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JUDGMENT OF THE COURT

(Sixth Chamber)

of 10 September 2002

In Joined Cases C-216/99 and C-222/99 (Reference for a preliminary ruling from the Tribunale di Milano): Riccardo Prisco Srl v Amministrazione delle Finanze dello Stato (C-216/99) and Ministero delle Finanze v CASER SpA (C-229/99) [1]

(Directive 69/335/EEC — Indirect taxes on the raising of capital — Articles 10 and 12(1)(e) — Register of companies — Registration of companies' instruments of incorporation and other company documents — Recovery of sums paid but not due — Procedural time-limits under national law — Interest)

(2002/C 274/01)

(Language of the case: Italian)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Joined Cases C-216/99 and C-222/99: Reference to the Court under Article 234 EC by the Tribunale di Milano (Italy) (C-216/99) and the Corte d'appello di Roma (Italy) (C-222/99) for preliminary rulings in the proceedings pending before those courts between Riccardo Prisco Srl and Amministrazione delle Finanze dello Stato (C-216/99), and between Ministero delle Finanze and CASER SpA (C-222/99), on the interpretation of Articles 10 and 12(1)(e) of Council Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital (OJ, English Special Edition 1969(II), p. 412) and on the interpretation of Community law on the recovery of sums paid but not due, the Court (Sixth Chamber), composed of: F. Macken, President of the Chamber, J.-P. Puissochet (Rapporteur), R. Schintgen, V. Skouris and J.N. Cunha Rodrigues, Judges; C. Stix-Hackl, Advocate General; L. Hewlett, Principal Administrator, for the Registrar, has given a judgment on 10 September 2002, in which it has ruled:

1. *Article 10 of Council Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital must be interpreted as prohibiting, subject to the exceptions in Article 12 of that directive, retroactive charges for the registration of company documents in the register of companies where they do not constitute capital duty permitted by that directive. Article 12(1)(e) of Directive 69/335/EEC must be interpreted as meaning that such retroactive charges do not constitute duties paid by way of fees or dues permitted by that provision where the registrations in the register of companies for which they are charged have already given rise to charges for which the retroactive charges are intended to be a substitute but which are not reimbursed to those who have paid them. Otherwise, for such retroactive charges to constitute duties paid by way of fees or dues permitted by Article 12(1)(e) of Directive 69/335/EEC, their amounts, which may vary according to the legal form of the company, must be calculated solely on the basis of the cost of the formalities in question, although they may also cover the costs of minor operations carried out free of charge, and must take account of any other charges paid in parallel which are also intended to pay for the same service rendered. In calculating those amounts, a Member State is entitled to take into account all the costs linked with the registration operations, including the share of overheads attributable to them. A Member State also has the option of introducing flat-rate charges and setting their amounts for an indeterminate period, as long as it ensures at regular intervals that those amounts still do not exceed the average cost of the operations concerned.*

2. *Community law does not prohibit a Member State from resisting actions for repayment of charges levied in breach of Community law by relying on a time-limit under national law of three years, by way of derogation from the ordinary rules governing actions between private individuals for the recovery of sums paid but not due, for which the period allowed is more favourable, provided that that time-limit applies in the same way to actions based on Community law for repayment of such charges as to those based on national law.*

3. *Community law precludes the adoption by a Member State of provisions making repayment of a tax held to be contrary to Community law by a judgment of the Court, or whose incompatibility with Community law is apparent from such a judgment, subject to conditions relating specifically to that tax which are less favourable than those which would otherwise be applied to repayment of the tax in question.*

([1]) OJ C 226 of 7.8.1999.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 19 September 2002

in Case C-377/99: Federal Republic of Germany v Commission of the European Communities ([1])

(EAGGF — Clearance of accounts — 1995 financial year — Arable crops)

(2002/C 274/02)

(Language of the case: German)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-377/99, Federal Republic of Germany (Agents: initially by W.-D. Plessing and C.-D. Quassowski and subsequently W.-D. Plessing and B. Muttelsee-Schön) v Commission of the European Communities (Agents: M. Niejahr and G. Braun) — application for partial annulment of Commission Decision 1999/596/EC of 28 July 1999, amending Decision 1999/187/EC on the clearance of the accounts presented by the Member States in respect of the expenditure for 1995 of the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ 1999 L 226, p. 26), in so far as it imposes on the Federal Republic of Germany a flat-rate correction of 5 % to the expenditure declared in respect of financial support in the arable crops sector in Mecklenburg-Vorpommern, equal to the sum of DEM 30 394 115,33, instead of 2 %, equal to the sum of DEM 12 157 646,13 — the Court (Fifth Chamber), composed of: P. Jann, President of the Chamber, S. von Bahr (Rapporteur), D.A.O. Edward, A. La Pergola, and C.W.A. Timmermans, Judges; C. Stix-Hackl, Advocate General; M.-F. Contet, Administrator, for the Registrar, has given a judgment on 19 September 2002, in which it:

1. *Dismisses the action;*

2. *Orders the Federal Republic of Germany to pay the costs.*

([1]) OJ C 366 of 18.12.1999.

JUDGMENT OF THE COURT

of 17 September 2002

in Case C-413/99 (Reference for a preliminary ruling from the Immigration Appeal Tribunal): Baumbast, R v Secretary of State for the Home Department ([1])

(Freedom of movement for persons — Migrant worker — Rights of residence of members of the migrant worker's family — Rights of the children to pursue their studies in the host Member State — Articles 10 and 12 of Regulation (EEC) No 1612/68 — Citizenship of the European Union — Right of residence — Directive 90/364/EEC — Limitations and conditions)

(2002/C 274/03)

(Language of the case: English)

In Case C-413/99: Reference to the Court under Article 234 EC by the Immigration Appeal Tribunal (United Kingdom) for

a preliminary ruling in the proceedings pending before that court between Baumbast, R and Secretary of State for the Home Department, on the interpretation of Article 18 EC and Article 12 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition 1968 (II), p. 475), the Court, composed of: G.C. Rodríguez Iglesias, President, P. Jann, F. Macken (Rapporteur), N. Colneric and S. von Bahr (Presidents of Chambers), C. Gulmann, D.A.O. Edward, A. La Pergola, J.-P. Puissochet, M. Wathelet, V. Skouris, J.N. Cunha Rodrigues and C.W.A. Timmermans, Judges; L.A. Geelhoed, Advocate General; L. Hewlett, Administrator, for the Registrar, has given a judgment on 17 September 2002, in which it has ruled:

1. *Children of a citizen of the European Union who have installed themselves in a Member State during the exercise by their parent of rights of residence as a migrant worker in that Member State are entitled to reside there in order to attend general educational courses there, pursuant to Article 12 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community. The fact that the parents of the children concerned have meanwhile divorced, the fact that only one parent is a citizen of the Union and that parent has ceased to be a migrant worker in the host Member State and the fact that the children are not themselves citizens of the Union are irrelevant in this regard.*

2. *Where children have the right to reside in a host Member State in order to attend general educational courses pursuant to Article 12 of Regulation (EEC) No 1612/68, that provision must be interpreted as entitling the parent who is the primary carer of those children, irrespective of his nationality, to reside with them in order to facilitate the exercise of that right notwithstanding the fact that the parents have meanwhile divorced or that the parent who has the status of citizen of the European Union has ceased to be a migrant worker in the host Member State.*

3. *A citizen of the European Union who no longer enjoys a right of residence as a migrant worker in the host Member State can, as a citizen of the Union, enjoy there a right of residence by direct application of Article 18(1) EC. The exercise of that right is subject to the limitations and conditions referred to in that provision, but the competent authorities and, where necessary, the national courts must ensure that those limitations and conditions are applied in compliance with the general principles of Community law and, in particular, the principle of proportionality.*

(1) OJ C 6 of 8.1.2002.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 24 September 2002

in Case C-471/99 (Reference for a preliminary ruling from the Sozialgericht Nürnberg): Alfredo Martínez Domínguez, Joaquín Benítez Urbano, Agapito Mateos Cruz, Carmen Calvo Fernández v Bundesanstalt für Arbeit, Kindergeldkasse (1)

(Regulation (EEC) No 1408/71 — Articles 77 and 78 — Pensioners under the legislation of several Member States — Pensioners under a social-security convention between Member States concluded prior to accession to the European Communities — Benefits for dependent children and for orphans of pensioners — Entitlement to family benefits for which the competent institution of a Member State other than that of residence is responsible — Conditions of entitlement)

(2002/C 274/04)

(Language of the case: German)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-471/99: Reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the Sozialgericht Nürnberg (Germany) for a preliminary ruling in the proceedings pending before that court between Alfredo Martínez Domínguez, Joaquín Benítez Urbano, Agapito Mateos Cruz, Carmen Calvo Fernández and Bundesanstalt für Arbeit, Kindergeldkasse, on the interpretation of Articles 77(2)(b), 78(2)(b) and 79(1) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EEC) No 2001/83 of 2 June 1983 (OJ 1983 L 230, p. 6), the Court (Sixth Chamber), composed of: F. Macken, President of the Chamber, C. Gulmann (Rapporteur), R. Schintgen, V. Skouris and J.N. Cunha Rodrigues, Judges; A. Tizzano, Advocate General; L. Hewlett, Administrator, for the Registrar, has given a judgment on 24 September 2002, in which it has ruled:

Articles 77(2)(b) and 78(2)(b) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EEC) No 2001/83 of 2 June 1983, and read in conjunction with Article 79(1) thereof, must be interpreted as meaning that the competent institution of a Member State other than that of the residence of a person in receipt of an old-age or invalidity pension, or of the residence of orphans of a deceased worker, is not required to grant the persons concerned benefits for dependent children or for orphans where the conditions laid down by

the legislation of the Member State of residence for the award of such benefits are not or are no longer satisfied and where the entitlement of the pensioner or of the orphans claiming under the deceased worker is not acquired, in the other Member State, solely under the legislation of that State. None the less, in such a situation, the competent institution of the Member State other than that of residence may be required to award the benefit at issue under a social-security convention entered into by the two Member States concerned and incorporated in their national law prior to the entry into force of the Regulation, where the persons concerned have an established right to continued application of that convention after the entry into force of the Regulation.

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(1) OJ C 122 of 29.4.2000.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 17 September 2002

in Case C-498/99 (Reference for a preliminary ruling from the VAT and Duties Tribunal, Manchester): Town & County Factors Ltd v Commissioners of Customs and Excise (1)

(Sixth VAT Directive — Scope — Competition whose organiser binds himself in honour only — Taxable amount)

(2002/C 274/05)

(Language of the case: English)

In Case C-498/99: Reference to the Court under Article 234 EC by the VAT and Duties Tribunal, Manchester (United Kingdom), for a preliminary ruling in the proceedings pending before that tribunal between Town & County Factors Ltd and Commissioners of Customs and Excise, on the interpretation of Articles 2(1), 6(1) and 11A(1) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1), the Court (Sixth Chamber), composed of: N. Colneric, President of the Second Chamber, acting for the President of the Sixth Chamber, C. Gulmann, J.-P. Puissochet, R. Schintgen (Rapporteur) and V. Skouris, Judges; C. Stix-Hackl, Advocate General; L. Hewlett, Administrator, Registrar, has given a judgment on 17 September 2002, in which it has ruled:

1. *Article 2(1) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment must be interpreted as meaning that a supply of services which is effected for consideration but is not based on enforceable obligations, because it has been agreed that the provider is bound in honour only to provide the services, constitutes a transaction subject to value added tax.*

2. *Article 11A(1)(a) of the Sixth Directive 77/388 must be interpreted as meaning that the full amount of the entry fees received by the organiser of a competition constitutes the taxable amount for that competition where the organiser has that amount freely at his disposal.*

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(1) OJ C 47 of 19.2.2000.

JUDGMENT OF THE COURT

of 17 September 2002

in Case C-513/99 (Reference for a preliminary ruling from the Korkein hallinto-oikeus): Concordia Bus Finland Oy Ab v Helsingin kaupunki, HKL-Bussiliikenne (1)

(Public service contracts in the transport sector — Directives 92/50/EEC and 93/38/EEC — Contracting municipality which organises bus transport services and an economically independent entity of which participates in the tender procedure as a tenderer — Taking into account of criteria relating to the protection of the environment to determine the economically most advantageous tender — Whether permissible when the municipal entity which is tendering meets those criteria more easily)

(2002/C 274/06)

(Language of the case: Finnish)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-513/99: Reference to the Court under Article 234 EC by the Korkein hallinto-oikeus (Finland) for a preliminary

ruling in the proceedings pending before that court between Concordia Bus Finland Oy Ab, formerly Stagecoach Finland Oy Ab, and Helsingin kaupunki, HKL-Bussiliikenne, on the interpretation of Articles 2(1)(a), (2)(c) and (4) and 34(1) of Council Directive 93/38/EEC of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ 1993 L 199, p. 84), as amended by the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded (OJ 1994 C 241, p. 21, and OJ 1995 L 1, p. 1), and Article 36(1) of Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts (OJ 1992 L 209, p. 1), the Court, composed of: G.C. Rodríguez Iglesias, President, P. Jann and F. Macken (Presidents of Chambers), C. Gulmann, D.A.O. Edward, A. La Pergola, M. Wathelet, R. Schintgen and V. Skouris (Rapporteur), Judges; J. Mischo, Advocate General; H. von Holstein, Deputy Registrar, has given a judgment on 17 September 2002, in which it has ruled:

1. *Article 36(1)(a) of Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts must be interpreted as meaning that where, in the context of a public contract for the provision of urban bus transport services, the contracting authority decides to award a contract to the tenderer who submits the economically most advantageous tender, it may take into consideration ecological criteria such as the level of nitrogen oxide emissions or the noise level of the buses, provided that they are linked to the subject-matter of the contract, do not confer an unrestricted freedom of choice on the authority, are expressly mentioned in the contract documents or the tender notice, and comply with all the fundamental principles of Community law, in particular the principle of non-discrimination.*

2. *The principle of equal treatment does not preclude the taking into consideration of criteria connected with protection of the environment, such as those at issue in the main proceedings, solely because the contracting entity's own transport undertaking is one of the few undertakings able to offer a bus fleet satisfying those criteria.*

3. *The answer to the second and third questions would not be different if the procedure for the award of the public contract at issue in the main proceedings fell within the scope of Council Directive 93/38/EEC of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors.*

(1) OJ C 102 of 8.4.2000.

