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Information and Notices

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(Information)

COURT OF JUSTICE

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JUDGMENT OF THE COURT

of 10 December 2002

in Case C-29/99: Commission of the European Communities v Council of the European Union [1]

(International agreements — Convention on Nuclear Safety — Accession decision — Compatibility with the Euratom Treaty — External competence of the Community — Articles 30 to 39 of the Euratom Treaty)

(2003/C 19/01)

(Language of the case: English)

In Case C-29/99, Commission of the European Communities (Agents: T. F. Cusack and L. Ström) v Council of the European Union (Agents: S. Marquardt, F. Anton and A. P. Feeney): Application for annulment in part of the Council Decision of 7 December 1998 approving the accession of the European Atomic Energy Community to the Nuclear Safety Convention, the Court, composed of: G.C. Rodríguez Iglesias, President, J.-P. Puissochet, R. Schintgen, C.W.A. Timmermans (Presidents of Chambers), C. Gulmann, D.A.O. Edward, A. La Pergola, P. Jann, V. Skouris, F. Macken, N. Colneric (Rapporteur), S. von Bahr and J.N. Cunha Rodrigues, Judges; F.G. Jacobs, Advocate General; D. Louterman-Hubeau, Head of Division, for the Registrar, has given a judgment on 10 December 2002, in which it:

1. *Annuls the third paragraph of the declaration made by the European Atomic Energy Community according to the provisions of Article 30(4)(iii) of the Nuclear Safety Convention, which is attached to the Council Decision of 7 December 1998 approving the accession of the European Atomic Energy Community to the Nuclear Safety Convention, in so far as Articles 7, 14, 16(1) and (3) and 17 to 19 of that convention are not referred to therein;*

2. *Dismisses the remainder of the application;*

3. *Orders the Commission of the European Communities and the Council of the European Union to bear their own costs.*

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[1] OJ C 100 of 10.4.1999.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 12 December 2002

in Case C-470/99 (Reference for a preliminary ruling from the Vergabekontrollsenat des Landes Wien: Universale-Bau AG, Bietergemeinschaft: 1. Hinteregger & Söhne Bauges. mbH Salzburg, 2. ÖSTU-STETTIN Hoch- und Tiefbau GmbH, v Entsorgungsbetriebe Simmering GesmbH [1]

(Directive 93/37/EEC — Public works contracts — Definition of 'contracting authority' — Body governed by public law — Restricted procedure — Rules for weighting of criteria for selecting candidates invited to tender — Advertisement — Directive 89/665/EEC — Review procedures relating to public procurement — Time-limits for review)

(2003/C 19/02)

(Language of the case: German)

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

In Case C-470/99: Reference to the Court under Article 234 EC by the Vergabekontrollsenat des Landes Wien (Austria) for

a preliminary ruling in the proceedings pending before that court between Universale-Bau AG, Bietergemeinschaft: 1. Hinteregger & Söhne Bauges.mbH Salzburg, 2. ÖSTU-STETTIN Hoch- und Tiefbau GmbH, and Entsorgungsbetriebe Simmering GesmbH, on the interpretation of Article 1(a), (b) and (c) of Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts (OJ 1993 L 199, p. 54), and Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (OJ 1989 L 395, p. 33), as amended by 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 (Sixth Chamber), composed of: J.-P. Puissochet, President of the Chamber, R. Schintgen, C. Gulmann, V. Skouris (Rapporteur), and F. Macken, Judges; S. Alber, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 12 December 2002, in which it has ruled:

1. *A body which was not established to satisfy specific needs in the general interest not having an industrial or commercial character, but which has subsequently taken responsibility for such needs, which it has since satisfied, fulfils the requirement of the first indent of the second subparagraph of Article 1(b) of Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts so as to be regarded as a body governed by public law within the meaning of that provision, on condition that the assumption of responsibility for the satisfaction of those needs can be established objectively.*

2. *Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts, as amended by Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts, does not preclude national legislation which provides that any application for review of a contracting authority's decision must be commenced within a time-limit laid down to that effect and that any irregularity in the award procedure relied upon in support of such application must be raised within the same period, if it is not to be out of time, with the result that, when that period has passed, it is no longer possible to challenge such a decision or to raise such an irregularity, provided that the time-limit in question is reasonable.*

3. *Directive 93/37 is to be interpreted as meaning that where, in the context of a restricted procedure, the contracting authority has laid down in advance the rules for weighting the criteria for selecting the candidates who will be invited to tender, it is obliged to state them in the contract notice or tender documents.*

(1) OJ C 63 of 4.3.2000.

JUDGMENT OF THE COURT

of 10 December 2002

in Case C-153/00 (Reference for a preliminary ruling from the Onderzoeksrechter in de Rechtbank van eerste aanleg te Turnhout): Paul der Weduwe (1)

(Freedom to provide services — Banking activities — Employee of a credit institution established in a Member State and canvassing for clients in another Member State — National legislation on banking secrecy — Refusal to answer questions and to give evidence in a judicial investigation)

(2003/C 19/03)

(Language of the case: Dutch)

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

In Case C-153/00: Reference to the Court under Article 234 EC by the Onderzoeksrechter in de Rechtbank van eerste aanleg te Turnhout (Belgium) for a preliminary ruling in the criminal proceedings before that court against Paul der Weduwe, on the interpretation of Article 49 EC, the Court, composed of: J.-P. Puissochet, President of the Third and the Sixth Chambers, acting for the President, M. Wathelet, R. Schintgen and C.W.A. Timmermans (Presidents of Chambers), C. Gulmann, D.A.O. Edward, A. La Pergola (Rapporteur), P. Jann, V. Skouris, F. Macken, N. Colneric, S. von Bahr and J.N. Cunha Rodrigues, Judges; P. Léger, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 10 December 2002, in which it has ruled:

The reference for a preliminary ruling by the Onderzoeksrechter in de Rechtbank van eerste aanleg te Turnhout (Belgium), by order of 13 April 2000, is inadmissible.

(1) OJ C 192 of 8.7.2000.

JUDGMENT OF THE COURT

of 12 December 2002

in Case C-273/00 (Reference for a preliminary ruling from the Bundespatentgericht): Ralf Sieckmann v Deutsches Patent- und Markenamt [1]

(Trade marks — Approximation of laws — Directive 89/104/EEC — Article 2 — Signs of which a trade mark may consist — Signs capable of being represented graphically — Olfactory signs)

(2003/C 19/04)

(Language of the case: German)

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

In Case C-273/00: Reference to the Court under Article 234 EC by the Bundespatentgericht (Germany) for a preliminary ruling in the proceedings pending before that court between Ralf Sieckmann and Deutsches Patent- und Markenamt, on the interpretation of Article 2 of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989 L 40, p. 1), the Court, composed of: G.C. Rodríguez Iglesias, President, M. Wathelet, R. Schintgen, C.W.A. Timmermans (Presidents of Chambers), C. Gulmann, D.A.O. Edward, A. La Pergola, V. Skouris, F. Macken (Rapporteur), N. Colneric and J.N. Cunha Rodrigues, Judges; D. Ruiz-Jarabo Colomer, Advocate General; D. Louterman-Hubeau, Head of Division, for the Registrar, has given a judgment on 12 December 2002, in which it has ruled:

(1) *Article 2 of Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks must be interpreted as meaning that a trade mark may consist of a sign which is not in itself capable of being perceived visually, provided that it can be represented graphically, particularly by means of images, lines or characters, and that the representation is clear, precise, self-contained, easily accessible, intelligible, durable and objective.*

(2) *In respect of an olfactory sign, the requirements of graphic representability are not satisfied by a chemical formula, by a description in written words, by the deposit of an odour sample or by a combination of those elements.*

(1) OJ C 259 of 9.9.2000.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 5 December 2002

in Case C-379/00 (Reference for a preliminary ruling from the VAT and Duties Tribunal, London): Overland Footwear Ltd v Commissioners of Customs and Excise [1]

(Customs Code — Customs value of imported goods — Price of goods and buying commission — Reimbursement of duty payable on full amount)

(2003/C 19/05)

(Language of the case: English)

In Case C-379/00: Reference to the Court under Article 234 EC by the VAT and Duties Tribunal, London (United Kingdom), for a preliminary ruling in the proceedings pending before that court between Overland Footwear Ltd and Commissioners of Customs and Excise, on the interpretation of Articles 29, 32, 33, 78 and 236 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1), the Court (Sixth Chamber), composed of: J.-P. Puissochet, President of the Chamber, R. Schintgen, C. Gulmann (Rapporteur), F. Macken and J.N. Cunha Rodrigues, Judges; J. Mischo, Advocate General; L. Hewlett, Principal Administrator, for the Registrar, has given a judgment on 5 December 2002, in which it has ruled:

1. *Articles 29, 32 and 33 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code must be construed as meaning that a buying commission which is included in the customs value declared and is not shown separately from the selling price of the goods in the import declaration must be considered to be part of the transaction value within the meaning of Article 29 of that regulation and is, therefore, dutiable.*

2. *In a situation where the customs authorities have agreed to undertake revision of an import declaration and have adopted a decision 'regularising the situation' within the meaning of Article 78(3) of Regulation No 2913/92 taking account of the fact that the declaration was incomplete as a result of an inadvertent error by the declarant, those authorities may not go back on that decision.*

(1) OJ C 355 of 9.12.2000.

JUDGMENT OF THE COURT

of 12 December 2002

in Case C-395/00 (Reference for a preliminary ruling from the Tribunale di Trento): Distillerie Fratelli Cipriani SpA v Ministero delle Finanze [1]

(Directive 92/12/EEC — Article 20 — Export to non-member countries of products under duty-suspension arrangements — Products having to be considered not to have arrived at their destination by reason of the falsification of the accompanying document — Place of the offence or irregularity unknown — Determination of the Member State in which excise duty is chargeable)

(2003/C 19/06)

(Language of the case: Italian)

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

In Case C-395/00: 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 Distillerie Fratelli Cipriani SpA and Ministero delle Finanze, on the interpretation of Article 20(2) and (3) of Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products (OJ 1992 L 76, p. 1), the Court, composed of: J.-P. Puissochet, President of the Sixth Chamber, acting for the President, M. Wathelet, R. Schintgen and C.W.A. Timmermans (Presidents of Chambers), C. Gulmann, D.A.O. Edward, A. La Pergola, P. Jann, V. Skouris, F. Macken (Rapporteur) and N. Colneric, Judges; J. Mischo, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 12 December 2002, in which it has ruled:

Article 20(3) of Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products is invalid in so far as the period prescribed therein of four months for evidence to be provided of the correctness of the transaction or of the place where the irregularity or offence was actually committed may be relied on against a trader who has guaranteed the payment of the excise duties but was not in a position to know, at the appropriate time, that the duty-suspension arrangement had not been discharged.