JUDGMENT OF THE COURT

of 24 September 2002

in Joined Cases C-74/00 P and C-75/00 P: Falck SpA, Acciaierie di Bolzano SpA, v Commission of the European Communities (1)

(State aid — ECSC scheme — Rights of the recipient of aid — Scope: no need for trade and competition to be affected — Applicability of different State aid codes over time — Rate of interest to be applied for the repayment of incompatible aid)

(2002/C 274/07)

(Language of the case: Italian)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Joined Cases C-74/00 P and C-75/00 P: Falck SpA, established in Milan (Italy), (lawyers: G. Macrì, M. Condinanzi and F. Colussi) Acciaierie di Bolzano SpA, established in Bolzano (Italy) (lawyer: B. Nascimbene) — appeal against the judgment of the Court of First Instance of the European Communities (Fifth Chamber, Extended Composition) of 16 December 1999 in Case T-158/96 Acciaierie di Bolzano v Commission [1999] ECR II-3927, the other parties to the proceedings being Commission of the European Communities (Agents: V. di Bucci and K.-D. Borchardt) and Italian Republic (Agent: U. Leanza, assisted by D. Del Gaizo), with an address for service in Luxembourg, the Court, composed of: G.C. Rodríguez Iglesias, President, P. Jann, F. Macken, N. Colneric and S. von Bahr (Presidents of Chambers), D.A.O. Edward, A. La Pergola, J.-P. Puissochet (Rapporteur), M. Wathelet, V. Skouris and J.N. Cunha Rodrigues, Judges; S. Alber, Advocate General; L. Hewlett, Administrator, for the Registrar, gave a judgment on 24 September 2002 in which it:

1. *Sets aside the judgment of the Court of First Instance of 16 December 1999 in Case T-158/96 Acciaierie di Bolzano v Commission in so far as the Commission's tardiness in requiring repayment entailed an infringement of the principle of legal certainty;*

2. *Dismisses the remainder of the appeals;*

3. *Dismisses the action for annulment brought by Acciaierie di Bolzano SpA before the Court of First Instance;*

4. *Orders Falck SpA and Acciaierie di Bolzano SpA to share the costs in Cases C-74/00 P and C-75/00 P;*

5. *Orders the Italian Republic to bear its own costs in Cases C-74/00 P and C-75/00 P.*

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(1) OJ C 135 of 13.5.2000.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 19 September 2002

in Case C-101/00 (Reference for a preliminary ruling from the korkein hallinto-oikeus): Tulliasiamies, v Antti Siilin (1)

(Taxation of imported used cars — First paragraph of Article 95 of the EC Treaty (now, after amendment, first paragraph of Article 90 EC) — Sixth VAT Directive)

(2002/C 274/08)

(Language of the case: Finnish)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-101/00: Reference to the Court under Article 234 EC by the korkein hallinto-oikeus (Finland) for a preliminary ruling in the proceedings pending before that court brought by Tulliasiamies, and Antti Siilin, on the interpretation of the first paragraph of Article 95 of the EC Treaty (now, after amendment, the first paragraph of Article 90 EC) and of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1), in the version of Council Directive 92/111/EEC of 14 December 1992 amending Directive 77/388/EEC and introducing simplification measures with regard to value added tax (OJ 1992 L 384, p. 47), the Court (Fifth Chamber), composed of: P. Jann, President of the Chamber, S. von Bahr, A. La Pergola, M. Wathelet (Rapporteur) and C.W.A. Timmermans, Judges; C. Stix-Hackl, Advocate General; L. Hewlett, Principal Administrator, for the Registrar, has given a judgment on 19 September 2002, in which it has ruled:

1. *The first paragraph of Article 95 of the EC Treaty (now, after amendment, the first paragraph of Article 90 EC) allows a Member State to apply to used vehicles imported from another Member State a system of taxation under which the taxable value is determined by reference to the customs value as defined by Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code and Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation (EEC) No 2913/92, but precludes the taxable value from varying according to the marketing stage where this may result, at least in certain cases, in the amount of the tax on an imported used car exceeding the amount of the residual tax incorporated in the value of a similar used car already registered in the national territory.*

2. *The first paragraph of Article 95 of the Treaty precludes a Member State from applying to used cars imported from another Member State a system of taxation under which the tax on those vehicles*

   — *is equal, during the first six months from the registration or bringing into use of the vehicle, to the tax charged on a similar new vehicle, and*

   — *is equal, from the 7th to the 150th month of use of the vehicle, to the tax on a similar new vehicle, with a linear reduction by a percentage of 0,5 % per full calendar month,*

   since such a system of taxation does not take the actual depreciation of the vehicle into account and does not provide a guarantee that the amount of tax it determines will in no case exceed the residual tax incorporated in the value of a similar used car already registered in the national territory.

3. *Where a Member State applies to used cars imported from other Member States a system of taxation under which the actual depreciation of the vehicles is defined in a general and abstract way on the basis of criteria laid down by national law, the first paragraph of Article 95 of the Treaty requires that system of taxation to be arranged in such a way, making allowance for the reasonable approximations inherent in any system of that type, as to exclude any discriminatory effect. That requirement presupposes, first, that the criteria on which the flat-rate method of calculating the depreciation of vehicles is based are made public and, second, that the owner of a used vehicle imported from another Member State is able to challenge the application of a flat-rate method of calculation to that vehicle, which may mean that its particular characteristics have to be examined in order to ensure that the tax applied to it does not exceed the residual tax incorporated in the value of a similar used vehicle already registered in the national territory.*

4. *A tax such as that at issue in the main proceedings, described in national law as 'value added tax' on car tax, does not constitute 'value added tax' within the meaning of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, in the version of Council Directive 92/111/EEC of 14 December 1992 amending Directive 77/388/EEC and introducing simplification measures with regard to value added tax, and is compatible with Article 33 of that directive.*

5. *The first paragraph of Article 95 of the Treaty precludes the levying of a tax such as that at issue in the main proceedings, which is payable on car tax, in so far as the amount charged as such a tax on a used car imported from another Member State exceeds the amount of the residual tax incorporated in the value of a similar used car already registered in the national territory.*

([1]) OJ C 176 of 24.6.2000.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 19 September 2002

in Case C-104/00 P: DKV Deutsche Krankenversicherung AG v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) ([1])

(Appeal — Community trade mark — Regulation (EC) No 40/94 — Word 'Companyline' — Absolute ground for refusal — Distinctive character)

(2002/C 274/09)

(Language of the case: German)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-104/00 P, DKV Deutsche Krankenversicherung AG (represented by: S. von Petersdorff-Campen): Appeal against the judgment of the Court of First Instance of the European Communities (Fourth Chamber) of 12 January 2000 in Case T-19/99 DKV v OHIM (COMPANYLINE) [2000] ECR II-1, seeking to have that judgment set aside, the other party to the proceedings being: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Agents: A. von Mühlendahl and D. Schennen), the Court (Fifth Chamber), composed of: P. Jann (Rapporteur), President of the Chamber, S. von Bahr, M. Wathelet, C.W.A. Timmermans and A. Rosas, Judges; D. Ruiz-Jarabo Colomer, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 19 September 2002, in which it:

1. *Dismisses the appeal;*

2. *Orders DKV Deutsche Krankenversicherung AG to pay the costs.*

([1]) OJ C 192 of 8.7.2000.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 19 September 2002

in Case C-113/00: Kingdom of Spain v Commission of the European Communities ([1])

(State aid — Agriculture — Aid for horticultural products intended for industrial processing in Extremadura — Article 87(1) and (3)(a) and (c) EC — Small amount of aid — No comments from parties concerned — Operating aid — Aid relating to products subject to a common organisation of the market — Restrictions on the free movement of goods — Statement of reasons)

(2002/C 274/10)

(Language of the case: Spanish)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-113/00, Kingdom of Spain (Agent: S. Ortiz Vaamonde) v Commission of the European Communities (Agent: D. Triantafyllou): Application for annulment of Commission Decision 2000/237/EC of 22 December 1999 concerning an aid scheme implemented by Spain in favour of horticultural products intended for industrial processing in Extremadura in the 1997/98 marketing year (OJ 2000 L 75, p. 54), the Court (Fifth Chamber), composed of: P. Jann, President of the Chamber, D.A.O. Edward, A. La Pergola, M. Wathelet and C.W.A. Timmermans (Rapporteur), Judges; F.G. Jacobs, Advocate General; R. Grass, Registrar, has given a judgment on 19 September 2002, in which it:

1. *Dismisses the application;*

2. *Orders the Kingdom of Spain to pay the costs.*

([1]) OJ C 176 of 24.6.2000.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 19 September 2002

in Case C-114/00: Kingdom of Spain v Commission of the European Communities [1]

(State aid — Agriculture — Aid awarded in the form of an interest-rate rebate for loans lasting less than one year — Article 87(1) and (3)(a) and (c) EC — Commission Notice 96/C 44/02 on State aids: subsidised short-term loans in agriculture (crédits de gestion) — Small amount of aid — No comments from interested parties — Operating aid — Aid relating to products subject to a common organisation of the market — Restrictions on the free movement of goods — Statement of reasons)

(2002/C 274/11)

(Language of the case: Spanish)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-114/00, Kingdom of Spain (Agent: S. Ortiz Vaamonde) v Commission of the European Communities (Agent: D. Triantafyllou): Application for annulment of Commission Decision 2000/240/EC of 22 December 1999 concerning an aid scheme implemented by Spain to finance operating capital in the agricultural sector in Extremadura (OJ 2000 L 76, p. 16), the Court (Fifth Chamber), composed of: P. Jann, President of the Chamber, D.A.O. Edward, A. La Pergola, M. Wathelet and C.W.A. Timmermans (Rapporteur), Judges; F.G. Jacobs, Advocate General; R. Grass, Registrar, has given a judgment on 19 September 2002, in which it:

1. *Dismisses the application;*

2. *Orders the Kingdom of Spain to pay the costs.*

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[1] OJ C 192 of 8.7.2000.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 10 September 2002

in Case C-141/00 (Reference for a preliminary ruling from the Bundesfinanzhof): Ambulanter Pflegedienst Kügler GmbH v Finanzamt für Körperschaften I in Berlin [1]

(Article 13(A)(1)(c) and (g) of the Sixth Directive (77/388/EEC) — Exemption of care provided by capital companies — Services closely linked to welfare and social security work supplied by organisations, not being bodies governed by public law, recognised as charitable by the Member State concerned — Direct effect)

(2002/C 274/12)

(Language of the case: German)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-141/00: Reference to the Court under Article 234 EC by the Bundesfinanzhof (Germany) for a preliminary ruling in the proceedings pending before that court between Ambulanter Pflegedienst Kügler GmbH and Finanzamt für Körperschaften I in Berlin, on the interpretation of Article 13(A)(1)(c) and (g) of the Sixth Council Directive (77/388/EEC) of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1), the Court (Sixth Chamber), composed of: F. Macken (Rapporteur), President of the Chamber, C. Gulmann, J.-P. Puissochet, R. Schintgen and J.N. Cunha Rodrigues, Judges; A. Tizzano, Advocate General; H. von Holstein, Deputy Registrar, has given a judgment on 10 September 2002, in which it has ruled:

1. *The exemption envisaged in Article 13(A)(1)(c) of the Sixth Council Directive (77/388/EEC) of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment is not dependent on the legal form of the taxable person supplying the medical or paramedical services referred to in that provision.*

2. *The exemption envisaged in Article 13(A)(1)(c) of the Sixth Directive (77/388/EEC) applies to the provision of care of a therapeutic nature by a capital company running an out-patient service under which care, including home care, is provided by qualified nursing staff, to the exclusion of the provision of general care and domestic help.*

3. a) *The provision of general care and domestic help by an out-patient care service to persons in a state of physical or economic dependence amounts to the supply of services closely linked to welfare and social security work within the meaning of Article 13(A)(1)(g) of the Sixth Directive (77/388/EEC).*

   (b) *The exemption provided for in Article 13(A)(1)(g) of the Sixth Directive (77/388/EEC) may be relied upon by a taxable person before national courts in order to oppose national rules incompatible with that provision. It is for the national court to establish, in the light of all relevant factors, whether the taxable person is an organisation recognised as charitable within the meaning of the aforesaid provision.*

([1]) OJ C 176 of 24.6.2000.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 12 September 2002

in Case C-152/00: Commission of the European Communities v French Republic ([1])

(Failure by a Member State to fulfil its obligations — Directive 86/609/EEC — Incomplete transposition)

(2002/C 274/13)

(Language of the case: French)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-152/00, Commission of the European Communities (Agents: L. Ström and J.-F. Pasquier) v French Republic (Agents: K. Rispal-Bellanger and C. Vasak, and G. de Bergues): Application for a declaration that, by failing to transpose fully and correctly Council Directive 86/609/EEC of 24 November 1986 on the approximation of laws, regulations and administrative provisions of the Member States regarding the protection of animals used for experimental and other scientific purposes (OJ 1986 L 358, p. 1), and in particular Articles 4, 7, 11, 12, 18 and 22 thereof, the French Republic has failed to fulfil its obligations under the EC Treaty, the Court (Fifth Chamber), composed of: P. Jann, President of the Chamber, S. von Bahr and A. La Pergola (Rapporteur), Judges; L.A. Geelhoed, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 12 September 2002, in which it:

1. *Declares that, by failing to adopt all the measures necessary to ensure the correct transposition of Articles 4, 7(3), 11, 12(2), 18(1) and (3) and 22(1) of Council Directive 86/609/EEC of 24 November 1986 on the approximation of laws, regulations and administrative provisions of the Member States regarding the protection of animals used for experimental and other scientific purposes, the French Republic has failed to fulfil its obligations under that directive;*

2. *Orders the French Republic to pay the costs.*

([1]) OJ C 176 of 24.6.2000.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 10 September 2002

in Case C-172/00 (Reference for a preliminary ruling from the Landgericht Köln): Ferring Arzneimittel GmbH v Eurim-Pharm Arzneimittel GmbH ([1])

(Interpretation of Article 28 EC and Article 30 EC — Medicinal products — Withdrawal of parallel import licence in consequence of waiver of the marketing authorisation for the medicinal product of reference by the holder of that authorisation)

(2002/C 274/14)

(Language of the case: German)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-172/00: Reference to the Court under Article 234 EC by the Landgericht Köln (Germany) for a preliminary ruling in the proceedings pending before that court between Ferring Arzneimittel GmbH and Eurim-Pharm Arzneimittel GmbH, on the interpretation of Article 28 EC and Article 30 EC, the Court (Sixth Chamber), composed of: F. Macken, President of the Chamber, C. Gulmann (Rapporteur), J.-P. Puissochet, V. Skouris and J.N. Cunha Rodrigues, Judges; L.A. Geelhoed, Advocate General; L. Hewlett, Administrator, for the Registrar, has given a judgment on 10 September 2002, in which it has ruled:

1. *Article 28 EC precludes national legislation under which the withdrawal of the marketing authorisation of reference for a medicinal product on application by the holder thereof means that the parallel import licence for that product automatically ceases to be valid.*

2. *The fact that the new version of the medicinal product has been placed on the market of the Member State of importation alone or is also found on the market in other Member States does not alter the answer to the first question.*

3. *If it is demonstrated that there is in fact a risk to public health arising from the coexistence of two versions of the same medicinal product on the market in a Member State such a risk may justify restrictions on the importation of the old version of the medicinal product in consequence of the withdrawal of the marketing authorisation of reference by the holder thereof in relation to that market.*

(1) OJ C 211 of 22.7.2000.

JUDGMENT OF THE COURT

of 17 September 2002

in Case C-253/00 (Reference for a preliminary ruling from the Court of Appeal (England & Wales) (Civil Division): Antonio Muñoz y Cia SA, Superior Fruiticola SA v Frumar Ltd, Redbridge Produce Marketing Ltd (1)

(Agriculture — Regulation (EC) No 2200/96 — Quality standards for varieties of table grapes — Legal obligations of operators marketing table grapes within the Community — Right of an operator to seek enforcement of those obligations in civil proceedings)

(2002/C 274/15)

(Language of the case: English)

In Case C-253/00: Reference to the Court under Article 234 EC by the Court of Appeal of England and Wales (Civil Division) for a preliminary ruling in the proceedings pending before that court between Antonio Muñoz y Cia SA, Superior Fruiticola SA and Frumar Ltd, Redbridge Produce Marketing Ltd, on the interpretation of Regulation (EEC) No 1035/72 of the Council of 18 May 1972 and Council Regulation (EC) No 2200/96 of 28 October 1996 on the common organisation of the market in fruit and vegetables (OJ, English Special Edition 1972 (II), p. 437, and OJ 1996 L 297, p. 1 respectively), the Court, composed of: G.C. Rodríguez Iglesias, President, P. Jann (Rapporteur), N. Colneric and S. von Bahr, (Presidents of Chambers), C. Gulmann, D.A.O. Edward, A. La Pergola, J.-P. Puissochet, R. Schintgen, J.N. Cunha Rodrigues and C.W.A. Timmermans, Judges; L.A. Geelhoed, Advocate General; R. Grass, Registrar, has given a judgment on 17 September 2002, in which it has ruled:

Regulation (EEC) No 1035/72 of the Council of 18 May 1972 and Council Regulation (EC) No 2200/96 of 28 October 1996 on the common organisation of the market in fruit and vegetables are to be interpreted as meaning that compliance with the provisions on quality standards applicable to fruit or vegetables must be capable of enforcement by means of civil proceedings instituted by a trader against a competitor.

(1) OJ C 247 of 26.8.2000.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 24 September 2002

in Case C-255/00 (Reference for a preliminary ruling from the Tribunale di Trento): Grundig Italiana SpA v Ministero delle Finanze (1)

(Internal taxes contrary to Community law — Recovery of sums paid but not due — National legislation retroactively reducing time-limits for bringing proceedings — Compatibility with the principle of effectiveness)

(2002/C 274/16)

(Language of the case: Italian)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-255/00: Reference to the Court under Article 234 EC by the Tribunale di Trento (Italy) for a preliminary ruling in the proceedings pending before that court between Grundig Italiana SpA and Ministero delle Finanze, on the interpretation of the principles of Community law relating to the recovery of sums paid but not due, the Court (Sixth Chamber), composed of: F. Macken, President of the Chamber, C. Gulmann, J.-P. Puissochet (Rapporteur), R. Schintgen and J.N. Cunha Rodrigues, Judges; D. Ruíz-Jarabo Colomer, Advocate General; R. Grass, Registrar, has given a judgment on 24 September 2002, in which it has ruled:

Community law precludes the retroactive application of a time-limit that is shorter and, as the case may be, more restrictive for the claimant than the period for initiating proceedings that was previously applicable to claims for the recovery of national taxes contrary to Community law where no adequate transitional period is provided during which claims relating to sums paid before the entry into force of the legislation introducing the new time-limit may still be brought within the old period. Where a limitation period of five years is replaced with a time-limit of three years, a transitional period of 90 days must be regarded as insufficient and six months must be regarded as the minimum period required to ensure that the exercise of rights of recovery is not rendered excessively difficult.

([1]) OJ C 247 of 26.8.2000.

JUDGMENT OF THE COURT

of 17 September 2002

in Case C-320/00 (Reference for a preliminary ruling from the Court of Appeal (England & Wales) (Civil Division): A.G. Lawrence and Others v Regent Office Care Ltd, Commercial Catering Group, Mitie Secure Services Ltd ([1])

(Principle of equal pay for men and women — Direct effect — Comparison of the work performed for different employers)

(2002/C 274/17)

(Language of the case: English)

In Case C-320/00: Reference to the Court under Article 234 EC by the Court of Appeal of England and Wales (Civil Division) for a preliminary ruling in the proceedings pending before that court between A. G. Lawrence and Others and Regent Office Care Ltd, Commercial Catering Group, Mitie Secure Services Ltd, on the interpretation of Article 141(1) EC, the Court, composed of: G. C. Rodríguez Iglesias, President, P. Jann, F. Macken, N. Colneric (Rapporteur) and S. von Bahr (Presidents of Chambers), D. A. O. Edward, A. La Pergola, J.-P. Puissochet, M. Wathelet, R. Schintgen and V. Skouris, Judges; L. A. Geelhoed, Advocate General; H. A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 17 September 2002, in which it has ruled:

A situation such as that in the main proceedings, in which the differences identified in the pay conditions of workers of different sex performing equal work or work of equal value cannot be attributed to a single source, does not come within the scope of Article 141(1) EC.

([1]) OJ C 316 of 4.11.2000.

JUDGMENT OF THE COURT

of 17 September 2002

in Case C-334/00 (Reference for a preliminary ruling from the Corte suprema di cassazione): Fonderie Officine Meccaniche Tacconi SpA v Heinrich Wagner Sinto Maschinenfabrik GmbH (HWS) ([1])

(Brussels Convention — Article 5(1) and (3) — Special jurisdiction — Pre-contractual liability)

(2002/C 274/18)

(Language of the case: Italian)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-334/00: Reference to the Court under the Protocol of 3 June 1971 on the interpretation by the Court of Justice of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters by the Corte suprema di cassazione (Italy) for a preliminary ruling in the proceedings pending before that court between Fonderie Officine Meccaniche Tacconi SpA and Heinrich Wagner Sinto Maschinenfabrik GmbH (HWS), on the interpretation of Article 5(1) and (3) of the abovementioned Convention of 27 September 1968 (OJ 1978 L 304, p. 36), as amended by the Convention of 9 October 1978 on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland (OJ 1978 L 304, p. 1 and — amended version — p. 77), by the Convention of 25 October 1982 on the Accession of the Hellenic Republic (OJ 1982 L 388, p. 1) and by the Convention of 26 May 1989 on the Accession of the Kingdom of Spain and the Portuguese Republic (OJ 1989 L 285, p. 1), the Court, composed of: G. C. Rodríguez Iglesias, President, N. Colneric and S. von Bahr (Presidents of Chambers), C. Gulmann, D. A. O. Edward, A. La Pergola, J.-P. Puissochet, M. Wathelet, R. Schintgen, J. N. Cunha Rodrigues (Rapporteur) and C. W. A. Timmermans, Judges; L. A. Geelhoed, Advocate General; R. Grass, Registrar, has given a judgment on 17 September 2002, in which it has ruled:

In circumstances such as those of the main proceedings, characterised by the absence of obligations freely assumed by one party towards another on the occasion of negotiations with a view to the formation of a contract and by a possible breach of rules of law, in particular the rule which requires the parties to act in good faith in such negotiations, an action founded on the pre-contractual liability of the defendant is a matter relating to tort, delict or quasi-delict within the meaning of Article 5(3) of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by the Convention of 9 October 1978 on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, by the Convention of 25 October 1982 on the Accession of the Hellenic Republic and by the Convention of 26 May 1989 on the Accession of the Kingdom of Spain and the Portuguese Republic.

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(1) OJ C 302 of 21.10.2000.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 19 September 2002

in Case C-336/00 (Reference for a preliminary ruling from the Oberster Gerichtshof): Republik Österreich v Martin Huber (1)

(Agriculture — Part-financed aid — Repayment — Legal basis — Protection of legitimate expectations — Legal certainty — Procedural autonomy of Member States)

(2002/C 274/19)

(Language of the case: German)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-336/00: Reference to the Court under Article 234 EC by the Oberster Gerichtshof (Austria) for a preliminary ruling in the proceedings pending before that court between Republik Österreich and Martin Huber, on the validity and interpretation of Council Regulation (EEC) No 2078/92 of 30 June 1992 on agricultural production methods compatible with the requirements of the protection of the environment and the maintenance of the countryside (OJ 1992 L 215, p. 85), as amended by the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded (OJ 1994 C 241, p. 21 and OJ 1995 L 1, p. 1), the Court (Fifth Chamber), composed of: P. Jann, President of the Chamber, D. A. O. Edward, A. La Pergola, M. Wathelet (Rapporteur) and C. W. A. Timmermans, Judges; S. Alber, Advocate General; M.-F. Contet, Administrator, for the Registrar, has given a judgment on 19 September 2002, in which it has ruled:

1. *Consideration of the first question has not disclosed any factor of such a kind as to affect the validity of Council Regulation (EEC) No 2078/92 of 30 June 1992 on agricultural production methods compatible with the requirements of the protection of the environment and the maintenance of the countryside, as amended by the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded.*

2. *Article 7(2) of Regulation (EEC) No 2078/92, as amended by the abovementioned Act of Accession, must be interpreted as meaning that a Commission decision approving a national aid programme also encompasses its content, without, however, conferring on that programme the nature of an act of Community law.*

3. *A Commission decision approving a national aid programme as referred to in Article 7 of Regulation (EEC) No 2078/92, as amended by the Act of Accession, is addressed only to the Member State concerned. It is for the national courts to decide, in the light of national law, whether the publicity given to that programme enabled it to become binding on agricultural and rural operators, in particular by ensuring compliance with the requirement of appropriate information laid down in Article 3(3)(f) of Regulation (EEC) No 2078/92.*

4. *Community law does not preclude the application of the principles of the protection of legitimate expectations and legal certainty in order to prevent the recovery of aid part-financed by the Community which has been wrongly paid, provided that the interest of the Community is also taken into consideration. The application of the principle of the protection of legitimate expectations assumes that the good faith of the beneficiary of the aid in question is established.*

5. *It is open to Member States to implement national aid programmes within the meaning of Article 3(1) of Regulation (EEC) No 2078/92, as amended by the Act of Accession, by private-sector measures or by forms of State action, in so far as the national measures in question do not affect the scope and effectiveness of Community law.*

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(1) OJ C 335 of 25.11.2000.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 12 September 2002

in Case C-351/00 (Reference for a preliminary ruling from the vakuutusoikeus): Pirkko Niemi [1]

(Social policy — Equal treatment for men and women — Applicability of Article 119 of the EC Treaty (Articles 117 to 120 of the EC Treaty have been replaced by Articles 136 EC to 143 EC) or Directive 79/7/EEC — Concept of 'pay' — Retirement pension scheme for public servants)

(2002/C 274/20)

(Language of the case: Finnish)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-351/00: Reference to the Court under Article 234 EC by the vakuutusoikeus (Finland) for a preliminary ruling in the proceedings brought by Pirkko Niemi on the interpretation of Article 119 of the EC Treaty (Articles 117 to 120 of the EC Treaty have been replaced by Articles 136 EC to 143 EC) and of Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security (OJ 1979 L 6, p. 24), the Court (Fifth Chamber), composed of: P. Jann, President of the Chamber, S. von Bahr, D. A. O. Edward, M. Wathelet and C. W. A. Timmermans (Rapporteur), Judges; S. Alber, Advocate General; H. von Holstein, Deputy Registrar, has given a judgment on 12 September 2002, in which it has ruled:

A pension such as that paid under the Valtion eläkelaki (State Pensions Law) 280/1966 as amended by Law 638/1994 falls within the scope of Article 119 of the EC Treaty (Articles 117 to 120 of the EC Treaty have been replaced by Articles 136 EC to 143 EC).

(1) OJ C 335 of 25.11.2000.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 17 September 2002

in Case C-392/00 (Reference for a preliminary ruling from the Bundesfinanzhof): Finanzamt Hannover-Nord v Norddeutsche Gesellschaft zur Beratung und Durchführung von Entsorgungsaufgaben bei Kernkraftwerken mbH [1]

(Raising of capital — Directive 69/335/EEC — Capital duty — Interest-free loans granted by members — Profit and loss transfer agreement)

(2002/C 274/21)

(Language of the case: German)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-392/00: Reference to the Court under Article 234 EC by the Bundesfinanzhof (Germany) for a preliminary ruling in the proceedings pending before that court between Finanzamt Hannover-Nord and Norddeutsche Gesellschaft zur Beratung und Durchführung von Entsorgungsaufgaben bei Kernkraftwerken mbH, on the interpretation of Article 4(2)(b) of Council Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital (OJ, English Special Edition 1969 (II), p. 412), as amended by Council Directive 85/303/EEC of 10 June 1985 (OJ 1985 L 156, p. 23), the Court (Sixth Chamber), composed of: F. Macken, President of the Chamber, N. Colneric, J.-P. Puissochet, R. Schintgen (Rapporteur) and V. Skouris, Judges; C. Stix-Hackl, Advocate General; H. A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 17 September 2002, in which it has ruled:

Article 4(2)(b) of Council Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital, as amended by Council Directive 85/303/EEC of 10 June 1985, must be interpreted as not precluding the charging of capital duty on the amount of interest saved by a company by virtue of an interest-free loan granted to it by its members where a profit and loss transfer agreement was entered into by the members and the company before the loan was granted, if the interest thereby saved has durably increased the company's assets. It is for the national court to determine, in the light of all the characteristics of the transaction at issue, whether, and if so to what extent, the interest saved has in fact had that effect.