[1] OJ C 372 of 23.12.2000.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 28 November 2002

in Case C-417/00 (Reference for a preliminary ruling from the Oberverwaltungsgericht des Landes Sachsen-Anhalt): Agrargenossenschaft Pretzsch eG v Amt für Landwirtschaft und Flurneuordnung Anhalt, [1]

(Common agricultural policy — Regulation (EEC) No 3887/92 — Integrated administration and control system for certain Community aid schemes — Implementing rules — Aid linked to set-aside of land — Declaration of area of set-aside — Failure to give notice, after submission of the aid application, of a decrease of the area of set-aside — Penalties)

(2003/C 19/07)

(Language of the case: German)

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

In Case C-417/00: Reference to the Court under Article 234 EC by the Oberverwaltungsgericht des Landes Sachsen-Anhalt (Germany) for a preliminary ruling in the proceedings pending before that court between Agrargenossenschaft Pretzsch eG and Amt für Landwirtschaft und Flurneuordnung Anhalt, on the interpretation of Article 9(2) of Commission Regulation (EEC) No 3887/92 of 23 December 1992 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes (OJ 1992 L 391, p. 36), as amended by Commission Regulations (EC) Nos 229/95 of 3 February 1995 (OJ 1995 L 27, p. 3) and 1648/95 of 6 July 1995 (OJ 1995 L 156, p. 27), the Court (Sixth Chamber), composed of: R. Schintgen, President of the Second Chamber, acting for the President of the Sixth Chamber, C. Gulmann, V. Skouris, F. Macken (Rapporteur) and N. Colneric, Judges; P. Léger, Advocate General; R. Grass, Registrar, has given a judgment on 28 November 2002, in which it has ruled:

Article 9(2) of Commission Regulation (EEC) No 3887/92 of 23 December 1992 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes, as amended by Commission Regulations (EC) Nos 229/95 of 3 February 1995 and 1648/95 of 6 July 1995, must be interpreted as meaning that the penalties prescribed by that provision are not limited to cases in which the farmer has made erroneous or false declarations at the time when the aid application was submitted but that they also apply where the farmer has failed to notify the competent authority of changes affecting the conditions governing grant of the aid.

[1] OJ C 45 of 10.02.2001.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 12 December 2002

in Case C-442/00 (Reference for a preliminary ruling from the Tribunal Superior de Justicia de Castilla-La-Mancha): Ángel Rodríguez Caballero v Fondo de Garantía Salarial (Fogasa), [1]

(Social policy — Protection of employees in the event of the insolvency of their employer — Directive 80/987/EEC — Scope — 'Claims' — 'Pay' — 'Salarios de tramitación' — Payment guaranteed by the guarantee institution — Payment subject to the adoption of a judicial decision)

(2003/C 19/08)

(Language of the case: Spanish)

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

In Case C-442/00: Reference to the Court under Article 234 EC by the Tribunal Superior de Justicia de Castilla-La-Mancha (Spain) for a preliminary ruling in the proceedings pending before that court between Ángel Rodríguez Caballero and Fondo de Garantía Salarial (Fogasa), on the interpretation of Article 1 of Council Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer (OJ 1980 L 283, p. 23), the Court (Sixth Chamber), composed of: J.-P. Puissochet, President of the Chamber, C. Gulmann, V. Skouris, F. Macken and N. Colneric (Rapporteur), Judges; L.A. Geelhoed, Advocate General; R. Grass, Registrar, has given a judgment on 12 December 2002, in which it:

1. *Claims in respect of 'salarios de tramitación' must be regarded as employees' claims arising from contracts of employment or employment relationships and relating to pay, within the meaning of Articles 1(1) and 3(1) of Council Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer, irrespective of the procedure under which they are determined, if, according to the national legislation concerned, such claims, when recognised by judicial decision, give rise to liability on the part of the guarantee institution and if a difference in treatment of identical claims acknowledged in a conciliation procedure is not objectively justified.*

2. *The national court must set aside national legislation which, in breach of the principle of equality, excludes from the concept of 'pay' within the meaning of Article 2(2) of Directive 80/987 claims in respect of 'salarios de tramitación' agreed in a conciliation procedure supervised and approved by a court; it must apply to members of the group disadvantaged by that discrimination the arrangements in force in respect of employees whose claims of the same type come, according to the national definition of 'pay', within the scope of that directive.*

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[1] OJ C 28 of 27.1.2001.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 12 December 2002

in Case C-456/00: French Republic v Commission of the European Communities [1]

(Action for annulment — State aid — Common organisation of the markets — Wine — Measures for adapting vineyards in Charentes)

(2003/C 19/09)

(Language of the case: French)

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

In Case C-456/00, French Republic (Agents: G. de Bergues and L. Bernheim) v Commission of the European Communities (Agent: A. Alves Vieira and D. Triantafyllou): Application for annulment of Commission Decision 2001/52/EC of 20 September 2000 on the State aid implemented by France in the wine-growing sector (OJ 2001 L 17, p. 30), the Court (Sixth Chamber), composed of: R. Schintgen, President of the Second Chamber, acting for the President of the Sixth Chamber, V. Skouris, F. Macken, N. Colneric and J.N. Cunha Rodrigues (Rapporteur), Judges; A. Tizzano, Advocate General; R. Grass, Registrar, has given a judgment on 12 December 2002, in which it:

1. *Dismisses the action;*

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

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[1] OJ C 45 of 10.2.2001.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 12 December 2002

in Case C-5/01: Kingdom of Belgium v Commission of the European Communities [1]

(ECSC Treaty — Aid granted by the Member States — Annulment of Commission Decision 2001/198/ECSC of 15 November 2000 concerning State aid granted by Belgium to Cockerill Sambre SA)

(2003/C 19/10)

(Language of the case: French)

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

In Case C-5/01, Kingdom of Belgium (Agent: A. Snoecx, assisted by L. Levi, G. Vandersanden and J.-M. de Backer, avocats) v Commission of the European Communities (Agent: G. Rozet): Application for the annulment of Commission Decision 2001/198/ECSC of 15 November 2000 concerning State aid granted by Belgium to Cockerill Sambre SA (OJ 2001 L 71, p. 23), the Court (Fifth Chamber), composed of: M. Wathelet, President of the Chamber, C.W.A. Timmermans, D.A.O. Edward (Rapporteur), P. Jann and S. von Bahr, Judges; C. Stix-Hackl, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 12 December 2002, in which it:

1. *Dismisses the application;*

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

(1) OJ C 61 of 24.02.2001.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 5 December 2002

in Case C-174/01: Commission of the European Communities v Grand Duchy of Luxembourg [1]

(Failure by a Member State to fulfil obligations — Waste management — First indent of Article 11(1) of Directive 96/59/EC on the disposal of polychlorinated biphenyls and polychlorinated terphenyls (PCB/PCT))

(2003/C 19/11)

(Language of the case: French)

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

In Case C-174/01, Commission of the European Communities (Agents: H. Støvlbaek and J. Adda) v Grand Duchy of Luxembourg (Agent: J. Falz): Application for a declaration that, by failing to draw up plans for the decontamination and/or disposal of inventoried equipment and the polychlorinated biphenyls contained therein, in accordance with the requirements of Article 11 of Council Directive 96/59/EC of 16 September 1996 on the disposal of polychlorinated biphenyls and polychlorinated terphenyls (PCB/PCT) (OJ 1996 L 243, p. 31), the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive, the Court (Fifth Chamber), composed of: D.A.O. Edward, acting for the President of the Fifth Chamber, A. La Pergola (Rapporteur), P. Jann, S. von Bahr and A. Rosas, Judges; D. Ruiz-Jarabo Colomer, Advocate General; R. Grass, Registrar, has given a judgment on 5 December 2002, in which it:

1. *Declares that, by failing to draw up plans for the decontamination and/or disposal of inventoried equipment and the polychlorinated biphenyls contained therein, in accordance with the requirements of the first indent of Article 11(1) of Council Directive 96/59/EC of 16 September 1996 on the disposal of polychlorinated biphenyls and polychlorinated terphenyls (PCB/PCT), the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive;*

2. *Orders the Grand Duchy of Luxembourg to pay the costs.*

(1) OJ C 173 of 16.6.2001.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 28 November 2002

in Case C-259/01: Commission of the European Communities v French Republic [1]

(Failure by a Member State to fulfil its obligations — Directive 98/30/EC — Failure to transpose within the prescribed period)

(2003/C 19/12)

(Language of the case: French)

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

In Case C-259/01, Commission of the European Communities (Agent: R. Tricot) v French Republic (Agents: G. de Bergues and A. Bréville-Viéville): Application for a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 98/30/EC of the European Parliament and of the Council of 22 June 1998 concerning common rules for the internal market in natural gas (OJ 1998 L 204, p. 1), or, in any event, by not notifying the Commission thereof, the French Republic has failed to fulfil its obligations under that directive and, in particular, under Article 29 thereof, the Court (Sixth Chamber), composed of: R. Schintgen (Rapporteur), President of the Second Chamber, acting for the President of the Sixth Chamber, C. Gulmann, V. Skouris, F. Macken and N. Colneric, Judges; C. Stix-Hackl, Advocate General; R. Grass, Registrar, has given a judgment on 28 November 2002, in which it:

1. *Declares that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 98/30/EC of the European Parliament and of the Council of 22 June 1998 concerning common rules for the internal market in natural gas, the French Republic has failed to fulfil its obligations under Article 29 thereof;*

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

(1) OJ C 227 of 11.8.2001.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 5 December 2002

in Case C-324/01: Commission of the European Communities v Kingdom of Belgium [1]

(Failure by a Member State to fulfil its obligations — Conservation of natural habitats — Wild fauna and flora — Incomplete transposition)

(2003/C 19/13)

(Language of the case: French)

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

In Case C-324/01, Commission of the European Communities (Agents: R. B. Wainwrighte and J. Adda) v Kingdom of Belgium (Agent: C. Pochet): Application for a declaration that, by failing to take all the measures necessary to ensure the full and proper transposition of Articles 1, 4(5), 5(4), 6, 7, 12, 13, 14, 15, 16(1), 22(b) and (c) and 23(2) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7), in conjunction with Annexes II, IV, V and VI thereto, the Kingdom of Belgium has failed to fulfil its obligations under the Directive and the third paragraph of Article 249 EC, the Court (Sixth Chamber), composed of: J.-P. Puissochet, President of the Chamber, C. Gulmann (Rapporteur), F. Macken, N. Colneric and J.N. Cunha Rodrigues, Judges; P. Léger, Advocate General; R. Grass, Registrar, has given a judgment on 5 December 2002, in which it:

1. *Declares that by failing to adopt all the laws, regulations and administrative measures necessary to ensure the full and proper transposition of Articles 1, 4(5), 5(4), 6, 7, 12, 13, 14, 15, 16(1), 22(b) and (c) and 23(2) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, in conjunction with Annexes II, IV, V and VI thereto, the Kingdom of Belgium has failed to fulfil its obligations under the Directive;*

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

(1) OJ C 289 of 13.10.2001.

JUDGMENT OF THE COURT

of 10 December 2002

in Case C-362/01: Commission of the European Communities v Ireland [1]

(Failure by a Member State to fulfil its obligations — Failure to transpose Directive 98/5/EC — Reasoned opinion — Failure to take into account observations submitted by the Member State in response to the formal notice — Bearing on admissibility)

(2003/C 19/14)

(Language of the case: English)

In Case C-362/01, Commission of the European Communities (Agent: K. Banks) v Ireland (Agent: D. J. O'Hagan, assisted by D. McGuinness, SC, and D. R. Phelan, BL): Application for a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 98/5/EC of the European Parliament and the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained (OJ 1998 L 77, p. 36), or by failing to inform the Commission thereof, Ireland has failed to fulfil its obligations under that directive, the Court, composed of: G.C. Rodríguez Iglesias, President, J.-P. Puissochet (Rapporteur), M. Wathelet and C.W.A. Timmermans (Presidents of Chambers), D.A.O. Edward, A. La Pergola, P. Jann, F. Macken, N. Colneric, S. von Bahr and J.N. Cunha Rodrigues, Judges; D. Ruiz-Jarabo Colomer, Advocate General; R. Grass, Registrar, has given a judgment on 10 December 2002, in which it:

1. *Declares that, by failing to adopt within the period prescribed the laws, regulations and administrative provisions necessary to comply with Directive 98/5/EC of the European Parliament and the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained, Ireland has failed to fulfil its obligations under that directive.*

2. *Orders Ireland to pay the costs.*

(1) OJ C 317 of 10.11.2001.

JUDGMENT OF THE COURT

(Third Chamber)

of 28 November 2002

in Case C-392/01: Commission of the European Communities v Kingdom of Spain [1]

(Failure by a Member State to fulfil its obligations — Directive 97/55/EC — Comparative advertising — Failure to implement within the prescribed period)

(2003/C 19/15)

(Language of the case: Spanish)

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

In Case C-392/01, Commission of the European Communities (Agent: I. Martínez del Peral) v Kingdom of Spain (Agent: L. Fraguas Gadea): Application for a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 97/55/EC of the European Parliament and of the Council of 6 October 1997 amending Directive 84/450/EEC concerning misleading advertising so as to include comparative advertising (OJ 1997 L 290, p. 18), or, in any event, by failing to inform the Commission of the adoption of any such measures, the Kingdom of Spain has failed to fulfil its obligations under that directive, the Court (Third Chamber), composed of: J.-P. Puissochet, President of the Chamber, C. Gulmann and J.N. Cunha Rodrigues (Rapporteur), Judges; C. Stix-Hackl, Advocate General; R. Grass, Registrar, has given a judgment on 28 November 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 97/55/EC of the European Parliament and of the Council of 6 October 1997 amending Directive 84/450/EEC concerning misleading advertising so as to include comparative advertising, the Kingdom of Spain has failed to fulfil its obligations under that directive.*

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

(1) OJ C 331 of 24.11.2001.

JUDGMENT OF THE COURT

(Second Chamber)

of 28 November 2002

in Case C-414/01: Commission of the European Communities v Kingdom of Spain [1]

(Failure by a Member State to fulfil its obligations — Failure to implement Directive 97/7/EC)

(2003/C 19/16)

(Language of the case: Spanish)

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

In Case C-414/01, 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 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts (OJ 1997 L 144, p. 19), or, in any event, by failing to inform the Commission of such provisions, the Kingdom of Spain has failed to fulfil its obligations under Article 15(1) of that directive, the Court (Second Chamber), composed of: R. Schintgen, President of the Chamber, V. Skouris and N. Colneric (Rapporteur), Judges; C. Stix-Hackl, Advocate General; R. Grass, Registrar, has given a judgment on 28 November 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 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts the Kingdom of Spain has failed to fulfil its obligations under Article 15(1) of that directive;*

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

(1) OJ C 348 of 8.12.2001.

ORDER OF THE COURT

(Fourth Chamber)

of 19 September 2002

in Case C-267/01 (reference for a preliminary ruling from the Oberste Gerichtshof): Jaroslav Nyvlt v Flughafen Wien AG [1]

(Article 104(3) of the Rules of Procedure — Answer to a question admitting of no reasonable doubt — Article 3 of Regulation (EEC) No 3922/91 — Harmonisation of technical requirements and administrative procedures in the field of civil aviation — Paragraph 35 of Code 145 of the Joint Aviation Requirements)

(2003/C 19/17)

(Language of the case: German)

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

In Case C-267/01: reference to the Court under Article 234 EC from the Oberste Gerichtshof (Austria) for a preliminary ruling in the proceedings pending before that court between Jaroslav Nyvlt and Flughafen Wien AG — on the interpretation of Paragraph 35 of Code 145 of the Joint Aviation Requirements, applicable to the Community by virtue of Article 3 of Council Regulation (EEC) No 3922/91 of 16 December 1991 on the harmonisation of technical requirements and administrative procedures in the field of civil aviation (OJ 1991 L 373, p. 4), as amended by Commission Regulation (EEC) No 2176/96 of 13 November 1996 (OJ 1996 L 291, p. 15) — the Court (Fourth Chamber), composed of: S. von Bahr, President of the Chamber, D.A.O. Edward and A. La Pergola (Rapporteur), Judges; A. Tizzano, Advocate General; R. Grass, Registrar, has made an order on 19 September 2002, in which it has ruled:

1. *Where a worker authorised to certify aircraft fit for service is placed by his employer at the disposal of an approved maintenance organisation, the obligations flowing from Paragraph 35 of Code 145 of the Joint Aviation Requirements, applicable in the Community by virtue of Article 3 of Directive 1999/42/EC of the European Parliament and of the Council of 7 June 1999 establishing a mechanism for the recognition of qualifications in respect of the professional Council Regulation (EEC) No 3922/91 of 16 December 1991 on the harmonization of technical requirements and administrative procedures in the field of civil aviation, as amended by Commission Regulation No 2176/96 of 13 November 1996, apply to such an approved maintenance organisation.*

2. *Without prejudice to the fulfilment of the obligations placed upon an approved maintenance organisation by Paragraph 35 of Code 145 of the abovementioned Joint Aviation Requirements, that provision does not preclude that, on the basis of national provisions which are more extensive, the existence is acknowledged of an obligation incumbent on an employer, not being an approved maintenance organisation, to furnish to a*

former employee, at his request, the documents relating to his qualifications and professional experience gained during his employment.

(1) OJ C 303, 27.10.2001.

Reference for a preliminary ruling by the Bundespatentgericht by order of that Court of 26 June 2002 in the complaint proceedings of Deutsche Telekom AG against DKV Deutsche Krankenversicherung AG

(Case C-367/02)

(2003/C 19/18)

Reference has been made to the Court of Justice of the European Communities by order of the (Federal Patent Court) of 26 June 2002, received at the Court Registry on 14 October 2002, for a preliminary ruling in the complaint proceedings of Deutsche Telekom AG against DKV Deutsche Krankenversicherung AG on the following question:

Do the words 'association with the earlier trade mark' in the second part of Article 4(1)(b) of the Trademarks Directive (1) apply to the case where the earlier trade mark is attributed to the later trade mark, the later trade mark having been formed by adding a well known company logo, or an element in a trade mark series belonging to the owner of the later trade mark, to the earlier trade mark, which is a one-word logo which is neither the undertaking's logo nor an element in a trade mark series and is of average distinctiveness?

(1) First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ L 40 of 11.02.1989, p. 1).

Reference for a preliminary ruling by the Tribunale di Milano, Prima Sezione penale by order of that court of 26 October 2002 in criminal proceedings against Silvio Berlusconi

(Case C-387/02)

(2003/C 19/19)

Reference has been made to the Court of Justice of the European Communities by order of the Tribunale di Milano, Prima Sezione penale (Milan District Court, First Criminal Chamber) of 26 October 2002 received at the Court Registry on 31 October 2002, for a preliminary ruling in the criminal proceedings against Silvio Berlusconi on the following questions:

1. Does Article 6 of Directive 68/151/EEC (1) on co-ordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community concern not only cases of failure to publish the balance sheet and profit and loss account, but also cases where those documents are published but their contents are false, given that the harm to the interests of members and third parties is clearly greater in the latter case? Is the directive intended in that respect to lay down a minimum level of protection at Community level leaving it to the Member States to put in place means of protection against the submitting of false balance sheets or the publishing of false company accounts?

2. Do the criteria of effectiveness, proportionality and dissuasiveness, which the penalties to be adopted by the Member States under Council Directive 68/151 must satisfy in order to be regarded as 'appropriate', refer to the nature or type of penalty considered in the abstract, or rather to its application in practice having regard to the structural characteristics of the legal system within which it takes effect?

3. Are the principles set out in Council Directive 78/660/EEC (2) of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies, Council Directive 83/349/EEC (3) of 13 June 1983 based on Article 54(3)(g) of the Treaty on consolidated accounts and Council Directive 90/605/EEC (4) of 8 November 1990 amending Directive 78/660/EEC on annual accounts and Directive 83/349/EEC on consolidated accounts as regards the scope of those directives, upon which national measures relating to the drafting and contents of annual accounts and annual reports, in particular, of capital companies, must be based, to be interpreted as precluding a Member State from setting minimum thresholds below which inaccurate statements in annual accounts and annual reports relating to companies limited by shares, partnerships limited by shares and limited liability companies are not punishable?

(1) OJ, English Special Edition 1968 (I), p. 41.
(2) OJ 1978 L 222, p. 11.
(3) OJ 1983 L 193, p. 1.
(4) OJ 1990 L 317, p. 60.

Reference for a preliminary ruling by the Finanzgericht Hamburg by order of that Court of 16 October 2002 in the case of Deutsche See-Bestattungs-Genossenschaft e. G. against Hauptzollamt Kiel

(Case C-389/02)

(2003/C 19/20)

Reference has been made to the Court of Justice of the European Communities by order of the Finanzgericht Hamburg (Finance Court, Hamburg) of 16 October 2002, received at the Court Registry on 5 November 2002, for a preliminary ruling in the case of Deutsche See-Bestattungs-Genossenschaft e. G. against Hauptzollamt Kiel on the following question:

Does sailing in Community waters in craft for other than private non-commercial purposes constitute navigation within the meaning of the first paragraph of Article 8(1)(c) of Directive 92/81 [1]?

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[1] OJ L 316 of 31.10.1992, p. 12.

Reference for a preliminary ruling by the Corte di Appello di Lecce — Sezione penale by order of that Court of 7 October 2002 in the criminal proceedings against Sergio Adelchi

(Case C-391/02)

(2003/C 19/21)

Reference has been made to the Court of Justice of the European Communities by order of the Corte di Appello di Lecce — Sezione penale (Court of Appeal, Lecce, Criminal division) of 7 October 2002, received at the Court Registry on 8 November 2002, for a preliminary ruling in the criminal proceedings against Sergio Adelchi on the following questions:

1. With reference to the duty of each Member State to adopt 'appropriate penalties' for the infringements established by the first and fourth directives (Directive 68/151/EEC [1] and Directive 78/660/EEC [2]), must the directives themselves and in particular the combined provisions of Article 44(3)(g) of the EC Treaty, Articles 2(1)(f) and 6 of the first directive (Directive 68/151/EEC) and Article 2(2), (3) and (4) of the fourth directive (Directive 78/660/EEC), as consolidated by Directive 83/349 [3] and Directive 90/605 [4], be interpreted as meaning that that legislation precludes a law of a Member State which, in amending the system of penalties already in force in respect of company law offences concerning the infringement of the obligations imposed in order to safeguard the principle of public and accurate information on companies, lays down a sanctionative system which in the specific instance is not informed by the criteria of effectiveness, proportionality and dissuasiveness of the sanctions imposed in order to ensure that that principle is upheld?