(1) OJ C 372 of 23.12.2000.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 19 September 2002

in Case C-433/00 (Reference for a preliminary ruling from the Landgericht Köln): Aventis Pharma Deutschland GmbH v Kohlpharma GmbH, MTK Pharma Vertriebs-GmbH [1]

(Trade mark rights — Medicinal products — Central marketing authorisation — Repackaging)

(2002/C 274/22)

(Language of the case: German)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-433/00: Reference to the Court under Article 234 EC by the Landgericht Köln (Germany) for a preliminary ruling in the proceedings pending before that court between Aventis Pharma Deutschland GmbH and Kohlpharma GmbH, MTK Pharma Vertriebs-GmbH, on the interpretation of Council Regulation (EEC) No 2309/93 of 22 July 1993 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Agency for the Evaluation of Medicinal Products (OJ 1993 L 214, p. 1) and of the rules of Community law on the free movement of medicinal products, the Court (Sixth Chamber), composed of: F. Macken, President of the Chamber, N. Colneric, C. Gulmann (Rapporteur), J.-P. Puissochet and V. Skouris, Judges; F. G. Jacobs, Advocate General; H. A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 19 September 2002, in which it has ruled:

Council Regulation (EEC) No 2309/93 of 22 July 1993 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Agency for the Evaluation of Medicinal Products precludes a medicinal product which is the subject of two separate central marketing authorisations, one for packs of five items and the other for packs of 10 items, from being marketed in a package consisting of two packs of five items which have been joined together and relabelled.

(1) OJ C 45 of 10.2.2001.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 19 September 2002

in Case C-221/01: Commission of the European Communities v Kingdom of Belgium [1]

(Directive 97/33/EC — Telecommunications — Interconnection of networks — Interoperability of services)

(2002/C 274/23)

(Language of the case: French)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-221/01, Commission of the European Communities (Agent: H. van Lier) v Kingdom of Belgium (Agent: initially F. van de Craen, and, subsequently, A. Snoecx): Application for a declaration that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Directive 97/33/EC of the European Parliament and of the Council of 30 June 1997 on interconnection in Telecommunications with regard to ensuring universal service and interoperability through application of the principles of Open Network Provision (ONP) (OJ 1997 L 199, p. 32) and, in particular, with Articles 7(5), 9(3) and 14(1) and (2) thereof, the Kingdom of Belgium has failed to fulfil its obligations under that directive, the Court (Sixth Chamber), composed of: F. Macken, President of the Chamber, N. Colneric, C. Gulmann (Rapporteur), R. Schintgen and V. Skouris, Judges; F. G. Jacobs, Advocate General; R. Grass, Registrar, has given a judgment on 19 September 2002, in which it:

1. *Declares that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Articles 7(5) and 9(3) of Directive 97/33/EC of the European Parliament and of the Council of 30 June 1997 on interconnection in Telecommunications with regard to ensuring universal service and interoperability through application of the principles of Open Network Provision (ONP), as well as Article 14(1) in conjunction with Article 12(4) thereof, the Kingdom of Belgium has failed to fulfil its obligations under that directive;*

2. *Orders the Kingdom of Belgium to pay the costs.*

(1) OJ C 227 of 11.8.2001.

JUDGMENT OF THE COURT

(First Chamber)

of 12 September 2002

in Case C-312/01: Commission of the European Communities v Hellenic Republic [1]

(Failure by a Member State to fulfil its obligations — Directive 98/78/CE — Failure to transpose within the prescribed time-limit)

(2002/C 274/24)

(Language of the case: Greek)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-312/01, Commission of the European Communities (Agents: C. Tufvesson and M. Patakia) v Hellenic Republic (Agent: N. Dafniou): Application for a declaration that, by failing to adopt or to communicate to the Commission within the prescribed time-limit, all of the laws, regulations and administrative provisions necessary to comply with Directive 98/78/EC of the European Parliament and of the Council of 27 October 1998 on the supplementary supervision of insurance undertakings in an insurance group (OJ 1998 L 330, p. 1), the Hellenic Republic has failed to fulfil its obligations under that directive, the Court (First Chamber), composed of: P. Jann (Rapporteur), President of the Chamber, M. Wathelet and A. Rosas, Judges; L. A. Geelhoed, Advocate General; R. Grass, Registrar, has given a judgment on 12 September 2002, in which it:

1. *Declares that, by failing to bring into force or to communicate to the Commission within the prescribed time-limit, all of the laws, regulations and administrative provisions necessary to comply with Directive 98/78/EC of the European Parliament and of the Council of 27 October 1998 on the supplementary supervision of insurance undertakings in an insurance group, the Hellenic Republic has failed to fulfil its obligations under that directive;*

2. *Orders the Hellenic Republic to pay the costs.*

[1] OJ C 275 of 29.9.2001.

JUDGMENT OF THE COURT

(First Chamber)

of 12 September 2002

in Case C-386/01: Commission of the European Communities v Kingdom of Spain [1]

(Failure by a Member State to fulfil its obligations — Failure to transpose Directive 98/7/EC)

(2002/C 274/25)

(Language of the case: Spanish)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-386/01, Commission of the European Communities (Agent: I. Martínez del Peral) v Kingdom of Spain (Agent: S. Ortiz Vaamonde): Application for a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 98/7/EC of the European Parliament and of the Council of 16 February 1998 amending Directive 87/102/EEC for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit (OJ 1998 L 101, p. 17) or, in any event, by failing to inform the Commission of the adoption of such provisions, the Kingdom of Spain has failed to fulfil its obligations under Article 2(1) of that directive, the Court (First Chamber), composed of: P. Jann (Rapporteur), President of the Chamber, M. Wathelet and A. Rosas, Judges; S. Alber, Advocate General; R. Grass, Registrar, has given a judgment on 12 September 2002, in which it:

1. *Declares that, by failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary to comply with Directive 98/7/EC of the European Parliament and of the Council of 16 February 1998 amending Directive 87/102/EEC for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit, the Kingdom of Spain has failed to fulfil its obligations under Article 2(1) of that directive.*

2. *Orders the Kingdom of Spain to pay the costs.*

[1] OJ C 317 of 10.11.2001.

ORDER OF THE COURT

(First Chamber)

of 8 July 2002

in Case 203/01 (reference for a preliminary ruling from the Supremo Tribunal Administrativo (Portugal)): Fazenda Pública v Antero & Co. Ltd [1]

(Article 104(3) of the Rules of Procedure — Post-clearance recovery of import duties — Entry in the accounts of the import duties to be collected — Calculation of the time-limit for taking action for recovery)

(2002/C 274/26)

(Language of the case: Portuguese)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-203/01: reference to the Court under Article 234 EC from the Supremo Tribunal Administrativo (Supreme Administrative Tribunal) for a preliminary ruling in the proceedings pending before that court between Fazenda Pública v Antero & Co. Ltd., intervener: Ministério Público — on the interpretation of Articles 1, 2 and 5 of Council Regulation (EEC) No 1697/79 of 24 July 1979 on the post-clearance recovery of import duties or export duties which have not been required of the person liable for payment on goods entered for a customs procedure involving the obligation to pay such duties (OJ 1979 L 197, p. 1) — the Court (First Chamber), composed of: P. Jann (Rapporteur), President of the Chamber, M. Wathelet and A. Rosas, Judges; A. Tizzano, Advocate General; R. Grass, Registrar, has made an order on 8 July 2002, in which it has ruled:

The expression 'entry in the accounts' used in Article 1(2)(c) and in the second subparagraph of Article 2(1) of Council Regulation (EEC) No 1697/79 of 24 July 1979 on the post-clearance recovery of import duties or export duties which have not been required of the person liable for payment on goods entered for a customs procedure involving the obligation to pay such duties refers to the administrative act determining the amount of the import or export duties to be collected by the competent authorities and not to the entry by the customs authorities in accounts books, or on equivalent computer media, of such amount. Such entry is not a condition prior essential to the taking of action for post-clearance recovery.

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[1] OJ 2001 C 227.

Appeal brought on 30 July 2002 by Nuno Antas de Campos against the judgment delivered on 14 May 2002 by the Second Chamber of the Court of First Instance of the European Communities in Case T-194/00 [1] **between Nuno Antas de Campos and European Parliament**

(Case C-279/02 P)

(2002/C 274/27)

An appeal against the judgment delivered on 14 May 2002 by the Second Chamber of the Court of First Instance of the European Communities in Case T-194/00 between Nuno Antas de Campos and European Parliament was brought before the Court of Justice of the European Communities on 30 July 2002 by Nuno Antas de Campos, represented by C. Botelho Moniz and E. Maia Cadete, lawyers.

The appellant claims that the Court should:

— quash the contested judgment for errors in law, as a result of the misapplication, in the present case, of the principle of sound administration, the duty to provide reasons, the principle of equality and non-discrimination and the rules guaranteeing the right to a fair hearing;

— also on the grounds of breach of the principle of sound administration and of the duty to provide reasons and the principle of equality and non-discrimination, annul the decision of the President of the European Parliament, communicated to the appellant by means of letter No 109172, of 14 July 2000, in reply to a complaint submitted by him on 2 December 1999;

— refer the case back to the Court of First Instance for assessment of the facts in support of the claim for compensation, the case to proceed to final judgment on that matter;

— in the event that the judgment of the Court of First Instance is quashed on the sole ground of infringement of the right to a fair hearing, refer the case back to the Court of First Instance to hear the evidence previously passed over;

— order the European Parliament to pay the costs of these proceedings as well as those incurred by the appellant in Case T-194/00.

Pleas in law and main arguments

— Error in law as regards application of the principle of sound administration: The appointing authority could not validly make a decision on the basis of a criterion which it itself, in the same administrative procedure, had deemed unconvincing.

— Error in law as regards determination of the requirements of the duty to provide reasons: There is nothing in the contested decision to explain the change of direction adopted by the appointing authority. The mere transfer of the holder of an office does not make it possible to ignore entirely the steps taken in a particular administrative procedure by the authority itself. On the contrary, the obligations under the duty to provide reasons require, in such circumstances, greater rigour in the explanations provided for the decision adopted.

— Error in law as regards the application of the principle of equality and non-discrimination: The parameters utilised by the European Parliament changed to such an extent that its decisions, under the same legislative instrument, were rendered contradictory with regard to the solution offered to the heads of the information offices.

— Error in law as regards the conditions for the exercise of the right to a fair hearing: The rejection of the requests submitted by the appellant, both with regard to the calling of witnesses and the production of documentary evidence — in blatant contrast to the unsubstantiated statements by the European Parliament, at the hearing, on the existence and relevance of certain documents, without producing them — deprived the appellant of the opportunity to support in a conclusive manner its points of view and counter effectively the arguments put forward by the defendant institution.

([1]) OJ C 285, 7.10.2000, p. 17.

Reference for a preliminary ruling by the Verwaltungsgericht Stuttgart by order of that Court of 21 August 2002 in the case of 1. Radlberger Getränkegesellschaft mbH & Co., and 2. S. Spitz Kommanditgesellschaft against Land Baden-Württemberg; intervener: Federal Republic of Germany

(Case C-309/02)

(2002/C 274/28)

Reference has been made to the Court of Justice of the European Communities by order of the Verwaltungsgericht Stuttgart (Stuttgart Administrative Court) of 21 August 2002, received at the Court Registry on 29 August 2002, for a preliminary ruling in the case of 1. Radlberger Getränkegesellschaft mbH & Co., and 2. S. Spitz Kommanditgesellschaft against Land Baden-Württemberg; intervener: Federal Republic of Germany on the following questions:

1. On a proper construction of Article 1(2) of European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste (OJ 1994 L 365, p. 10) are Member States prohibited from favouring systems for reusing drinks packaging over recoverable non-refillable packaging where a Federal target for reusable packaging of 72 % is not reached by suspending the option of obtaining an exemption from a statutory return, disposal and deposit obligation in respect of empty non-refillable drinks packaging by participating in a return and disposal system for drinks sectors in which the proportion of reusable packaging has fallen below the level set in 1991?

2. On a proper construction of Article 18 of Directive 94/62/EC are Member States prohibited from impeding the placing of drinks in recoverable non-refillable packaging on the market where a Federal target for reusable packaging of 72 % is not reached by suspending the option of obtaining an exemption from a statutory return, disposal and deposit obligation in respect of empty non-refillable drinks packaging by participating in a return and disposal system for drinks sectors in which the proportion of reusable packaging has fallen below the level set in 1991?

3. On a proper construction of Article 7 of Directive 94/62/EC do producers and distributors of drinks sold in recoverable non-refillable packaging have a right to participate in an existing return and disposal system for used drinks packaging, in order to meet a statutory obligation to charge a deposit on non-refillable drinks packaging and to accept the return of used drinks packaging?

4. On a proper construction of Article 28 EC are the Member States prohibited from enacting regulations providing that where a Federal target for reusable packaging of 72 % is not reached the option of obtaining an exemption from statutory return, management and deposit obligations in respect of empty non-refillable drinks packaging by participating in a return and disposal system is to be suspended for drinks sectors in which the proportion of reusable packaging has fallen below the level set in 1991?

Appeal brought on 10 September 2002 by Hijos de Andrés Molina S.A. against the judgment delivered by the Fifth Chamber (Extended Composition) of the Court of First Instance of the European Communities on 10 July 2002 in Case T-152/99 between Hijos de Andrés Molina S.A. and the Commission of the European Communities

(Case C-316/02 P)

(2002/C 274/29)

An appeal against the judgment delivered by the Fifth Chamber (Extended Composition) of the Court of First Instance of the European Communities on 11 July 2002 in Case T-152/99 between Hijos de Andrés Molina S.A. and the Commission of the European Communities was brought before the Court of Justice of the European Communities on 10 September 2002 by Hijos de Andrés Molina S.A. (HAMSA), represented by Luis Manuel Olivencia Brugger and José Luis Ballester García-Izquierdo, with an address for service in Luxembourg.

The appellant claims that the Court should:

— set aside in part the judgment of 11 July 2002, and rule

(a) that the aid granted to HAMSA in 1994 was compatible with Community law, being compatible with the general aid scheme applicable;

(b) that the aid granted pursuant to the HAMSA restructuring plan in December 1995 was compatible with Community law;

(c) uphold the remainder of the contested judgment of 11 July 2002 which is not challenged in this appeal.

Pleas in law and main arguments

(a) The aid received by HAMSA in 1994 on the basis of a general aid scheme previously approved by the Commission was compatible with Community law:

In its judgment the Court of First Instance introduced a new matter, extraneous to the proceedings and to the dispute brought before it. Whereas the parties, HAMSA and the Commission, took the view that the aid granted in 1993 and 1994 was regulated by general aid schemes N 624792 and N 428/93, respectively, the Court of First Instance considered that schemes N 428/93 and N 462/94 applied to the aid granted in 1993 and 1994, respectively.

HAMSA had no opportunity, during either the administrative or the judicial procedure, to put forward its arguments concerning that new formulation by the Court of First Instance of the matter at issue, which amounted to breach of HAMSA's right to a fair hearing. In its submission, that fact constitutes a breach of procedure which adversely affects its interests within the meaning of Article 51 of the EEC Statute of the Court of Justice.