2. Must those directives and, in particular, Article 44(3)(g) of the EC Treaty, Articles 2(1)(f) and 6 of the first directive (Directive 68/151/EEC) and Article 2(2), (3) and (4) of the fourth directive (Directive 78/660/EEC), as consolidated by Directive 83/349 and Directive 90/605), be interpreted as meaning that that legislation precludes a law of a Member State which does not make it a punishable offence for companies to infringe obligations concerning disclosure and the provisions of accurate information on certain company documents (including the balance sheet and the profit and loss account) where the disclosure of false company accounts or the failure to provide information result in a distortion of the financial results for a given period, or a distortion in the net assets, which does not exceed a certain percentage threshold?

3. Must those directives and, in particular, Article 44(3)(g) of the EC Treaty, Articles 2(1)(f) and 6 of the first directive (Directive 68/151/EEC) and Article 2(2), (3) and (4) of the fourth directive (Directive 78/660/EEC), as consolidated by Directive 83/349 and Directive 90/605), be interpreted as meaning that that legislation precludes a law of a Member State which does not make it a punishable offence for companies to infringe obligations concerning disclosure and the provision of accurate information where statements are made which, although aimed at deceiving members or the public with a view to securing an unjust profit, are the consequence of estimated valuations which, taken individually, depart from actual values to an extent not greater than a certain threshold?

4. Irrespective of progressive limits or thresholds, must those directives and, in particular, Article 44(3)(g) of the EC Treaty, Articles 2(1)(f) and 6 of the first directive (Directive 68/151/EEC) and Article 2(2), (3) and (4) of the fourth directive (Directive 78/660/EEC), as consolidated by Directive 83/349 and Directive 90/605), be interpreted as meaning that that legislation precludes a law of a Member State which does not make it a punishable offence for companies to infringe obligations concerning disclosure and the provision of accurate information where the false statements or the fraudulent omissions and, thus, the disclosures and statements which do not give a true and fair view of the company's assets and liabilities and financial position do not distort 'to an appreciable extent' the company's assets, liabilities and financial position (even though it is for the national legislature to define the concept of 'appreciable distortion'?

5. Must those directives and, in particular, Article 44(3)(g) of the EC Treaty, Articles 2(1)(f) and 6 of the first directive (Directive 68/151/EEC) and Article 2(2), (3) and (4) of the fourth directive (Directive 78/660/EEC), as consolidated by Directive 83/349 and Directive 90/605), be interpreted as meaning that that legislation precludes a law of a Member State which, in response to an infringement by companies of those obligations concerning disclosure and the provision of accurate information imposed on them in order to safeguard 'the interests of both members and third parties', allows only members and creditors to seek imposition of a penalty, thereby excluding third parties from any general and effective protection?

6. Must those directives and, in particular, Article 44(3)(g) of the EC Treaty, Articles 2(1)(f) and 6 of the first directive (Directive 68/151/EEC) and Article 2(2), (3) and (4) of the fourth directive (Directive 78/660/EEC), as consolidated by Directive 83/349 and Directive 90/605), be interpreted as meaning that that legislation precludes a law of a Member State which, in response to the infringement by companies of those obligations concerning disclosure and the provision of accurate information imposed on them in order to safeguard 'the interests of both members and third parties', provides for prosecution machinery and a sanctionative system which are markedly differentiated, whereby the possibility of the imposition of a punishment upon complaint being made, together with more serious and effective penalties, is reserved solely for infringements occasioning loss to members and creditors?

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(1) First Council Directive 68/151/EEC of 9 March 1968 on co-ordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community (English special edition...: Series-I I Chapter 1968(I), p. 41).

(2) Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54 (3) (g) of the Treaty on the annual accounts of certain types of companies (OJ L 222, 14.08.1978, p. 11).

(3) Seventh Council Directive 83/349/EEC of 13 June 1983 based on the Article 54 (3) (g) of the Treaty on consolidated accounts (OJ L 193, 18.07.1983, p. 1).

(4) Council Directive 90/605/EEC of 8 November 1990 amending Directive 78/660/EEC on annual accounts and Directive 83/349/EEC on consolidated accounts as regards the scope of those Directives (OJ L 317, 16.11.1990, p. 60).

Action brought on 8 November 2002 by the Commission of the European Communities against the Hellenic Republic

(Case C-394/02)

(2003/C 19/22)

An action against the Hellenic Republic was brought before the Court of Justice of the European Communities on 8 November 2002 by the Commission of the European Communities, represented by Michel Nolin and Minas Konstantinidis, of its Legal Service, with an address for service in Luxembourg.

The Commission claims that the Court should:

a) declare that, as a result of the award by the Dimosia Epikhirisi Ilektrismou (DEI) of work for the construction of a conveyor system at the steam-generated electricity station at Megalopolis by a procedure of negotiation without a competition first being called, the Hellenic Republic has failed to fulfil its obligations under Council Directive 93/38/EEC (1) of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors and, in particular, under Article 20 et seq. of the directive;

b) order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

Directive 93/38 governs the choice of procurement procedures in the water, energy, transport and telecommunications sectors and applies to contracts whose estimated value is not less than EUR 5 000 000.

According to the Commission, the contract at issue, by reason of its value and type, is covered by the directive. Consequently, the contracting entity (Dimosia Epikhirisi Ilektrismou (DEI); the State Electricity Undertaking) had to follow the procedures under Article 20(1) of the directive and call a competition in accordance with Article 21 of the directive. However, the contract was not put out to tender but was awarded following private negotiation.

The Commission maintains that in the present case neither Article 20(2)(c) of the directive (technical or artistic reasons rendering it absolutely essential to place the contract with a particular contractor) nor Article 20(2)(d) (extreme urgency brought about by events unforeseeable by the contracting entity) is applicable.

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(1) OJ L 199, 9.8.1993, p. 84.

Action brought on 12 November 2002 by the Commission of the European Communities against the Federal Republic of Germany (received by fax on 11 November 2002)

(Case C-401/02)

(2003/C 19/23)

An action against the Federal Republic of Germany was brought before the Court of Justice of the European Communities on 12 November 2002 (received by fax on 11 November 2002) by the Commission of the European Communities, represented by C. Schmidt, acting as Agent, with an address for service in Luxembourg.

The Commission of the European Communities claims that the Court should:

1. Rule that, by failing to adopt the measures necessary to ensure application of Directive 98/61/EC of the European Parliament and of the Council [1] of 24 September 1998 amending Directive 97/33/EC with regard to operator number portability and carrier pre-selection, or in any event by failing to notify the Commission of those measures, the Federal Republic of Germany has failed to fulfil its obligations under Article 12(7) of Directive 97/33/EC;

2. Order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

The Commission alleges that — notwithstanding the fact that the period within which actual carrier pre-selection had to be introduced expired on 1 January 2000 — no carrier pre-selection for local calls is at present being offered in Germany by the carrier notified as the 'organisation with significant market power'. The Commission considers that the grounds given in justification of this are invalid:

— The question whether the possibility for carrier pre-selection is also to be provided with regard to local calls must be resolved on the basis of the directive's wording. The recitals in the preamble may be adduced as an aid to interpretation if that wording allows of several interpretations. The wording of Article 12(7), however, is unequivocal with regard to the applicability of carrier pre-selection in the case of local calls. Second, the fifth recital in the preamble, to which the German Government refers, mentions the Green Paper on a numbering policy for telecommunications services in Europe not as a reference document setting out the obligations arising under the directive but solely as a preparatory document. Third, the reference to the glossary of the Green Paper is out-dated and must be considered within its historical context, particularly in light of subsequent developments. In particular, the extent of carrier pre-selection depends on the degree of liberalisation achieved within the market concerned. In the Resolution of 17 July 1997 on the Green Paper on a numbering policy for telecommunications services in Europe, [2] the European Parliament called on the Commission to make proposals in the amendment to the existing Directive 97/33/EC which would be directed at the introduction of carrier pre-selection for fixed local access providers with significant market power in order to facilitate fair competition. As the Council subsequently found in its Resolution of 22 September 1997 on the further development of a numbering policy for telecommunications services in the European Community, [3] the gradual introduction of carrier pre-selection should 'encourage competition in all sectors of the market', at least for carriers with significant market power providing fixed local public telephone services. Following liberalisation of the market for local calls (that is to say, in principle from 1 January 1998), the availability of carrier pre-selection at local level should encourage competition within this market sector.

The Commission accordingly confirmed the applicability of Article 12(7) to pre-selection at local level through the express reference to, inter alia, carrier pre-selection in the case of local calls as an obligation under Article 12(7) of the directive in the second and third recitals in its decision of 22 December 1999 on the United Kingdom's request for deferment of the obligation to introduce carrier pre-selection pursuant to Article 20(2) of Directive 97/33/EC, as amended by Directive 98/61/EC.

— Deferment of obligations may be granted only in accordance with the procedure under Article 20(2) of the directive. Germany is not one of the countries to which an additional transitional period was granted for the transposition of Article 12(7) of the directive. The Commission also takes the view that, since 1 January 2000 at the latest, there could be no further grounds for any legitimate expectation that the economic conditions governing investments in local networks would be maintained.

[1] OJ L 268, 3.10.1998, p. 37.
[2] OJ C 286, 22.09.1997, p. 232.
[3] OJ C 303, 04.10.1997, p. 1.

Reference for a preliminary ruling by the Tribunale di Milano, Sezione IV Penale by order of that Court of 29 October 2002 in the criminal proceedings against Marcello Dell'Utri, Romano Luzi and Romano Comincioli

(Case C-403/02)

(2003/C 19/24)

Reference has been made to the Court of Justice of the European Communities by order of the Tribunale di Milano, Sezione IV Penale (Milan District Court, Fourth Criminal Chamber) of 29 October 2002, received at the Court Registry on 12 November 2002, for a preliminary ruling in the criminal proceedings against Marcello Dell'Utri, Romano Luzi and Romano Comincioli on the following questions:

— May Article 6 of Directive 68/151/EEC [1] (first directive) be understood as requiring the Member States to establish appropriate penalties not only for non-disclosure by commercial companies of balance sheets and profit and loss accounts but also for false disclosure of such documents, of other company documents addressed to members or to the public, or of any information on a company's assets and liabilities, and economic and financial situation which the company is required to provide in relation to itself or to the group of which it forms a part?

— Must the concept of the 'appropriateness' of the penalty, for the purposes also of Article 5 of the EC Treaty, be understood in terms to be specifically assessed within the legislative scope (both criminal and procedural) of the Member States as requiring a penalty which is 'efficacious, effective and genuinely dissuasive'?