Secondly, the appellant alleges that the Court of First Instance failed to analyse the aid granted to HAMSA in 1994 in accordance with scheme N 462/94 which it regards as applicable.

(b) The rescue and restructuring aid granted on the basis of a restructuring plan was compatible with the common market:

In its decision of 3 February 1999 the Commission stated that it had not received the HAMSA restructuring plan until 4 July 1997. None the less, in response to questions asked by the Court of First Instance a few days before the hearing, the Commission acknowledged that it had received the restructuring plan before the Spanish authorities notified it of the aid on 1 July 1996. In actual fact, the restructuring plan was delivered by a Spanish official to a Community official in DG Agriculture in January 1996, but the Commission did not decide to initiate the procedure under Article 93(3) of the Treaty or to adopt measures of any kind with regard to the plan and the aid granted in implementing it in accordance with the provisions of the directives relating to the rescuing and restructuring of undertakings in crisis. Later, on 29 April 1997, that is to say, 14 months after the restructuring plan was notified, the Commission gave notice of the opening of the procedure, considering that the aid had not been notified, when, following the Lorenz case-law, it ought to have been regarded as existing aid.

Reference for a preliminary ruling by the korkein Hallinto-oikeus by order of that Court of 10 September 2002 in the appeal brought by Petri Mikael Manninen

(Case C-319/02)

(2002/C 274/30)

Reference has been made to the Court of Justice of the European Communities by order of the korkein Hallinto-oikeus (Supreme Administrative Court) of 10 September 2002,

received at the Court Registry on 12 September 2002, for a preliminary ruling in the appeal brought by Petri Mikael Manninen on the following questions:

1. Is Article 56 of the Treaty establishing the European Community to be interpreted as precluding a corporation tax credit system like the Finnish one described above, in which the recipient of a dividend who is generally liable to tax in Finland is granted a corporation tax credit in respect of a dividend paid by a domestic share company, but not in respect of dividend income he receives from a share company registered in Sweden?

2. If the answer to the above question is in the affirmative, may Article 58 EC be interpreted as meaning that the provisions of Article 56 are without prejudice to Finland's right to apply the relevant provisions of the Law on Corporation Tax Credits, since it is a condition for obtaining a corporation tax credit in Finland that the company distributing the dividend has paid the corresponding tax or supplementary tax in Finland, which does not take place with respect to a dividend paid from abroad, in which case taxation is not even carried out once?

Reference for a preliminary ruling by the Regeringsrätten (Sweden) by order of that Court of 10 September 2002 in the case of Förvaltnings AB Stenholmen against Riksskatteverket

(Case C-320/02)

(2002/C 274/31)

Reference has been made to the Court of Justice of the European Communities by order of the Regeringsrätten (Supreme Administrative Court) (Sweden) of 10 September 2002, received at the Court Registry on 13 September 2002, for a preliminary ruling in the case of Förvaltnings AB Stenholmen against Riksskatteverket (National Tax Board) on the following questions:

1. Can an animal be considered to be second-hand goods?

   If that question is answered in the affirmative, the Court is asked to answer the following question.

2. Is an animal which is purchased from a private individual (rather than a breeder) and which is sold, after training, for a specific purpose to be considered to be second-hand goods?

Action brought on 16 September 2002 by the Commission of the European Communities against the Kingdom of Spain

(Case C-324/02)

(2002/C 274/32)

An action against the Kingdom of Spain was brought before the Court of Justice of the European Communities on 16 September 2002 by the Commission of the European Communities, represented by Gregorio Valero Jordana, of its Legal Service, with an address for service in Luxembourg.

The applicant claims that the Court of Justice should:

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 1999/30/EC [1] of 22 April 1999 relating to limit values for sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter and lead in ambient air or, in any event, by failing to communicate such provisions to the Commission, the Kingdom of Spain has failed to fulfil its obligations under that directive;

— order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

The binding nature of the third paragraph of Article 249 EC and the first paragraph of Article 10 EC requires the Member States to adopt the measures necessary to implement the directives addressed to them before the expiry of the period prescribed for that purpose. The period in question expired on 19 July 2001 without Spain's having introduced the necessary measures.

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[1] OJ L 163, 29.6.1999, p. 41.

Action brought on 17 September 2002 by the Commission of the European Communities against the Kingdom of Spain

(Case C-326/02)

(2002/C 274/33)

An action against the Kingdom of Spain was brought before the Court of Justice of the European Communities on 17 Sep-

tember 2002 by the Commission of the European Communities, represented by Gregorio Valero Jordana, of its Legal Service, with an address for service in Luxembourg.

The applicant claims that the Court of Justice should:

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 1999/13/EC [1] of 11 March 1999 on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain activities and installations or, in any event, by failing to communicate such provisions to the Commission, the Kingdom of Spain has failed to fulfil its obligations under that directive;

— order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

The binding nature of the third paragraph of Article 249 EC and the first paragraph of Article 10 EC requires the Member States to adopt the measures necessary to implement the directives addressed to them before the expiry of the period prescribed for that purpose. The period in question expired on 1 April 2001 without Spain's having introduced the necessary measures.

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[1] OJ L 85, 29.3.1999, p. 1.

Reference for a preliminary ruling by the Rechtbank te s'-Gravenhage by decision of that Court of 16 September 2002 in the case of Lili Georgieva Panayotova, Radostina Markova Kalcheva, Izabella Malgorzata Lis, Lubica Sopova, Izabela Leokadia Topa and Jolanta Monika Rusiecka against Minister voor Vreemdelingenzaken en Integratie

(Case C-327/02)

(2002/C 274/34)

Reference has been made to the Court of Justice of the European Communities by decision of the Rechtbank te s'-Gravenhage (District Court, The Hague) of 16 September 2002, received at the Court Registry on 18 September 2002, for a preliminary ruling in the case of Lili Georgieva Panayotova, Radostina Markova Kalcheva, Izabella Malgorzata Lis, Lubica Sopova, Izabela Leokadia Topa and Jolanta Monika Rusiecka against Minister voor Vreemdelingenzaken en Integratie (Minister for Alien Affairs and Integration) on the following questions:

1. Must the answer given by the Court to question 4 in its judgment of 27 November 2001 in Case C-257/99 Barkoci and Malik be interpreted to mean that it is incompatible with Article 45(1) in conjunction with Article 59(1) of the Association Agreement with Bulgaria, Article 44(3) in conjunction with Article 58 of the Association Agreement with Poland and Article 45(3) in conjunction with Article 59 of the Association Agreement with the Slovak Republic for the competent authority, when assessing an application submitted in the Netherlands for a full residence permit with a view to establishment in accordance with the Association Agreement, to refrain from examining the contents of the application solely on the ground that the applicant does not have a temporary residence permit? Does the fact that the substantive entry requirements are clearly and manifestly satisfied make any difference to the answer to this question?

2. Is it relevant for the purposes of answering the first question, and if so how, whether the person applying for a full residence permit is legally resident in the Netherlands at the time of the application, whether or not on the basis of an entitlement other than a temporary residence permit, such as the 'free period' referred to in Article 8 of the Vreemdelingenwet?

Action brought on 19 September 2002 by the Commission of the European Communities against Ireland

(Case C-330/02)

(2002/C 274/35)

An action against Ireland was brought before the Court of Justice of the European Communities on 19 September 2002 by the Commission of the European Communities, represented by Mr X. Lewis, acting as agent, with an address for service in Luxembourg.

The Applicant claims that the Court should:

— declare that by failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 1999/13/EC [1] of 11 March 1999 on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain activities and

installations or, in any event, by failing to notify such provisions to the Commission, Ireland has failed to fulfil its obligations under Article 15 of this Directive;

— order Ireland to pay the costs.

Pleas in law and main arguments

Article 249 EC, under which a directive shall be binding as to the result to be achieved, upon each Member State, carries by implication an obligation on the Member States to observe the period for compliance laid down in the directive. That period expired on 1 April 2001 without Ireland havthe conclusions of the Commission.ing enacted the provisions necessary to comply with the directive referred to in

(1) OJ L 85, 29.3.1999, p. 1.

Pleas in law and main arguments

The obligation on the part of the United Kingdom to take measures in order to comply with the directive for the entirety of its territory is not disputed.

Since the United Kingdom has not informed the Commission of the provisions adopted and brought into force to comply with the directive concerned for Gibraltar and since the Commission is in possession of no other information enabling it to conclude that the United Kingdom has adopted and brought into force the necessary provisions, it is compelled to assume that the United Kingdom has not yet adopted such provisions and has thus failed to fulfil its obligations under the directive.

(1) OJ L 163, 29.6.1999, p. 41.

Action brought on 19 September 2002 by the Commission of the European Communities against the United Kingdom

(Case C-331/02)

(2002/C 274/36)

An action against the United Kingdom was brought before the Court of Justice of the European Communities on 19 September 2002 by the Commission of the European Communities, represented by Mr X. Lewis, acting as agent, with an address for service in Luxembourg.

The Applicant claims that the Court should:

1) declare that by failing to adopt and bring into force for Gibraltar the laws, regulations and administrative provisions necessary to comply with Council Directive 1999/30/EC (1) of 22 April 1999 relating to limit values for sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter and lead in ambient air or, in any event, by failing to notify such provisions to the Commission, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil fully its obligations under this Directive.

2) order the United Kingdom to pay the costs.

Action brought on 19 September 2002 by the Commission of the European Communities against the United Kingdom

(Case C-332/02)

(2002/C 274/37)

An action against the United Kingdom was brought before the Court of Justice of the European Communities on 19 September 2002 by the Commission of the European Communities, represented by Mr X. Lewis, acting as agent, with an address for service in Luxembourg.

The Applicant claims that the Court should:

1) declare that by failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 1999/13/EC (1) of 11 March 1999 on limitation of emissions of volatile organic compounds due to the use of organic solvents in certain activities and installations or, in any event, by failing to notify such provisions to the Commission, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil fully its obligations under Article 15 of this Directive;

2) order the United Kingdom to the pay the costs.

Pleas in law and main arguments

The obligation on the part of the United Kingdom to take measures in order to comply with the directive for the entirety of its territory is not disputed.

Since the United Kingdom has not informed the Commission of the provisions adopted and brought into force to comply with the directive concerned for Gibraltar and since the Commission is in possession of no other information enabling it to conclude that the United Kingdom has adopted and brought into force the necessary provisions, it is compelled to assume that the United Kingdom has not yet adopted such provisions and has thus failed to fulfil its obligations under the directive.

(1) OJ L 85, 29.3.1999, p. 1.

Action brought on 20 September 2002 by the Italian Republic against the Commission of the European Communities

(Case C-333/02)

(2002/C 274/38)

An action against the Commission of the European Communities and the Council of the European Union was brought before the Court of Justice of the European Communities on 20 September 2002 by the Italian Republic, represented by Prof. Umberto Leanza, acting as Agent, and Giacomo Aiello, Avvocato dello Stato.

The applicant claims that the Court of Justice should:

— annul Commission Regulation (EC) No 1129/2002 (1) of 7 June 2002 fixing the derived intervention prices for white sugar for the 2002/2003 marketing year (OJ of 28 June 2002), in so far as it fails to fix the derived intervention price for white sugar for all areas of Italy and, in so far as may be necessary, annul also Article 2(1)(a) of Council Regulation (EC) No 1260/2001 (2) of 19 June 2001;

— order the Commission of the European Communities and the Council of the European Union to pay the costs.

Pleas in law and main arguments

For the fifth year running the regulation adopted by the Council, identifying the deficit areas for which 'derived' prices for sugar and beet are fixed, did not include Italy, with the result that the 'ordinary' intervention price fixed by Article 2(1)(a) of the regulation is applicable to Italy.

The criterion used in describing an area as a 'deficit' area has been to take as a basis the figures for production and consumption shown in the balance sheets communicated by the Member States.

It is forecast that Italy's production of sugar will be 111 400 tonnes greater than its estimated consumption.

The Commission reaches that result by using a criterion for assessing consumption which the Italian Government considers to be unlawful and incorrect.

In particular, the calculation of foreseeable consumption did not include sugar used in products intended for export.

The Commission has, therefore, considered that 'consumption' means solely white sugar used directly in Italy, to the exclusion of sugar used (still in Italy) in the preparation of sugar-based products intended for export.

What has been determined is not, therefore, the 'demand' for sugar, understood as 'consumption' by the market, but rather consumption *stricto sensu* in the national territory.

That operating method does not appear to be right, since it uses an unduly restrictive definition of consumption.

(1) OJ L 169, 28.6.2002, p. 22.
(2) OJ L 178, 30.6.2001, p. 1.

Action brought on 20 September 2002 by the Commission of the European Communities against the Italian Republic

(Case C-337/02)

(2002/C 274/39)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 20 September 2002 by the Commission of the European Communities, represented by Antonio Aresu and Knut Simonsson, acting as Agents.

The applicant claims that the Court should:

— Declare that, by maintaining in force Article 3(3) of Law No 10 of 10 July 1991, which lays down the conditions to which are subject those maritime companies having their main offices in another Member State if they are to be treated identically to Italian maritime companies so far as concerns participating in the Italian share of the conference liner traffic, the Italian Republic has failed to fulfil its obligations under Articles 43 and 48 EC;

— Order the Italian Republic to pay the costs.

Pleas in law and main arguments

Article 3(3) of Italian Law No 210 of 1991 lays down, for those maritime companies established in other Member States which intend to exercise their right to establish themselves in Italy and participate in conference liner traffic from that State, additional conditions which such companies are not necessarily required to fulfil in the Member State of origin. The Commission concludes that that amounts to an infringement of Article 43 EC in conjunction with Article 48 EC.

Reference for a preliminary ruling by the Högsta Domstolen by order of that Court of 10 September 2002 in the case of Fixtures Marketing Limited against AB Svenska Spel

(Case C-338/02)

(2002/C 274/40)

Reference has been made to the Court of Justice of the European Communities by order of the Högsta Domstolen (Supreme Court) of 10 September 2002, received at the Court Registry on 23 September 2002, for a preliminary ruling in the case of Fixtures Marketing Limited against AB Svenska Spel on the following questions:

1. In assessing whether a database is the result of a 'substantial investment' within the meaning of Article 7(1) of Council Directive 96/9/EC [1] of 11 March 1996 on the legal protection of databases (the 'database directive') can the maker of a database be credited with an investment primarily intended to create something which is independent of the database and which thus does not merely concern the 'obtaining, verification or presentation' of the contents of the database? If so, does it make any difference if the investment or part of it nevertheless constitutes a prerequisite for the database?

   AB Svenska Spel contends in this case that Fixtures Marketing Limited's investment is primarily concerned with the drawing up of the fixture lists for the English and Scottish football leagues and not with the databases where the data are stored. Fixtures Marketing Limited, for its part, argues that it is not possible to distinguish the work for the purpose of planning the game and that for the purpose of drawing up the fixture lists.

2. Does a database enjoy protection under the database directive only in respect of activities covered by the objective of the database maker in creating the database?

   AB Svenska Spel contends that Fixtures Marketing Limited's creation of the database is not intended to facilitate football pools and other gaming activities but that such activities are a by-product of the purpose of the investment. Fixtures Marketing Limited, for its part, argues that the purpose of the investment is irrelevant and disputes that the possibility of exploiting the database for football pools constitutes a by-product of the actual purpose of the investment in the database.

3. What do the terms 'a substantial part, evaluated qualitatively and/or quantitatively, of the contents of that database' in Article 7(1) mean?

4. Is the directive's protection under Article 7(1) and Article 7(5) against 'extraction and/or re-utilisation' of the contents of a database limited to such use as entails a direct exploitation of the base or does the protection also cover use in cases where the contents are available from another source (second-hand) or are generally accessible?

AB Svenska Spel contends that the company had no knowledge of the databases and obtained the data for the pools coupons from other sources and that what appeared on the pools coupons was not the whole or a substantial part of the fixture lists. Fixtures Marketing Limited, for its part, argues that it was irrelevant to the assessment whether the data were obtained from sources other than the fixture lists since the data originally came from them.

5. How should the terms 'normal exploitation' and 'unreasonably prejudice' in Article 7(5) be interpreted?

Fixtures Marketing Limited argues that AB Svenska Spel has repeatedly and systematically extracted and re-utilised the contents of the database for commercial purposes, in a manner which conflicts with a normal exploitation of that database and thereby unreasonably prejudiced the football leagues. AB Svenska Spel, for its part, contended that it is wrong to look at several pools coupons together in making an assessment and disputes that their use is in breach of Article 7(5) of the directive.

(1) OJ L 77, 27.3.1996, p. 20.

Removal from the register of Cases C-427/99 P (1) and C-371/00 P (2)

(2002/C 274/41)

By order of 1st August 2002 the President of the Court of Justice of the European Communities ordered the removal from the register of Cases C-427/99 P and C-371/00 P: RJB Mining plc v Commission of the European Communities.

(1) OJ C 20, 22.1.2000.
(2) OJ C 355, 25.11.2000.

Removal from the register of Case C-413/00 (1)

(2002/C 274/42)

By order of 2 July 2002 the President of the First Chamber of the Court of Justice of the European Communities ordered the removal from the register of Case C-413/00: Commission of the European Communities v Kingdom of the Netherlands.

(1) OJ C 28, 27.1.2001.

Removal from the register of Case C-303/01 (1)

(2002/C 274/43)

By order of 31 July 2002 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-303/01: Alexandros K. Kefalas and Others v Elliniko Dimosio (the Greek State) and Others.

(1) OJ C 56, 31.7.2002.

Removal from the register of Case C-44/02 (1)

(2002/C 274/44)

By order of 2 July 2002 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-44/02: Commission of the European Communities v Portuguese Republic.

(1) OJ C 97, 20.4.2002.

COURT OF FIRST INSTANCE

Action brought on 3 July 2002 by the joint venture Makedoniko Metro, Mikhaniki A.E. and Others against the Commission of the European Communities

(Case T-202/02)

(2002/C 274/45)

(Language of the Case: Greek)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 3 July 2002 by the joint venture Makedoniko Metro, Mikhaniki A.E. and Others, established in Thessaloniki, Greece, represented by Christos Gkonis, of the Athens Bar, with an address for service in Luxembourg.

The applicant claims that the Court should:

(a) allow the action in its entirety;

(b) order the European Commission and its official organs against whom the action is directed as set out in the initial section 'Individual allocation of responsibility of organs of the European Union' jointly and severally to pay:

(i) to Mikhaniki A.E. EUR 23 578 050 with interest at the rate of 8 % from 29 November 1996, or otherwise from 27 August 1998, EUR 224 654 and EUR 60 000 000 with interest for late payment at the rate of 8 % from the lodging of the action;

(ii) to Prodromos Emfietzoglos, Chairman of Mikhaniki A.E., EUR 15 000 000 with interest for late payment at the rate of 8 % from the lodging of the action as compensation for non-material harm;

(iii) to Mikhaniki A.E. EUR 1 025 839 588 in respect of future loss with interest at the rate of 8 % from the lodging of the present action;

(iv) to the joint venture Makedoniko Metro, for the benefit of ABB Daimler-Benz Transportation (Deutschland) GmbH (Adtranz), at a proportion of 20 %, and Belgian Transport and Urban Infrastructure Consult (Transurb Consult), at a proportion of 0,35 %, a total of EUR 110 754 352;

(c) order the European Commission to send a letter to all its departments in order to restore the name and reputation of Mikhaniki A.E. and its chairman Prodromos Emfietzoglos, and to lodge with the Court of Justice and to communicate to the applicant the minutes of the meetings of 7 April 1998 and 27 August 1988 and the decisions which were adopted at those meetings, together with the originals of the letters of Mr Mogg, Mr Monti and the President, Mr Prodi;

(d) order the European Commission and its official organs to pay all the legal costs and all the expenditure relating to conduct of the proceedings;

(e) the applicant proposes as witnesses:

(i) the European Ombudsman Jacob Söderman,

(ii) the European Ombudsman's assistants I. Harden and O. Verheecke,

(iii) the Chairman of Mikhaniki A.E., Prodromos Emfietzoglos and

(iv) whomever may be considered necessary after the documents sought have been lodged by the European Commission.

Pleas in law and main arguments

The applicant submits that the decisions by which the European Commission resolved to take no further action on the applicant's complaints that the competent Greek authorities unlawfully failed to entrust the construction of the Thessaloniki Metro to it are unlawful.

In its submission, those decisions are the cause of the harm which it has suffered and infringe Community legislation on public works. Furthermore, they infringe the principle that equal conditions of competition are to be ensured, the prohibition of discrimination and the principle of equal treatment, the principle of proportionality, the requirement to state reasons and the principle of good administration. By the decisions, the Commission infringed the right to a hearing and to assistance and misused its powers.

Action brought on 27 August 2002 by 'H' against the Court of Justice of the European Communities

(Case T-255/02)

(2002/C 274/46)

(Language of the case: French)

An action against the Court of Justice of the European Communities was brought before the Court of First Instance of the European Communities on 27 August 2002 by 'H', represented by Juan Ramón Iturriagagoitia Bassas, lawyer.

The applicant claims that the Court of First Instance should:

— annul the decision taken by the appointing authority on 14 May 2002;

— order the defendant to pay the applicant, by way of compensation for the damage he has suffered and will in future suffer, the sum of EUR 350 000, subject to all necessary reservations, together with default interest at the rate of 10 % per annum from 4 October 1999 until the date of payment;

— order the defendant to pay the costs.

Pleas in law and main arguments

The applicant, an official of the Court of Justice, challenges that institution's refusal to compensate him for the non-material damage allegedly suffered as a result of his occupational disease, which has been recognised in a decision taken by the appointing authority on 31 May 2001, on the basis of Article 73 of the Staff Regulations and under which he received EUR 35 192,16 compensation.

In this action the applicant, on the basis of Article 288 EC (formerly Article 215 of the EC Treaty), draws attention to the non-material difficulties he has undergone since his exposure to asbestos on the premises of his institution. Those difficulties take the form inter alia of physical and psychological problems in his relations with his colleagues and in his family and social relationships. The applicant claims that in its decision of 14 May 2002 dismissing his request for compensation for the non-material loss and damage in question, the defendant disregarded the fact that his occupational disease had non-medical sequelæ in his life and confined itself to dealing with one part only of his pathology.

In support of his claims the applicant alleges breach of the principle of proper administration and of the duty to have regard for officials' welfare, misuse of powers in the circumstances of the case and breach of the Charter of Fundamental Rights of the European Union.

Action brought on 27 August 2002 by 'I' against the Court of Justice of the European Communities

(Case T-256/02)

(2002/C 274/47)

(Language of the case: French)

An action against the Court of Justice of the European Communities was brought before the Court of First Instance of the European Communities on 27 August 2002 by 'I', represented by Juan Ramón Iturriagagoitia Bassas, lawyer.

The applicant claims that the Court of First Instance should:

— annul the decision taken by the appointing authority on 14 May 2002, notified 27 May 2002, concerning the claim for compensation for non-material loss and damage of any kind suffered by the applicant as a result of disease;

— order the defendant to pay the applicant, by way of compensation for the damage he has suffered and will in future suffer, the sum of EUR 350 000, subject to all necessary reservations, together with default interest at the rate of 10 % per annum from 4 October 1999 until the date of payment;

— order the defendant to pay the costs.

Pleas in law and main arguments

The applicant, an official of the Court of Justice, challenges that institution's refusal to compensate him for the non-material damage allegedly suffered as a result of his occupational disease, which has been recognised on the basis of Article 73 of the Staff Regulations and for which he has received compensation.

The pleas in law put forward in support of this action are similar to those put forward in Case T-255/02 H v Court of Justice.

Action brought on 27 August 2002 by 'K' against the Court of Justice of the European Communities

(Case T-257/02)

(2002/C 274/48)

(Language of the case: French)

An action against the Court of Justice of the European Communities was brought before the Court of First Instance of the European Communities on 27 August 2002 by 'K', represented by Juan Ramón Iturriagagoitia Bassas, lawyer.

The applicant claims that the Court of First Instance should:

— annul the decision taken by the appointing authority on 14 May 2002, notified 27 May 2002, concerning the claim for compensation for non-material loss and damage of any kind suffered by the applicant as a result of disease;

— order the defendant to pay the applicant, by way of compensation for the damage she has suffered and will in future suffer, the sum of EUR 350 000, subject to all necessary reservations, together with default interest at the rate of 10 % per annum from 4 October 1999 until the date of payment;

— order the defendant to pay the costs.

Pleas in law and main arguments

The applicant, an official of the Court of Justice, challenges that institution's refusal to compensate her for the non-material damage allegedly suffered as a result of her occupational disease, which has been recognised on the basis of Article 73 of the Staff Regulations and for which she has received compensation.

The pleas in law put forward in support of this action are similar to those put forward in Case T-255/02 H v Court of Justice.

Action brought on 10 September 2002 by Hendrikus Boukes against the European Parliament

(Case T-258/02)

(2002/C 274/49)

(Language of the case: French)

An action against the European Parliament was brought before the Court of First Instance of the European Communities on 10 September 2002 by Hendrikus Boukes, domiciled in Waldbredimus (Luxembourg), represented by Eric Boigelot, lawyer, with an address for service in Luxembourg.

The applicant claims that the Court should:

— annul the decision taken by the Secretary-General of the European Parliament, Julian Priestley, on 4 January 2002 dismissing the applicant's request of 4 October 2001 concerning the recognition of his marriage by the AIPN;

— annul the implied decision rejecting the applicant's complaint, brought in accordance with Article 90(2) of the Staff Regulations on 27 February 2002 and registered on 1 March 2002, to which the European Parliament has still not replied.

— in any event order the defendant to pay the costs.

Pleas in law and main arguments

The applicant in the present case challenges the refusal by the AIPN to take account of the formalisation of his partnership, treated as a civil marriage under Netherlands law and which legally records and recognises the family life that he leads in the context of a stable relationship with his partner, for the purpose of having it treated in the same way as marriage under the Staff Regulations.

In support of the forms of order sought, the applicant claims:

— breach of Article F(1), and (2) of the Treaty on the European Union and Article 3(2) EC;

— breach of Article 1a(1) and the second paragraph of Article 27 of the Staff Regulations and the provisions of the Staff Regulations governing remuneration and reimbursement of expenses, allowances and pension scheme;

— breach of Articles 7, 9 and 21 of the Charter of Fundamental Rights of the European Union;

— breach of Articles 8, 12 and 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms;

— Disregard of general principles of law, such as non-discrimination and equal treatment, equal pay for men and women, respect for private and family life, the principle that the civil status of Community nationals is to be governed by the legislation of their Member State, proper administration, the protection of legitimate expectations.

Action brought on 30 August 2002 by Raiffeisen Zentralbank Österreich Aktiengesellschaft against the Commission of the European Communities

(Case T-259/02)

(2002/C 274/50)

(Language of the Case: German)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 30 August 2002 by Raiffeisen Zentralbank Österreich Aktiengesellschaft, established in Vienna, represented by S. Völcker, Lawyer.

The applicant claims that the Court should:

— annul the Commission decision of 11 June 2002 (C(2002)2091 final) in so far as it relates to the applicant;

— in the alternative, reduce the fine of EUR 30 380 000 imposed on the applicant in the defendant's decision;

— order the defendant to pay the costs.

Pleas in law and main arguments

The proceeding conducted by the defendant was directed against regular meetings of banks in Austria ('Bankenrunden'). By the contested decision the Commission found that the applicant — together with seven other Austrian banking institutions — had infringed Article 81 EC by participating in agreements and concerted practices concerning prices, charges and advertising measures, designed to restrict competition on the Austrian banking market from 1 January 1995 until 24 June 1998. The Commission imposed fines on the banks concerned.

The applicant submits first of all that the defendant wrongly assumed that the arrangements in the present case could affect trade between States. The Austrian banks' arrangements were restricted exclusively to Austria. Nor were they liable, given the nature of the service in question, to partition the Austrian market. There is therefore no infringement of Article 81 EC. Furthermore, there is no basis for the Commission's requirement to cease the infringement in the future. The Commission itself found that the applicant had brought the arrangements to an end on 24 June 1998.

The applicant also contests the classification of the infringement as 'very serious' for the purposes of the guidelines on the calculation of fines. When assessing the gravity of the infringement, the Commission disregarded in particular the fact that the Bankenrunden were not established by the banks expressly to interfere with competition but, on the contrary, took place over 50 years in accordance with Austrian law and — to the end — with the cooperation of State authorities.

Furthermore, the applicant contests the calculation of the fine imposed on it. In disregard of the links in the rural cooperative sector and inconsistently with settled case-law, the Commission attributed to the applicant market shares of undertakings in which it had no stake and whose market conduct it could not determine. In addition, the Commission rejected all mitigating grounds put forward without considering them sufficiently. Finally, the Commission misapplied the Leniency Notice ([1]).

([1]) Commission Notice on the non-imposition or reduction of fines in cartel cases (OJ C 207 of 18.7.1996, p. 4).