— Do the combined provisions of new Articles 2621 and 2622 of the Civil Code, as amended by Legislative Decree No 61 of 11 April 2002, satisfy those criteria: in particular can Article 2621 of the Civil Code, which summarily punishes by a term of imprisonment of one year and six months offences in connection with non-disclosure of balance sheets not occasioning financial loss or occasioning loss but in respect of which no prosecution may be brought under Article 2622 of the Civil Code owing to the absence of a complaint, be described as 'effectively dissuasive' and 'genuinely appropriate'? Finally, is it appropriate, in terms not least of the specific protection of the collective interest in the 'transparency' of the corporate market, and the possibility that that interest may assume a Community dimension, to provide in respect of offences under Article 2622(1) of the Civil Code (those committed in regard to companies not listed on the stock exchange) that proceedings may only be brought upon a complaint by members of the company concerned or by its creditors?

[1] First Council Directive 68/151/EEC of 9 March 1968 on co-ordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community (English Special Edition...: Series-I I Chapter 1968(I), p. 41).

Action brought on 15 November 2002 by the Commission of the European Communities against the Hellenic Republic

(Case C-407/02)

(2003/C 19/25)

An action against the Hellenic Republic was brought before the Court of Justice of the European Communities on 15 November 2002 by the Commission of the European Communities, represented by Michel Nolin and Minas Konstantinidis, of its Legal Service, with an address for service in Luxembourg.

The Commission claims that the Court should:

a) declare that, as a result of the direct award by the municipality of Serres of the contract 'Renewal of the town of Serres: framework of investigative study models and pilot realisation programme' without tenders first being invited, the Hellenic Republic has failed to fulfil its obligations under the provisions of Directive 92/50/EEC [1] (Article 8 et seq.) which require a tender procedure to be carried out and lay down the tender procedure for the award of public service contracts;

b) order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

The provisions of Directive 92/50 govern the choice of procedures for the award of public service contracts and lay down common rules in the field of design contests and in the technical field. Those provisions apply to contracts whose estimated value is equal to or exceeds a specified threshold.

According to the Commission, the contract 'Renewal of the town of Serres: framework of investigative study models and pilot realisation programme' is a public service contract falling within the directive given its subject-matter and value. Nevertheless, the contract was not put out to tender but was awarded directly by the municipality of Serres to the Aristotle University of Thessaloniki.

The Commission further maintains that in the present case neither the exception in Article 6 of the directive (contract with an entity which is itself a contracting authority within the meaning of the directive) nor the exception in Article 1(a)(ix) is applicable.

(1) Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts (OJ L 209, 24.7.1992, p. 1).

Appeal by Jan Pflugradt against the judgment of the Court of First Instance of the European Communities (Fifth Chamber) of 22 October 2002 in Joined Cases T-178/00 and T-341/00, Jan Pflugradt v European Central Bank, lodged on 18 November 2002

(Case C-409/02 P)

(2003/C 19/26)

An appeal against the judgment delivered on 22 October 2002 by the Fifth Chamber of the Court of First Instance of the European Communities in Joined Cases T-178/00 and T-341/99, Jan Pflugradt v the European Central Bank, was brought before the Court of First Instance of the European Communities on 18 November 2002 by Jan Pflugradt, represented by Dr Norbert Pflüger, 44 Kaiserstraße, D-60329 Frankfurt am Main, with an address for service in Luxembourg.

The appellant claims that the Court should, on setting aside the judgment appealed against (1)

1. annul the appellant's performance appraisal report for 1999 dated 23 November 1999;

2. annul the decision of the respondent (ECB) in its letter of 28 June 2000 altering the responsibilities assigned to the appellant;

3. order the ECB to pay the costs.

Pleas in law and main arguments

— The judgment appealed against mistakes the scope and structure of the EBC's functional autonomy under the contractual system established by Article 36.1 of the ESCB Statute and the first sentence of Article 9(a) of the Conditions of Employment. Owing to that error of law that judgment was based on the supposition that under the contractual system the ECB had the same wide discretion as is available to employers in the use of staff under the law governing officials of the European Communities. That discretion relating to the use of staff is, however, to be distinguished from discretion in terms of operational organisation. The Court of First Instance was wrong to consider the ECB entitled to disregard the applicant's job description which had become a part of the contract and to withdraw contractually agreed responsibilities from him. In accordance with principles governing the law concerning officials, the Court of First Instance should not have had regard to whether the tasks withdrawn constituted 'essential elements' of the contractually agreed area of activity. It should have inquired into whether those tasks were contractually laid down.

  In the event that the contractually agreed employment cannot be continued because of cessation of employment, Article 11(a)(ii) provides for the possibility of dismissal for organisational reasons. That provision therefore makes it clear that it is not permissible unilaterally to alter the terms of the contract in order to enable employment relations to be 'developed further' in disregard of contractual agreements. It is not permissible to leave to the ECB as the employer from the point of view of employment law the decision on the application of two different arrangements which in the end are contradictory. If that were the case, the ECB could — in certain cases even arbitrarily — choose between termination of contract under Article 11(a)(ii) of the Conditions of Employment and continuation of the contract in disregard of contractual agreements.

  The Court of First Instance described the appellant's responsibility for appraisal of the members of the UNIX team as not an essential element of the contract of employment, although in the job description it is termed a 'key responsibility'. The Court of First Instance also misconstrued the job description by assuming it to constitute merely a provisional assignment of responsibilities.

— Infringement of the rules concerning evidence.

(1) Not yet published in the Official Journal of the European Communities.

Reference for a preliminary ruling by the Verwaltungsgerichtshof by order of that Court of 6 November 2002 in the case of Spedition Ulustrans, Uluslararasi Nakliyat ve. Tic. A.S. Istanbul against Finanzlandesdirektion Oberösterreich

(Case C-414/02)

(2003/C 19/27)

Reference has been made to the Court of Justice of the European Communities by order of the Verwaltungsgerichtshof (Administrative Court) of 6 November 2002, received at the Court Registry on 19 November 2002, for a preliminary ruling in the case of Spedition Ulustrans, Uluslararasi Nakliyat ve. Tic. A.S. Istanbul against Finanzlandesdirektion Oberösterreich (Regional Finance Directorate for Upper Austria) on the following questions:

Does Paragraph 79(2) of the Zollrechtsdurchführungsgesetz (Act to implement customs law, under which an employer or undertaking incurs liability for a customs debt at the same time as the employee or other person contracted by the undertaking incurs liability for the debt, if that person has, in the discharge of his employer's or the undertaking's affairs, acted unlawfully with regard to customs obligations), widen the meaning of the term 'customs debtor' in a manner that is contrary to Article 202(3) of the Customs Code and therefore incompatible with Community law?

Action brought on 19 November 2002 by the Commission of the European Communities against the Kingdom of Belgium

(Case C-415/02)

(2003/C 19/28)

An action against the Kingdom of Belgium was brought before the Court of Justice of the European Communities on 19 November 2002 by the Commission of the European Communities, represented by R. Lyal and Ch. Giolito, acting as Agents, with an address for service in Luxembourg.

The Commission of the European Communities claims that the Court should:

— Rule that:

by imposing the 'tax on stock-exchange transactions' on applications made in Belgium for new securities issued when a company or investment fund is being set up or following the completion of an increase in capital or during a loan issue;

by imposing the 'tax on the delivery of securities to the holder' on the substantive issue to the holder of securities relating to Belgian or foreign public funds, in the case of new securities issued when a company or investment fund is being set up or following the completion of an increase in capital or during a loan issue,

the Kingdom of Belgium has failed to fulfil its obligations under Article 11 of Council Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital [1];

— Order the Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

The taxes referred to in the forms of order sought are at variance with Article 11 of the Directive in so far as they are imposed on the delivery to the subscriber and/or the issue of new securities. In those cases, the derogation provided for in Article 12(1)(a) of the Directive, which allows Member States to charge duties on the transfer of securities, is not applicable because such a 'transfer' presupposes the existence of a previous owner of the securities in question.

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[1] OJ English Special Edition 1969(II), p. 412.

Action brought on 19 November 2002 by the Commission of the European Communities against the Hellenic Republic

(Case C-417/02)

(2003/C 19/29)

An action against the Hellenic Republic was brought before the Court of Justice of the European Communities on 19 November 2002 by the Commission of the European Communities, represented by Maria Patakia, Legal Adviser in its Legal Service.

The Commission claims that the Court should:

(a) declare that,

— by enacting and retaining in force Article 3(1)(c) and (2) of Presidential Decree 107/93, and

— by accepting the systematic refusal by the Tekhniko Epimelitirio Elladas (TEE) (Technical Chamber of Greece), registration with which is an essential precondition in order to pursue the profession of architect in Greece, to register Community nationals holding non-Greek qualifications which should be recognised under Council Directive 85/384/EEC of 10 June 1985 on the mutual recognition of diplomas, certificates and other evidence of formal qualifications in architecture, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services [1],

the Hellenic Republic has failed to fulfil its obligations under Articles 6(2), 10 and 12 of that directive;

(b) order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

The Commission alleges that the Hellenic Republic has failed to transpose Directive 85/384 into national law correctly inasmuch as the Greek legislation lays down: (i) a parallel system for contesting diplomas, certificates and other evidence of formal qualifications beyond that provided for by the directive (referral to the advisory committee for architecture); and (ii) an obligation on the other Member States beyond that owed by them under Article 6(1) of the directive.

In addition, the Commission alleges that the defendant has implemented the directive inappropriately by reason of incorrect administrative practice on the part of the Tekhniko Epimelitirio Elladas (TEE). In its submission, the TEE either does not examine in due time applications for entry on the register or does not inform applicants, giving reasons, of the refusal to register them.

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[1] OJ L 223, 21.8.1985, p. 15.

Reference for a preliminary ruling by the Bundespatentgericht by order of that Court of 15 October 2002 in the appeal matter of PRAKTIKER Bau- und Heimwerkermärkte AG

(Case C-418/02)

(2003/C 19/30)

Reference has been made to the Court of Justice of the European Communities by order of the Bundespatentgericht (Federal Patents Court) of 15 October 2002, received at the Court Registry on 20 November 2002, for a preliminary ruling in the appeal matter of PRAKTIKER Bau- und Heimwerkermärkte AG on the following questions on the interpretation of the First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ L 40 1989, p. 1):

1. Does retail trading constitute a service within the meaning of Article 2 of the Directive?

   If the answer to this question should be affirmative:

2. To what extent must the content of such services by a retailer be specifically stated in order to guarantee the certainty of the subject-matter of trade-mark protection that is required in order to

   (a) fulfil the function of the trade mark pursuant to Article 2 of the Directive, namely distinguishing the goods or services of one undertaking from those of other undertakings, and

   (b) define the scope of protection of such a trade mark in the event of a conflict?

3. To what extent is it necessary to define the scope of similarity (Article 4(1)(b) and Article 5(1)(b) of the Directive) between those services by a retailer and

   (a) the other services provided in connection with the sale of goods, or

   (b) the goods sold by that particular retailer?