Action brought on 2 September 2002 by Bank Austria Creditanstalt AG against the Commission of the European Communities

(Case T-260/02)

(2002/C 274/51)

(Language of the Case: German)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 2 September 2002 by Bank Austria Creditanstalt AG, established in Vienna, represented by C. Zschocke and J. Beninca, Lawyers.

The applicant claims that the Court should:

— annul the Commission decision of 11 June 2002 (COMP/36.571 — Austrian Banks) in so far as it relates to the applicant;

— in the alternative, reduce the fine of EUR 30 380 000 imposed on the applicant in the defendant's decision;

— order the defendant to pay the costs.

Pleas in law and main arguments

The proceeding conducted by the defendant was directed against regular meetings of banks in Austria ('Bankenrunden'). By the contested decision the Commission found that the applicant — together with seven other Austrian banking institutions — had infringed Article 81 EC by participating in agreements and concerted practices concerning prices, charges and advertising measures, designed to restrict competition on the Austrian banking market from 1 January 1995 until 24 June 1998. The Commission imposed fines on the banks concerned.

The applicant submits first of all that Article 81 EC cannot be applicable since the banks' meetings, which the applicant admits, could not affect trade between Member States because of their regional and local focus.

The applicant further contends that the defendant, when setting the basic amount, assumed that those meetings had adverse economic effects although the applicant, together with the other banks concerned, had proved by means of an economist's expert report that there were no such effects. In addition, the defendant exercised its discretion improperly when setting the basic amount because it failed to take account of the transitional situation pertaining in legal terms in Austria after entry into the European Economic Area, the statutorily privileged status of the Bankenrunden under Austrian cartel law, the participation of State authorities and the fact that the Bankenrunden were public knowledge.

Furthermore, the applicant worked with the defendant in establishing the facts. The defendant granted no reduction for that wide-ranging cooperation and therefore exercised its discretion incorrectly and to the applicant's detriment when applying the Leniency Notice.

Finally, the applicant submits that the Commission has infringed essential procedural rights held by the applicant and that it unlawfully passed the statement of objections to the FPÖ (Austrian Freedom Party).

Action brought on 30 August 2002 by Bank für Arbeit und Wirtschaft Aktiengesellschaft against the Commission of the European Communities

(Case T-261/02)

(2002/C 274/52)

(Language of the Case: German)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 30 August 2002 by Bank für Arbeit und Wirtschaft Aktiengesellschaft, established in Vienna, represented by H.-J. Niemeyer and M. von Hinden, Lawyers, with an address for service in Luxembourg.

The applicant claims that the Court should:

— annul Articles 1 and 2 of the Commission decision of 11 June 2002 in Case COMP/36.571 — Austrian banks, in so far as it is found therein that the applicant has infringed Article 81 EC and must cease that infringement;

— annul Article 3 of the decision in so far as it imposes a fine of EUR 7 590 000 upon the applicant;

— in the alternative, reduce the fine imposed on the applicant in Article 3 of the decision to an appropriate amount;

— order the defendant to pay the costs.

Pleas in law and main arguments

The proceeding conducted by the defendant was directed against regular meetings of banks in Austria ('Bankenrunden'). By the contested decision the Commission found that the applicant — together with seven other Austrian banking institutions — had infringed Article 81 EC by participating in agreements and concerted practices concerning prices, charges and advertising measures, designed to restrict competition on the Austrian banking market from 1 January 1995 until 24 June 1998. The Commission imposed fines on the banks concerned.

The applicant submits that the decision must be set aside if only because it infringes the obligation to state reasons under Article 253 EC. Furthermore, the defendant infringed Article 81 EC by assessing incorrectly in law the nature of the rounds of meetings which were investigated. On an objective assessment of the facts, the defendant should have recognised that there was predominantly disagreement between the banks in question. The incorrect assessment of the facts leaves its mark on the whole of the contested decision and must therefore result in its complete annulment. The decision also infringes Article 81 EC because the rounds of meetings investigated were not capable of affecting trade between Member States.

The applicant further contends that Article 3 of the contested decision must be annulled in the absence of fault, a precondition under Article 15(2) of Regulation No 17/62. Given the purely national nature of the rounds of meetings and the fact that they were rooted in a specifically Austrian context — with the participation of Austrian State authorities — the applicant was unable to discern their unlawful content and their purported ability to affect trade between Member States.

Furthermore the defendant, in breach of Article 15(2) of Regulation No 17/62, infringed essential principles governing the calculation of fines and in particular misapplied on many counts its own guidelines on the method for setting fines. First of all, it is wrong to accept that there was a 'very serious infringement', and the defendant failed to take account of numerous mitigating circumstances. Finally, the fine must be substantially reduced for the further reason that the defendant, by misapplying the notice on the non-imposition of fines in cartel cases, had no regard at all to the applicant's extensive cooperation.

Action brought on 30 August 2002 by Raiffeisenlandesbank Niederösterreich-Wien AG against the Commission of the European Communities

(Case T-262/02)

(2002/C 274/53)

(Language of the Case: German)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 30 August 2002 by Raiffeisenlandesbank Niederösterreich-Wien AG, established in Vienna, represented by H. Wollmann, Lawyer.

The applicant claims that the Court should:

— annul the Commission decision of 11 June 2002 in a proceeding under Article 81 EC (Case COMP/36.571/D-1 — Austrian Banks);

— in the alternative, annul Articles 3 and 4 of that decision in so far as they relate to the applicant;

— order the defendant to pay the costs.

Pleas in law and main arguments

The proceeding conducted by the defendant was directed against regular meetings of banks in Austria ('Bankenrunden'). By the contested decision the Commission found that the applicant — together with seven other Austrian banking institutions — had infringed Article 81 EC by participating in agreements and concerted practices concerning prices, charges and advertising measures, designed to restrict competition on the Austrian banking market from 1 January 1995 until 24 June 1998. The Commission imposed fines on the banks concerned.

The applicant submits that the rounds of meetings between the Austrian banks could not appreciably affect trade between States. The Commission misapplied Article 81(1) EC in the contested decision. The arrangements in question were limited to the territory of the Republic of Austria. The Commission adduced no conclusive evidence as to why the arrangements were none the less supposed to have been capable of appreciably affecting trade between States. In particular, it was not demonstrated that they had the effect of partitioning the market.

The applicant further contends that the Commission did not prove that the applicant acted with intent or negligently. The Commission misapplied Article 15(2) of Regulation No 17/62. It imposed a fine despite an absence of proof that the applicant's staff had acted with intent or negligently. The Commission fails to have regard to the fact that the question of fault does not turn on knowledge of the prohibition on cartels but primarily on knowledge of the facts which render that prohibition applicable in a specific case. Furthermore, the Commission considers fault only with regard to the requirement that competition be restricted and does not ask itself whether the applicant's staff were in a position to recognise the alleged effects between Member States. That was not the case.

Action brought on 30 August 2002 by Österreichische Postsparkasse Aktiengesellschaft against the Commission of the European Communities

(Case T-263/02)

(2002/C 274/54)

(Language of the Case: German)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 30 August 2002 by Österreichische Postsparkasse Aktiengesellschaft, established in Vienna, represented by H.-J. Niemeyer and M. von Hinden, Lawyers, with an address for service in Luxembourg.

The applicant claims that the Court should:

— annul Articles 1 and 2 of the defendant's decision of 11 June 2002 in Case COMP/36.571/D-1 — Austrian banks, in so far as it is found therein that the applicant has infringed Article 81 EC and must cease that infringement;

— annul Article 3 of the decision in so far as it imposes a fine of EUR 7 590 000 upon the applicant;

— in the alternative, reduce the fine imposed on the applicant in Article 3 of the decision to an appropriate amount;

— order the defendant to pay the costs.

Pleas in law and main arguments

The pleas in law and arguments correspond to those put forward in Case T-261/02 Bank für Arbeit und Wirtschaft AG v Commission.

Action brought on 2 September 2002 by Erste Bank der österreichischen Sparkassen AG against the Commission of the European Communities

(Case T-264/02)

(2002/C 274/55)

(Language of the Case: German)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 2 September 2002 by Erste Bank der österreichischen Sparkassen AG, established in Vienna, represented by W. Kirchhoff, F. Montag and G. Bauer, Lawyers.

The applicant claims that the Court should:

— annul Commission Decision C(2002)2091 final of 11 June 2002 in Case COMP/36.571/D-1 — Austrian Banks, in so far as it relates to the applicant;

— in the alternative, set aside the fine imposed on the applicant;

— in the alternative, reduce the amount of the fine imposed on the applicant in the contested decision to an appropriate sum;

— in any event order the defendant to pay the costs.

Pleas in law and main arguments

The proceeding conducted by the defendant was directed against regular meetings of banks in Austria ('Bankenrunden'). By the contested decision the Commission found that the applicant — together with seven other Austrian banking institutions — had infringed Article 81 EC by participating in agreements and concerted practices concerning prices, charges and advertising measures, designed to restrict competition on the Austrian banking market from 1 January 1995 until 24 June 1998. The Commission imposed fines on the banks concerned.

The applicant submits that the decision has numerous defects. First, it infringes in many respects the right to a fair hearing. The applicant was not given the opportunity before the decision was adopted to state its views on the allegation that all independent savings banks were to be attributed to it as the leading institution. Nor is the statement of reasons for the decision adequate. In particular, the reasons for attributing the savings banks to the applicant, and those for the calculation of the applicant's market share, on the basis of which the amount of the fine was determined, do not satisfy the requirements of the case-law on the duty to state reasons.

The applicant further submits that the decision infringes the principle of good administration. The unlawful attribution of the conduct of all independent savings banks to the applicant/GiroCredit as the leading institution in the savings bank sector is a particularly serious breach. The legal preconditions for such attribution are manifestly not present.

The applicant contends in addition that the infringement in the present case did not appreciably affect trade between Member States. Many of the *Bankenrunden* had no international connection. Others could at any rate have no appreciable effect on trade between States. Even if the infringement were to have affected trade between States appreciably, there is in any event no fault on the applicant's part. In accordance with Article 15(2) of Regulation No 17/62 it was therefore not possible to fine the applicant.

Furthermore, in determining the applicant's fine the defendant made two errors of calculation with serious consequences. Also, the seriousness of the infringement and the existence of mitigating grounds are misappraised in the decision and no regard was had to the applicant's extensive cooperation. Finally, the decision violates the prohibition on retroactivity in Article 7 of the European Convention on Human Rights, because the fine was determined on the basis of a framework for fines which, as a result of two amendments to the defendant's decision-making practice, was not introduced until the infringement had come to an end.

Action brought on 3 September 2002 by Mr Jan Pflugradt against the European Central Bank

(Case T-265/02)

(2002/C 274/56)

(Language of the case: German)

An action against the European Central Bank was brought before the Court of First Instance of the European Communities on 3 September 2002 by Mr Jan Pflugradt, Frankfurt am Main (Germany), represented by N. Pflüger, lawyer.

The applicant claims that the Court should:

— annul the formal warning given by the letter of 28 February 2002;

— order the defendant to pay the costs.

Pleas in law and main arguments

The case has the same basis as Case T-83/02 (Pflugradt v ECB) [1], and the pleas in law and arguments correspond to those which were put forward in that case.

[1] OJ C 118, 18.5.2002, p. 30.

Action brought on 4 September 2002 by Deutsche Post AG against the Commission of the European Communities

(Case T-266/02)

(2002/C 274/57)

(Language of the case: German)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 4 September 2002 by Deutsche Post AG, Bonn (Germany), represented by J. Sedemund and T. Lübbig, with an address for service in Luxembourg.

The applicant claims that the Court should:

— declare the Commission Decision of 19 June 2002 on State aid No 61/99 (ex No 153/96) void;

— order the Commission to pay the costs.

Pleas in law and main arguments

The subject of the contested decision is the below-cost selling of parcel services for business clients, compensating for which gives rise to cross-subsidisation which is contrary to the law on aid. In its decision the Commission found that the State aid of EUR 572 million, which Germany granted to the applicant, was incompatible with the common market. It found that State compensation for the net additional costs of a rebate policy which reduces the costs normally incurred in providing door to door parcel services which are open to competition favoured the undertaking within the meaning of Article 87(1) EC.

The applicant contests that decision and points out that the same below-cost selling was the subject of the Commission Decision of 20 March 2000 [1] adopted on the basis of Article 82 EC and that the two decisions came to very different conclusions regarding the duration, the amount and the source of financing of the alleged below-cost selling. The applicant submits that the below-cost selling alleged in the Decision is based on a miscalculation.

The applicant also argues that the Commission's assertion that the below-cost selling complained of arose as a result of an aggressive rebate policy and that there is thus no causal link between it and the applicant's public service obligations is not based on any evidence and is clearly inaccurate. Further, the Commission has exceeded its powers in the area of services in the general economic interest, as, according to the case-law, it has no authority to decide on the level of costs or the efficiency of the postal service provider.

The applicant submits that the Commission has misapplied Article 87 and infringed the case-law on findings regarding aid to undertakings providing services in the general economic interest. The Commission has furnished no evidence that the decision on cross-subsidisation in favour of the business client parcel service can be attributed to State-run bodies of the Federal Republic of Germany. Moreover the Commission has disregarded the fact that a purely internal offsetting of losses within an undertaking does not constitute aid, but is merely covered by Article 82. It has also disregarded the fact that the financing of temporary below-cost selling was an economically sound decision.

Finally, the applicant submits that the Commission has infringed the principle of the right to a fair hearing.

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(1) Commission Decision 2001/354/EC of 20 March 2001 relating to a proceeding under Article 82 of the EC Treaty (Case COMP/35.141 Deutsche Post AG) (OJ 2001 L 125, p. 27).

Action brought on 28 August 2002 by MLP Finanzdienstleistungen AG against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-270/02)

(2002/C 274/58)

(Language of the case: German)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) was brought before the Court of First Instance of the European Communities on 28 August 2002 by MLP Finanzdienstleistungen AG, Heidelberg (Germany), represented by W. Göpfert, lawyer.

The applicant claims that the Court should:

— annul the decision of the Third Board of Appeal of 26 June 2002 in the appeal procedure R 206/2002-3;

— order the defendant to pay the costs.

Pleas in law and main arguments

Community trade mark applied for:	Word mark 'bestpartner' — application No 2 268 134
Goods or services:	Services in Classes 36, 38 and 42 (*inter alia*, insurance, Internet services and data processing for others)
Decision before the Board of Appeal:	Refusal of registration by the examiner
Decision of the Board of Appeal:	Dismissal of appeal
Pleas in law:	— No grounds for refusal under Article 7(1)(b) and (c) of Regulation (EC) No 40/94 (1); — No need to keep free.

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(1) Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1).