Appeal brought on 21 November 2002 by Europe Chemi-Con (Deutschland) GmbH against the judgment delivered on 12 September 2002 by the Fourth Chamber (Extended Composition) of the Court of First Instance of the European Communities in case T-89/00 [1] between Europe Chemi-Con (Deutschland) GmbH and the Council of the European Union, supported by the Commission of the European Communities

(Case C-422/02 P)

(2003/C 19/31)

An appeal against the judgment delivered on 12 September 2002 by the Fourth Chamber (Extended Composition) of the Court of First Instance of the European Communities in case T-89/00 between Europe Chemi-Con (Deutschland) GmbH and the Council of the European Union, supported by the Commission of the European Communities, was brought before the Court of Justice of the European Communities on 21 November 2002 by Europe Chemi-Con (Deutschland) GmbH, established in Nuremberg (Germany), represented by K. Adamantopoulos, J. J. Gutiérrez Gisbert and J. Branton, lawyers, with an address for service in Luxembourg.

The Appellant claims that the Court should:

1. set aside the judgment of the Court of First Instance of 12 September 2002 in case T-89/00;

2. make an order that the costs of and occasioned by these proceedings, and those before the Court of First Instance, be borne by the Council;

3. annul the last indent of Article 3 of Council Regulation (EC) No. 173/2000 of 24 January 2000 terminating the anti-dumping proceedings concerning imports of certain large aluminium electrolytic capacitors ('LAECs') originating in Japan, the Republic of Korea and Taiwan [2] in so far as it does not state that the retroactive effect of this Regulation shall apply from 4 December 1997 onwards; or, in the alternative, refer the case back to the Court of First Instance.

Pleas in law and main arguments

The Appellant submits that the Court of First Instance wrongly substituted its own understanding for what the Appellant had claimed by stating in paragraph 48 of the judgment that the Appellant had 'essentially alleged an error in law with respect to the application of the principle of equal treatment in the Contested Regulation'. Rather, the Court of First Instance should have held that the Appellant had essentially alleged an error in law with respect to the application of the principle of non discrimination, as laid down in Article 9(5) of the Basic Anti-Dumping Regulation ('BR') [3], to the facts of the present case. Had the Court of First Instance properly considered the application of the principle of non discrimination laid down in Article 9(5) BR, rather than concentrating on the principle of equal treatment, it should have reached a different conclusion.

The Appellant also submits that the Court of First Instance erred in law by concluding in paragraph 58 of the judgment in relation to Article 9(5) BR that:

(i) Article 9(5) BR relates only to the initial imposition of anti-dumping duties;

(ii) Article 9(5) BR does not necessarily apply to the maintenance in force of anti-dumping duties, pursuant to Article 11(2) BR; and

(iii) Article 9(5) BR may be applied at the discretion of the Council and as such is a non-mandatory rule of law.

Finally, notwithstanding that the Appellant's case is not based on an infringement of the general principle of equal treatment, the Appellant maintains that the Court of First Instance erred in law in any event (and failed to give adequate reasoning) when concluding in paragraph 57 of the judgment that the difference in legal basis for the application of anti-dumping duties against LAECs from the U.S.A. and Thailand on the one hand, and Japan on the other, was sufficient reason to render the principle of equal treatment inapplicable in the circumstances of the present case.

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[1] OJ C 163, 10.06.2000, p. 32.
[2] OJ L 22, 27.01.2000, p. 1.
[3] Council Regulation (EC) No. 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (OJ L 56, 06.03.1996, p. 1).

Action brought on 22 November 2002 by the Commission of the European Communities against the United Kingdom of Great Britain and Northern Ireland

(Case C-423/02)

(2003/C 19/32)

An action against the United Kingdom of Great Britain and Northern Ireland was brought before the Court of Justice of the European Communities on 22 November 2002 by the Commission of the European Communities, represented by X. Lewis and M. Konstantinidis, acting as agents, with an address for service in Luxembourg.

The Applicant claims that the Court should:

1) declare that by failing to adopt the laws, regulations or administrative provisions necessary to comply fully with Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste [1] 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 18 of that Directive;

2) order the United Kingdom of Great Britain and Northern Ireland to pay the costs.

Pleas in law and main arguments

The Commission considers that it is the duty of the authorities of the United Kingdom to initiate, in due time, the procedures necessary for incorporating Directive 1999/31/EC into domestic law so that such process is complete within the time limit laid down, irrespective of the nature of such procedures, and to inform the Commission thereof.

Since the United Kingdom has not informed the Commission of the provisions adopted to comply fully with the Directive, and since the Commission is in possession of no other information enabling it to conclude that the United Kingdom has adopted 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 182, 16.07.1999, p. 1.

Action brought on 22 November 2002 by the Commission of the European Communities against the United Kingdom of Great Britain and Northern Ireland

(Case C-424/02)

(2003/C 19/33)

An action against the United Kingdom of Great Britain and Northern Ireland was brought before the Court of Justice of the European Communities on 22 November 2002 by the Commission of the European Communities, represented by X. Lewis and M. Konstantinidis, acting as agents, with an address for service in Luxembourg.

The Applicant claims that the Court should:

1) declare that by failing to adopt the laws, regulations or administrative provisions necessary to comply with Article 3(1) of Council Directive 75/439/EEC requiring Member States to take the measures necessary to give priority to the processing of waste oils by regeneration ([1]), as amended by Directive 87/101/EEC on waste oils ([2]) 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 fully fulfil its obligations under that Directive;

2) order the United Kingdom of Great Britain and Northern 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 January 1990 without the United Kingdom of Great Britain and Northern Ireland having enacted the provisions necessary to comply with the directive referred to in the conclusions of the Commission.

([1]) OJ L 194, 25.07.1975, p. 23.
([2]) OJ L 42, 12.02.1987, p. 43.

Reference for a preliminary ruling by the Cour Administrative (Grand-Duché de Luxembourg) by judgment of that Court of 21 November 2002 in the appeal brought by Johanna Maria Boor, née Delahaye, against the Minister for Public Service and Administrative Reform

(Case C-425/02)

(2003/C 19/34)

Reference has been made to the Court of Justice of the European Communities by order of the Cour Administrative (Grand-Duché de Luxembourg) (Administrative Court, Grand Duchy of Luxembourg) of 21 November 2002, received at the Court Registry on 25 November 2002, for a preliminary ruling in the appeal brought by Johanna Maria Boor, née Delahaye, against the Minister for Public Service and Administrative Reform on the following question:

Having regard to the provisions of Directives 77/187/EEC ([1]), 98/50/EC ([2]) and 2001/23/EC ([3]) identified herein, in the event of the transfer of an undertaking from a non-profit-making association, which is a legal person under private law, to the State as transferee, is it permissible for the transferor's rights and obligations to be taken over only in so far as they are compatible with the State's own rules of public law, in particular in the area of remuneration, where the detailed provisions and amounts of compensation are laid down by grand ducal regulation, bearing in mind that the status of public-sector employee confers legal benefits in the areas of, *inter alia*, career development and job stability on the staff concerned, and that, in the event of disagreement as regards 'substantial changes' to the employment relationship within

the meaning of Article 4(2) of those Directives, the staff concerned retain the right to request termination of that relationship according to the detailed rules in the relevant provisions?

(1) Council Directive 77/187/EEC of 14 February 1977 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses (OJ L 61 of 05.03.1977, p. 26).

(2) Council Directive 98/50/EC of 29 June 1998 amending Directive 77/187/EEC on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses (OJ L 201 of 17.07.1998, p. 88).

(3) Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (OJ L 82 of 22.03.2001, p. 16).

Appeal brought on 25 November 2002 by Giuseppe Di Pietro against the order delivered on 27 September 2002 by the Third Chamber of the Court of First Instance of the European Communities in Case T-254/01 between Giuseppe Di Pietro and Court of Auditors of the European Communities

(Case C-427/02 P)

(2003/C 19/35)

An appeal against the order delivered on 27 September 2002 by the Third Chamber of the Court of First Instance of the European Communities in Case T-254/01 between Giuseppe Di Pietro and Court of Auditors of the European Communities was brought before the Court of Justice of the European Communities on 25 November 2002 by Giuseppe Di Pietro, represented by Giuseppe Monforte, whose chambers are in Messina.

The appellant claims that the Court should:

— acquire the documents relating to the candidates admitted to the examination;

— find that the documents do not comply with the requirements objectively discernable from the competition notice, declare inadmissible the non-complying applications, annul the decision of the Court of Auditors in that respect and adopt any appropriate consequent measure;

— acquire the documents submitted by the end of the period prescribed by the notice confirming the claims made relating to whether Mr. Hervé meets all the requirements;

— in any event, find that the requirements do not comply with the requirements objectively discernable from the competition notice, annul Mr Hervé's appointment and adopt any appropriate consequent measure;

— in the event that the applicant's is the only candidature suited to the post and meeting the requirements to have been put forward for appointment as Secretary General of the Court of Auditors, declare that Mr Di Pietro is entitled to be appointed Secretary General, in view of the fact that the notice did not reserve a discretion to the Court regarding the appointment of those candidates deemed suitable;

— order the reimbursement of the costs and fees disbursed by the applicant and compensation for the damage suffered as a result of not being appointed to the post.

Pleas and main arguments

The applicant challenges the fact that the Court of First Instance declared his application manifestly inadmissible and upheld the objection of the Court of Auditors that his statement of 2 August 2001 cannot be deemed to be a complaint.

According to the Court of First Instance, in his letter of 2 August 200 the applicant does not challenge the legality of the decision which adversely affects him nor does it seek any means of settling the dispute out of court. Instead, it merely sets out a number of questions and requires the production of a number of documents. Therefore the aforementioned letter cannot be deemed a complaint within the meaning of Article 90(2) of the Staff Regulations.

The applicant argues that the Court of First Instance is wrong in that his statement of 2 August 2001 contains a request that action be taken.

Reference for a preliminary ruling by the Cour de cassation (France), chambre commerciale, financière et économique, by judgment of that Court of 19 November 2002 in the case of Bacardi-Martini SAS against Télévision France TF1 S.A., Groupe Jean-Claude Darmon S.A. and Girosport Sàrl

(Case C-429/02)

(2003/C 19/36)

Reference has been made to the Court of Justice of the European Communities by judgment of the Cour de cassation — chambre commerciale, financière et économique (Commercial, Financial and Economic Division) of 19 November 2002, received at the Court Registry on 27 November 2002, for a preliminary ruling in the case of Bacardi-Martini SAS against Télévision France TF1 S.A., Groupe Jean-Claude Darmon S.A. and Girosport Sàrl on:

1. whether Directive 89/552/EEC [1] of 3 October 1989, in the version prior to that of Directive 97/36/EC [2] of 30 June 1997, precludes national legislation such as Articles L.17 to L.21 of the French Code des débits de boissons (Code of Licensed Premises) and Article 8 of Decree No 92280 of 27 March 1992 from prohibiting, for reasons of the protection of public health and on pain of criminal penalties, advertising for alcoholic drinks, whether of national origin or from other Member States of the Union, on television, whether in the form of advertising spots within the meaning of Article 10 of the directive or of indirect advertising as a result of panels advertising alcoholic drinks appearing on television without thereby constituting surreptitious advertising within the meaning of Article 1(c) of the directive;

2. whether Article 49 EC and the principle of the free movement of television broadcasts within the Union must be interpreted as precluding a national provision such as that in Articles L.17 to L.21 of the French Code des débits de boissons and Article 8 of Decree No 92280 of 27 March 1992 which prohibits, for reasons of the protection of public health and on pain of criminal penalties, advertising for alcoholic drinks, whether of national origin or from other Member States of the Union, on television, whether in the form of advertising spots within the meaning of Article 10 of the directive or of indirect advertising as a result of panels advertising alcoholic drinks appearing on television without thereby constituting surreptitious advertising within the meaning of Article 1(c) of the directive, from having the effect that operators responsible for the broadcasting and distribution of television programmes:

   (a) refrain from broadcasting television programmes, such as in particular retransmissions of sporting events, whether taking place in France or in other countries of the Union, where they show prohibited advertisements within the meaning of the French Code des débits de boissons, or

   (b) broadcast them on condition that prohibited advertisements within the meaning of the French Code des débits de boissons do not appear, thereby preventing the conclusion of advertising contracts concerning alcoholic drinks whether of national origin or from other Member States of the Union.

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[1] Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by Law, Regulation or Administrative Action in Member States concerning the pursuit of television broadcasting activities (OJ L 298 of 17.10.1989, p. 23).

[2] Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (OJ L 202 of 30.7.1997, p. 60).

Action brought on 28 November 2002 by the Commission of the European Communities against the Italian Republic

(Case C-430/02)

(2003/C 19/37)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 28 November 2002 by the Commission of the European Communities, represented by Claire-Françoise Durand and Roberto Amorosi, acting as Agents.

The applicant claims that the Court should:

— Declare that, by failing to adopt all the provisions necessary to repeal or amend the rules governing quality labels of the Abruzzi Region the Region of Sicily, which labels were introduced by Leggi Regionali (Regional Laws) 31/1982 and 14/1966, the Italian Republic has failed to fulfil its obligations under Article 28 of the Treaty establishing the European Community;

— Order the Italian Republic to pay the costs.

Pleas in law and main arguments

The system of quality labels introduced by the Regions of Abruzzi and Sicily reserves the use of such labels solely to products processed or prepared within those regions which comply with mandatory manufacturing rules. The quality of the products concerned is therefore explicitly linked to their place of origin in Abruzzi or Sicily, which serves to create in the mind of the consumer the impression that products from those regions are of a quality superior to that of others. The use of that designation tends therefore to encourage consumers to purchase such products rather than imported products, stimulating their sale to the detriment of products from other Member States.

It follows that the system of quality labels introduced by the Regions of Abruzzi and Sicily constitutes a barrier to intra-Community trade contrary to Article 28 EC.

Action brought on 29 November 2002 by the Commission of the European Communities against the United Kingdom

(Case C-431/02)

(2003/C 19/38)

An action against the United Kingdom was brought before the Court of Justice of the European Communities on 29 November 2002 by the Commission of the European Communities, represented by Xavier Lewis and Minas Konstantinidis, acting as agents, with an address for service in Luxembourg.

The Applicant claims that the Court should:

1) declare that, by failing to adopt all the measures necessary to comply with its obligations under Articles 1(4), 1(5), 2(1), 2(2), 2(4), 3(1), 3(2), 3(3), 3(4), 4(1), 4(2), 4(3), 5(1) and 5(2) of Council Directive 91/689/EEC on hazardous waste [1], the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under this Directive and under the Treaty establishing the European Community;

2) order the United Kingdom to pay the costs.

Pleas in law and main arguments

Article 10(1) of the Directive, as amended by Council Directive 94/31/EC [2] of 27 June 1994 amending Directive 91/689/EEC on hazardous waste, requires Member States to bring into force the laws, regulations and administrative provisions necessary to comply with that Directive by 27 June 1995, and to inform the Commission forthwith. Article 10(3) of the Directive provides that Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field governed by the Directive.

As a result of an assessment of the national legislation communicated, the Commission found the existence of a number of inconsistencies and gaps in the United Kingdom's transposition. As the United Kingdom authorities have not communicated any amending legislation designed to remedy the situation, except for a draft concerning Gibraltar which has not yet been adopted, the Commission concludes that the United Kingdom has failed to transpose correctly Articles 1(4), 1(5), 2(1), 2(2), 2(4), 3(1), 3(2), 3(3), 3(4), 4(1), 4(2), 4(3), 5(1) and 5(2) of the Directive.

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(1) OJ L 377, 31.12.1991, p. 20.
(2) OJ L 168, 2.7.1994, p. 28.

Reference for a preliminary ruling by the Ufficio del Giudice di Pace di Lendinara by order of that Court of 29 October 2002 in the case of Dr Lucio Trombin against Insight World Education Systems Limited

(Case C-432/02)

(2003/C 19/39)

Reference has been made to the Court of Justice of the European Communities by order of the Ufficio del Giudice di Pace di Lendinara (Office of the Lendinara Magistrate) of 29 October 2002, received at the Court Registry on 29 November 2002, for a preliminary ruling in the case of Dr Lucio Trombin against Insight World Education Systems Limited on the following questions:

1. Are the rules or administrative practices of the national legal order, such as those described at points III and IV hereof, compatible with the principles of the EC Treaty concerning the free movement of persons (Article 39 et

seq EC), the right of establishment (Article 43 et seq. EC) and freedom to provide services (Article 49 et seq. EC), as interpreted by the Court of Justice. Of particular relevance in that regard are national rules and/or administrative practices which:

— impede the Italian establishment of a limited company whose principal business is in the United Kingdom from carrying on in the host state the business of organising and administering courses of study for preparation for university examinations, for which the company is duly authorised and accredited by the United Kingdom public authorities?

— discriminate as between nationals pursuing the same activities;

— prohibit and/or seriously impede the Italian establishment of that undertaking in obtaining, in another Member State and for valuable consideration, the services conducive to the pursuit of the abovementioned activity;

— discourage students from enrolling in those courses of study;

— impede the professional training of enrolled students and the obtaining of an award capable of conferring on its holder advantages either in securing access to a professional activity or in exercising it with greater reward in other Member States as well.

2. On an interpretation — herein requested — of Article 2 of Council Directive 89/48/EC [1], does that directive confer rights which may be relied on also before acquisition of the degree mentioned in Article 1 of the directive itself. If the reply to that question is affirmative, does the directive itself, regard also being had to the judgment in Case C-145/99 Commission v Italian Republic [2001] [2], permit rules or administrative practices in the national legal order which:

— make recognition of university degrees obtained on completion of training of at least three years' duration subject to the discretion of the public authorities;

— grant recognition in Italy of degrees awarded by universities recognised in the United Kingdom only if completed after regular attendance for the whole course of studies at those universities, to the exclusion therefore of degrees awarded to Italian nationals on the basis of periods of study completed with foreign institutions operating in Italy even though they are approved and accredited by the competent public authorities in the Member State to which they belong;

— require production of an attestation from the diplomatic representation — Italian consulate in the foreign country in which the degree was awarded — proving actual residence in that country by the person concerned for the whole period of the university studies;

— limit recognition of degrees 'solely' to pursuit of a profession already pursued in the State of origin, thus precluding recognition for the purposes of access to a regulated profession even though not previously exercised.

3. What is the meaning and scope of the expression 'harmful interruption (...) of vocational training' in Council Decision 63/266/EEC [3] and does it cover the creation at national level by the public authorities of a permanent system of information which evidences that degrees awarded by a university, even though legally recognised in the United Kingdom, cannot be recognised under national legislation if they have been obtained on the basis of periods of study completed in Italy.

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[1] OJ L 19 of 24.1.1989, p. 16.
[2] OJ C 109 of 4.5.2002, p. 2.
[3] OJ 63 of 20.4.1963, p. 1338 (English special edition...: Series-I (63-64) p. 25).

Action brought on 29 November 2002 by the Commission of the European Communities against the Kingdom of Belgium

(Case C-433/02)

(2003/C 19/40)

An action against the Kingdom of Belgium was brought before the Court of Justice of the European Communities on 29 November 2002 by the Commission of the European Communities, represented by K. Banks, acting as Agent, with an address for service in Luxembourg.

The Commission of the European Communities claims that the Court should:

— Declare that, by failing to apply the provisions on the public lending right set out in Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property, [1] the Kingdom of Belgium has failed to fulfil its obligations under Articles 1 and 5 of that Directive;

— Order the Kingdom of Belgium to pay the costs of the proceedings.

Pleas in law and main arguments

Although Belgium has provided for a right to remuneration for authors in those cases in which the latter cannot prohibit lending, none of the implementing measures provided for by Article 63 of the Law of 30 June 1994 on copyright and related rights has been adopted and the amount of remuneration has therefore never been fixed.

The Belgian authorities err in invoking difficulties in distinguishing the categories of establishments which may be exempted under Article 5(3) of the Directive. If the circumstances prevailing in the Member State in question do not make it possible to draw a valid distinction between categories of establishments, the solution must lie in imposing the obligation to pay the remuneration in question on all of the establishments concerned.

[1] OJ 1992 L 346 of 27.11.1992, p. 61.

Action brought on 2 December 2002 by the Commission of the European Communities against Ireland

(Case C-436/02)

(2003/C 19/41)

An action against Ireland was brought before the Court of Justice of the European Communities on 2 December 2002 by the Commission of the European Communities, represented by Knut Simonsson, acting as agent, with an address for service in Luxembourg.

The Applicant claims that the Court should:

1) declare that, by failing to carry out an annual total number of inspections corresponding to at least 25 % of the number of individual ships which entered its ports during the years 1999 and 2000, Ireland has failed to fulfil its obligations under Article 5 (1) of Directive 95/21/EC of 19 June 1995 on port State control of shipping [1];

2) order Ireland to pay the costs.

Pleas in law and main arguments

Article 5(1) of Directive 95/21/EC, in its wording at the material time, imposes an obligation on each Member State to inspect at least 25 % of the number of individual foreign ships which enter its ports in a given year. It is clear from the facts that Ireland failed to fulfil this obligation for the years 1999 and 2000 because in those years it inspected 7,5 % and 14,6 % respectively of the number of ships that entered its ports.

[1] Council Directive 95/21/EC of 19 June 1995 concerning the enforcement, in respect of shipping using Community ports and sailing in the waters under the jurisdiction of the Member States, of international standards for ship safety, pollution prevention and shipboard living and working conditions (port State control) (OJ L 157, 07.07.1995, p. 1).

Action brought on 4 December 2002 by the Commission of the European Communities against the French Republic

(Case C-439/02)

(2003/C 19/42)

An action against the French Republic was brought before the Court of Justice of the European Communities on 4 December 2002 by the Commission of the European Communities, represented by K. Simonsson and W. Wils, acting as Agents.