Action brought on 2 September 2002 by Österreichische Volksbanken-Aktiengesellschaft and Niederösterreichische Landesbank-Hypothekenbank AG against the Commission of the European Communities

(Case T-271/02)

(2002/C 274/59)

(Language of the Case: German)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 2 September 2002 by Österreichische Volksbanken-Aktiengesellschaft and Niederösterreichische Landesbank-Hypothekenbank AG, established in Vienna and St. Pölten (Austria), represented by A. Ablasser, R. Roniger and R. Bierwagen, Lawyers.

The applicants claim that the Court should:

— annul Article 1 of Commission Decision C(2002) 2091 final of 11 June 2002 in Case COMP/36.571/D-1 — Austrian Banks, in so far as it relates to the applicants;

— annul the first sentence of Article 2 of the decision in so far as it relates to the applicants;

— annul Article 3 of the decision in so far as it relates to the applicants or, in the alternative, reduce the fine imposed on the applicants in Article 3;

— in the alternative to the first claim, annul the decision allowing the FPÖ (Austrian Freedom Party) as a complainant and the transmission of the statement of objections;

— order the defendant to pay the costs.

Pleas in law and main arguments

The proceeding conducted by the defendant was directed against regular meetings of banks in Austria ('Bankenrunden'). By the contested decision the Commission found that the applicants — together with six other Austrian banking institutions — had infringed Article 81 EC by participating in agreements and concerted practices concerning prices, charges and advertising measures, designed to restrict competition on the Austrian banking market from 1 January 1995 until 24 June 1998. The Commission imposed fines on the banks concerned.

The applicants contend that the contested decision is unlawful first of all because the finding of the facts is partly incorrect, partly incomplete and therefore defective. The decision thus infringes essential procedural requirements within the meaning of the second paragraph of Article 230 EC. In addition, the decision displays numerous defects in its reasoning and contradictions. This concerns the choice of the persons to whom the decision was addressed, as a whole, and the question why the applicants were chosen on the basis of the criterion of the size of the institutions.

The applicants further contend that the decision infringes the principle of equal treatment since they were discriminated against when the persons to whom the decision was to be addressed were decided upon. They took part in the various rounds of meetings far less frequently than other banks or not at all, nor are they comparable with other banks as regards size. The Commission also infringed the principle of due process and the applicants' rights of defence.

In addition, the requirement under Article 81(1) EC that trade between States be affected is not met. The arrangements on the Austrian banking market were not capable of affecting trade between States, and no fault can be attributed to the applicants with regard to that requirement since they could assume, in particular on the basis of the legal position in Austria at that time and the participation of State authorities, that their conduct was lawful under European cartel law too. In determining the gravity of the infringement, the decision fails to have regard to the fact that no binding arrangements in the sense of a price cartel were entered into, and not a single attenuating circumstance was taken into account.

The applicants plead that a further procedural error is constituted by the decisions and measures of the Commission allowing the FPÖ (Austrian Freedom Party) as a complainant and transmitting the statement of objections to it.

Action brought on 6 September 2002 by Krüger GmbH & Co KG against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-273/02)

(2002/C 274/60)

(Language of the case to be determined pursuant to Article 131(2) of the Rules of Procedure — language in which the application was submitted: German)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) was brought before the Court of First Instance of the European Communities on 6 September 2002 by Krüger GmbH & Co KG, Bergisch Gladbach (Germany), represented by S. v. Petersdorff-Campen, lawyer. Calpis Co Ltd, Tokyo, Japan was an additional party to the proceedings before the Board of Appeal.

The applicant claims that the Court should:

— annul the decision of the First Board of Appeal of 25 June 2002, reference No R 484/2000-1;

— order the Office to pay the applicant's costs.

Pleas in law and main arguments

Applicant for Community trade mark:	Calpis Co, Ltd (formerly The Calpis Food Industry Co, Ltd)
Community trade mark applied for:	Word mark 'CALPICO' for goods in Classes 29, 30 and 32 — application No 225169
Owner of the opposing trade mark or sign:	The applicant
Opposing trade mark or sign right:	German word mark 'CALYPSO' for goods in Class 32
Decision of Opposition Division:	Rejection of opposition
Decision of Board of Appeal:	Dismissal of applicant's appeal
Pleas in law:	— Likelihood of confusion between trade marks within the meaning of Article 8(1)(b) of Regulation (EC) No 40/94 [1]; — Infringement of the principle of the right to a fair hearing.

[1] Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1).

Action brought on 9 September 2002 by Athanacia-Nancy Pascall against the Council of the European Union

(Case T-277/02)

(2002/C 274/61)

(Language of the Case: French)

An action against the Council of the European Union was brought before the Court of First Instance of the European Communities on 9 September 2002 by Athanacia-Nancy Pascall, domiciled in Brussels, represented by Albert Coolen, Jean-Noël Louis and Etienne Marchal, lawyers, with an address for service in Luxembourg.

The applicant claims that the Court should:

— annul the decision in the open competition COUNCIL/A/393 to give her a mark less than the minimum required for her oral test and not placing her on the reserve list;

— order the defendant to pay the costs.

Pleas in law and main arguments

In support of her action, the applicant relies on a breach of the obligation to state the reasons on which the decision was based. The applicant argues that the defendant ought to have informed her of the marks that she was given in respect of the various criteria that the selection board was required to consider.

In addition, the applicant relies on the breach of the legal framework constituted by the notice of open competition COUNCIL/A/393 and the breach of the principle of equal treatment. The applicant argues that the selection board was bound to assess her general and professional knowledge and qualifications in an interview in Greek. That interview was held in other languages.

Action brought on 16 September 2002 by Degussa AG against the Commission of the European Communities

(Case T-279/02)

(2002/C 274/62)

(Language of the case: German)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 16 September 2002 by Degussa AG, Düsseldorf (Germany), represented by R. Bechthold, M. Karl and W. Berg, with an address for service in Luxembourg.

The applicant claims that the Court should:

— declare the Commission Decision of 2 July 2002 (Case C. 373519 — Methionine) void, in so far as it concerns the applicant;

— in the alternative, reduce the fine imposed by Article 3 of the Decision;

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicant contests the Decision of the Commission by which a fine of EUR 118 125 000 was imposed on the applicant for breach of Article 81(1) EC. The Commission claimed that the applicant and other undertakings concerned — various producers of methionine — took part in a continuous agreement and/or concerted practice. According to the Commission's findings, the applicant took part in such arrangements from February 1986 until February 1999.

The applicant submits that in setting the fine the Commission did not correctly assess the duration of the infringement. The Commission assumed that the breach lasted from 1986 until 1999. In so doing it disregarded the fact that the agreements ended in 1988, and that a fresh decision to enter into agreements was made only in 1992. The Commission has not proved that there was a single continuous breach as it alleged. Furthermore, the Commission made several errors in setting the basic amount of the fine. In assessing the breach as a 'particularly serious breach' of Article 81(1) EC it incorrectly assessed the findings required as to the specific effect on the relevant market. This must be viewed as an error of assessment and the Commission is thereby in breach of its own guidelines on setting fines.

The applicant also submits that the Commission based the fine imposed on Degussa AG on the size of the undertaking in 2001 and thereby disregarded the fact that, since the ending of the anti-competitive agreements Degussa has been involved in two mergers of undertakings. The Commission should have based its decision on the fine solely on the turnover of the part of the current undertaking which corresponds to the former Degussa AG Frankfurt am Main. In that respect the Commission infringed the principle of liability.

The applicant submits, moreover, that the Commission's method of setting the fine did not meet the constitutional requirement of certainty. In the Commission's use of Article 15 of Regulation No 17/62 the invalidity of this basis for authorisation is clear as it gives the Commission an unlimited authority to impose fines, which is not consistent with the principles concerning the certainty of legal consequences of unlawful acts.

Finally, the Commission has disregarded the presumption of innocence, as it gave information to the economic press about the expected amount of the fine even before the decision was taken and that information was even published. An unbiased decision was thus no longer possible.

Action brought on 18 September 2002 by Norma Lebensmittelfilialbetrieb GmbH & Co. KG against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-281/02)

(2002/C 274/63)

(Language of the case: German)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) was brought before the Court of First Instance of the European Communities on 18 September 2002 by Norma Lebensmittelfilialbetrieb GmbH & Co KG, Nürnberg (Germany), represented by S. Rojahn and St. Freytag, lawyers.

The applicant claims that the Court should:

— annul the decision of the Third Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 3 July 2002 [1];

— order the defendant to pay the costs.

Pleas in law and main arguments

Community trade mark applied for:	Word mark 'Mehr für Ihr Geld' — application No 1669167
Goods or services:	Goods and services of Classes 3, 29, 30 and 35 (inter alia, bleaching preparations and other substances for laundry use, meat, coffee and marketing)
Decision contested before the Board of Appeal:	Refusal of registration by the examiner

Decision of the Board of Appeal:	Decision of the examiner set aside in so far as it applies to services in Class 35. Dismissal of the remainder of the appeal.
Pleas in law:	— Infringement of Article 7(1)(c) of Regulation (EC) No 40/94 [2]; — Infringement of Article 7(1)(b) of Regulation (EC) No 40/94.

(1) Case R 239/2002-3.
(2) Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1).

Action brought on 11 September 2002 by Cementbouw Handel & Industrie B.V. against the Commission of the European Communities

(Case T-282/02)

(2002/C 274/64)

(Language of the case: English)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 11 September 2002 by Cementbouw Handel & Industrie B.V., Amsterdam, Netherlands, represented by W. Knibbeler, Advocaat and O. W. Brouwer, Advocaat.

The applicant claims that the Court should:

— annul Article 1 of the contested Decision;

— annul Article 2 of the contested Decision;

— annul Article 3 of the contested Decision;

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicant contests Commission Decision C(2002) 2315, of 26 June 2002.

The applicant is active in the building materials sector. In 1999, the applicant and Franz Haniel & Cie GmbH acquired from Ruhrkohle AG its shares in certain factories which were members of the 'Coöperatieve verkoop en produktievereniging van kalkzandsteenproducenten' (CVK), a co-operative organization for Dutch calcium silicate producers. According to the contested Decision, the applicant and Franz Haniel thereby gained joint control of CVK. The Decision further states that the second set of commitments offered by the applicant and Franz Haniel are sufficient to ensure that the concentration would be compatible with the common market.

In support of its application, the applicant submits that the Commission has infringed Article 3 of Council Regulation No 4064/89 [1]. According to the applicant, the Commission erred in concluding that the applicant and Franz Haniel have joint control of CVK. The applicant furthermore claims that the Commission did not provide sufficient evidence for this conclusion and failed to give reasons for it, in breach of Article 253 of the EC Treaty.

The applicant also submits that the Commission has infringed Article 2 of Regulation No 4064/89. According to the applicant, the Commission erred in concluding that the transaction under which the shares in Ruhrkohle AG were acquired by the applicant and Franz Haniel led to a dominant position for CVK on the market for building materials for load-bearing walls in the Netherlands. Nor, the applicant claims, did the Commission provide sufficient evidence in support of this conclusion or provide a statement of its reasons for it, in breach of Article 253 of the EC Treaty.

The applicant finally claims that Article 3 and 8(2) of Regulation 4064/89 were misapplied, and the principle of proportionality was breached by the Commissions failure to accept the first set of commitments submitted by the applicant and Franz Haniel.

(1) Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings (OJ L 395, p. 1) (republished in OJ 1990, L 257, p. 13).

Action brought on 27 September 2002 by the Confederazione nazionale dei servizi against the Commission of the European Communities

(Case T-292/02)

(2002/C 274/65)

(Language of the case: Italian)

An action against the European Commission was brought before the Court of First Instance of the European Communities on 27 September 2002 by the Confederazione nazionale dei servizi, represented by C. Tessarolo and A. Vianello, lawyers.

The applicant claims that the Court should:

— annul Article 2 of Commission Decision No C.27/99 (ex NN 69/99) by which the Commission declared incompatible with the common market the measures adopted by Italy in the form of a three-year exemption from tax on profits and in the form of loans to joint-stock companies with publicly-owned majority shareholdings within the meaning of Legge (Law) No 142 of 8 June 1990;

— alternatively, annul Article 3 of Decision No C.27/99 by which the Commission required Italy to recover from the recipient undertakings the aid which had been declared unlawful;

— in any case, in the further alternative, annul Article 3 in so far as it fixes interest on the basis of the reference rate used to calculate the equivalent subsidy in connection with aid for regional purposes;

— order the Commission to pay the costs.

Pleas in law and main arguments

This action seeks annulment of the Commission's decision of 5 June 2002 (State Aid No 27/99), in so far as it declares unlawful and incompatible with the common market the three-year exemption from tax on profits, granted by Italy to local public service undertakings with publicly-owned majority shareholdings within the meaning of Article 3(70) of Legge (Law) No 549/1995, and loans at reduced interest rates within the meaning of Article 9a of Decreto Legge (Decree-Law) No 488/1986, in so far as it requires Italy to recover the said aids from the recipients, including the applicant.

In support of its claims the applicant alleges:

— infringement of Article 87(1) EC and Regulation No 659/1999/EC by virtue of the absence of any effect on trade between the Member States. It argues in that regard that, for the purposes of applying Article 87(1) to an aid measure, the Commission must identify and establish the facts that are capable of showing, firstly, the existence of a system of competition in the relevant market sector and, secondly, the possibility of the aid having a negative effect on trade within the Community. As it is, the markets in which the companies formed under Legge (Law) No 142/90 were operating during the period under consideration had not been liberalised; on the contrary, they were organised as local monopolies which were totally closed to free competition. Furthermore, the particular nature of companies formed under Legge No 142/90 and their substantive corporate continuity as reincarnations of the municipalised and special undertakings had led the Italian legislature and national law to confine the activities of the newly incorporated joint-stock companies within the local sphere of the relevant undertaking;

— infringement of Article 88(1) of the EC Treaty and of Article 1(b)(i) and (v) of Regulation No 659/1999, inasmuch as the defendant has classified the measures as 'new aid', thereby infringing the procedural rules with which the Commission must comply in the case of 'existing aid';

— infringement of the derogation provided for in Article 86(2) EC, inasmuch as undertakings formed under Legge No 142/90 perform activities of general economic interest.

The applicant also pleads infringement of the obligation to state reasons.

III

(Notices)

(2002/C 274/66)

Last publication of the Court of Justice in the *Official Journal of the European Communities*

OJ C 261, 26.10.2002

Past publications

OJ C 247, 12.10.2002

OJ C 233, 28.9.2002

OJ C 219, 14.9.2002

OJ C 202, 24.8.2002

OJ C 191, 10.8.2002

OJ C 180, 27.7.2002

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