The applicant claims that the Court should:

1. Declare that, by failing to carry out a number of annual inspections corresponding to at least 25 % of the number of individual vessels entering its ports in 1999 and 2000, the French Republic has failed to fulfil its obligations under Council Directive 95/21/EC of 19 June 1995 concerning port State control [1];

2. Order the French Republic to pay the costs.

Pleas in law and main arguments

By inspecting 14,1 % (in 1999) and 12,2 % (in 2000) of vessels which entered its ports, France has inspected an insufficient number of vessels entering its ports. Lack of staff cannot justify failure to fulfil obligations under Article 5(1) of Directive 95/21/EC.

(1) OJ Council Directive 95/21/EC of 19 June 1995 concerning the enforcement, in respect of shipping using Community ports and sailing in the waters under the jurisdiction of the Member States, of international standards for ship safety, pollution prevention and shipboard living and working conditions (port State control) (OJ 1995 L 157, p. 1).

Action brought on 3 December 2002 by the Commission of the European Communities against the Italian Republic

(Case C-440/02)

(2003/C 19/43)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 3 December 2002 by the Commission of the European Communities, represented by Maria Patakia and Claudio Loggi, acting as Agents.

The applicant claims that the Court should:

— Declare that, by failing to adopt and bring into force within the prescribed period the laws, regulations and administrative provisions necessary to comply with Directive 1999/42/EC (1) of the European Parliament and of the Council of 7 June 1999 establishing a mechanism for the recognition of qualifications in respect of the professional activities covered by the Directives on liberalisation and transitional measures and supplementing the general systems for the recognition of qualifications, or, in any event, by failing to communicate them, the Italian Republic has failed to fulfil its obligations under the directive; and

— Order the Italian Republic to pay the costs.

Pleas in law and main arguments

Under Article 249 of the EC Treaty, according to which a directive is to be binding, as to the result to be achieved, upon each Member State to which it is addressed, Member States are required to observe the time-limits laid down in directives for their transposition. That time-limit expired on 31 July 2001 without the Italian Republic having brought into force the necessary provisions in order to comply with the directive referred to in the Commission's application.

(1) OJ 1999 L 201, p. 77.

Reference for a preliminary ruling by the Conseil d'État by order of that Court of 6 November 2002 in the case of Caixa Bank France against Ministère de l'économie, des finances et de l'industrie

(Case C-442/02)

(2003/C 19/44)

Reference has been made to the Court of Justice of the European Communities by order of the Conseil d'État of 6 November 2002, received at the Court Registry on 5 December 2002, for a preliminary ruling in the case of Caixa Bank France against Ministère de l'économie, des finances et de l'industrie on the following questions:

1. As Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 (1) is silent on the point, does the prohibition by a Member State of banking institutions duly established in its territory from remunerating sight accounts and other repayable funds constitute an obstacle to freedom of establishment?

2. If the answer to the first question is in the affirmative, what kind of reasons of the public interest might in an appropriate case be relied on to justify such an obstacle?

(1) Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions (OJ L 126 of 26.05.2000, p. 1).

Removal from the register of Case C-254/01 [1]

(2003/C 19/45)

By order of 20 November 2002 the President of the Fifth Chamber of the Court of Justice of the European Communities ordered the removal from the register of Case C-254/01: Commission of the European Communities v Republic of Finland.

[1] OJ C 245 of 01.09.2001.

Removal from the register of Case C-280/01 [1]

(2003/C 19/46)

By order of 19 November 2002 the President of the Sixth Chamber of the Court of Justice of the European Communities ordered the removal from the register of Case C-280/01 (Referral for a preliminary ruling by the Court of Appeal (England & Wales) (Civil Division)): Brian Watson v First Choice Holidays & Flights Ltd, Aparta Hotels Caledonia SA.

[1] OJ C 289, 13.10.2001.

Removal from the register of Case C-227/02 [1]

(2003/C 19/47)

By order of 19 November 2002 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-227/02: Commission of the European Communities v Grand Duchy of Luxembourg.

[1] OJ C 180, 27.07.2002.

Removal from the register of Case C-268/02 [1]

(2003/C 19/48)

By order of 19 November 2002 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-268/02: Commission of the European Communities v Grand Duchy of Luxembourg.

[1] OJ C 219, 14.09.2002.

COURT OF FIRST INSTANCE

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 21 November 2002

in Case T-88/98: Kundan Industries Ltd and Tata International Ltd v Council of the European Union [1]

(Dumping — Stainless steel fasteners — Calculation of export price — Unreliability of the price — Calculation of normal value — Rights of the defence)

(2003/C 19/49)

(Language of the case: English)

In Case T-88/98, Kundan Industries Limited, Tata International Limited, established in Mumbai (India), represented by J.-F. Bellis and P. De Baere, lawyers, with an address for service in Luxembourg, v Council of the European Union (Agents: S. Marquardt, H.-J. Rabe and G. Berrisch), supported by Commission of the European Communities (Agents: V. Kreuschitz and N. Khan): Application for the annulment of Article 1 of Council Regulation (EC) No 393/98 of 16 February 1998 imposing a definitive anti-dumping duty on imports of stainless steel fasteners and parts thereof originating in the People's Republic of China, India, the Republic of Korea, Malaysia, Taiwan and Thailand (OJ 1998 L 50, p. 1) the Court of First Instance (Fourth Chamber, Extended Composition), composed of: M. Vilaras, President, V. Tiili, J. Pirrung, P. Mengozzi and A. W. H. Meij, Judges; H. Jung, Registrar, has given a judgment on 21 November 2002, in which it:

1. *Annuls Article 1 of Council Regulation (EC) No 393/98 of 16 February 1998 imposing a definitive anti-dumping duty on imports of stainless steel fasteners and parts thereof originating in the People's Republic of China, India, the Republic of Korea, Malaysia, Taiwan and Thailand insofar as it imposes an anti-dumping duty on exports to the European Community of products manufactured by Kundan Industries Limited and exported by Tata International Limited which exceeds that which would apply but for an adjustment to the export price made in respect of a commission.*

2. *Dismisses the remainder of the application.*

3. *Orders the Council to bear its own costs and to pay 30% of the costs of the applicants and orders the Commission to bear its own costs.*

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[1] OJ C 234, 25.7.1998.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 7 November 2002

in Joined Cases T-141/99, T-142/99, T-150/99 and T-151/99, Vela Srl and Tecnagrind SL v Commission of the European Communities [1]

(Agriculture — EAGGF — Withdrawal of financial assistance — Articles 23 and 24 of Regulation (EEC) No 4253/88 — Principles of legal certainty and protection of legitimate expectations — Principle of proportionality)

(2003/C 19/50)

(Language of the case: Italian)

In Joined Cases T-141/99, T-142/99, T-150/99 and T-151/99: Vela Srl, established in Milan (Italy), Tecnagrind SL, established in Barcelona (Spain), represented by G. M. Scarpellini, lawyer, with an address for service in Luxembourg, Commission of the European Communities (Agents: C. Cattabriga and M. Moretto) — Application, in Case T-141/99, for the annulment of Commission Decision C (1999) 540 of 9 March 1999 withdrawing the assistance granted to Vela Srl by Commission Decision C (92) 1494 of 30 June 1992, concerning grant of the EAGGF, Guidance Section, contribution under Council Regulation (EEC) No 4256/88 of 19 December 1988, laying down provisions for implementing Regulation (EEC) No 2052/88 as regards the EAGGF Guidance Section (OJ 1988 L 374, p. 25), in connection with Project No 92.IT.06.001 entitled Action in the form of a demonstrative project for the introduction and promotion of cylindrical luffa in disadvantaged European areas; in Case T-142/99, for the annulment of Commission Decision C (1999) 541 of 4 March 1999 withdrawing the assistance granted to Sonda Srl by Commission Decision C (93) 3401 of 26 November 1993, concerning grant of the EAGGF, Guidance Section, contribution under Council Regulation (EEC) No 4256/88, in connection with Project No 93.IT.06.057 entitled Action in the form of a pilot demonstrative project for the reduction of production costs and fertiliser costs in sunflower cultivation; in Case T-150/99, for the annulment of Commission Decision C (1999) 532 of 4 March 1999 withdrawing the assistance granted to Tecnagrind SL by Commission Decision C (93) 3395 of 26 November 1993, concerning grant of the EAGGF, Guidance Section, contribution under Council Regulation (EEC) No 4256/88, in connection with Project No 93.ES.06.031 entitled Demonstrative project for the multiple optimisation of Vetiver (Vetiveria Zizanioides) in the

Mediterranean area; and, in Case T-151/99, for the annulment of Commission Decision C (1999) 533 of 4 March 1999 withdrawing the assistance made to Tecnagrind SL by Commission Decision C (96) 2235 of 13 September 1996, concerning grant of the EAGGF, Guidance Section, contribution under Council Regulation (EEC) No 4256/88, in connection with Project No 95.ES.06.005 entitled 'Demonstrative project for the processing if castor-oil plants (Ricinus Communis) in agricultural undertakings for the extraction of aromatic essences', the Court of First Instance (Third Chamber), composed of: M. Jaeger, President, K. Lenaerts and J. Azizi, Judges; J. Palacio González, Administrator, for the Registrar, has given a judgment on 7 November 2002, in which:

1. *The applications are dismissed.*

2. *In each case, the applicants shall bear their own costs and pay those of the Commission.*

([1]) OJ C 246, 28.8.99.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 23 October 2002

in Joined Cases T-269/99, T-271/99 and T-272/99: Territorio Histórico de Guipúzcoa — Diputación Foral de Guipúzcoa and Others v Commission of the European Communities ([1])

(State aid — Decision to initiate the procedure under Article 88(2) EC — Actions for annulment — Admissibility — Tax measures — Selective nature — Legitimate expectations — Misuse of powers)

(2003/C 19/51)

(Language of the case: Spanish)

In Joined Cases T-269/99, T-271/99 and T-272/99, Territorio Histórico de Guipúzcoa — Diputación Foral de Guipúzcoa, Territorio Histórico de Álava — Diputación Foral de Álava, Territorio Histórico de Vizcaya — Diputación Foral de Vizcaya, represented by A. Creus Carreras and B. Uriarte Valiente, lawyers, v Commission of the European Communities (Agents: F. Santaolalla Gadea, G. Rozet and G. Valero Jordana): Application for annulment of the Commission's decisions, notified to the Spanish authorities by letters of 17 August 1999, to initiate the procedure under Article 88(2) EC against the Spanish State in relation to tax aid in the form of a 45 % tax credit in the Provinces of Álava, Viscaya and Guipúzcoa (OJ 1999 C 351, p. 29, and OJ 2000 C 71, p. 8), the Court of First Instance (Third Chamber, Extended Composition), composed of: M. Jaeger, President, R. García-Valdecasas, K. Lenaerts, P. Lindh and J. Azizi, Judges; Registrar: B. Pastor, Deputy Registrar, has given a judgment on 23 October 2002, in which it:

1. *Dismisses the applications;*

2. *Orders the applicants to pay their own costs together with those of the Commission.*

([1]) OJ C 47 of 19.2.2000.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 23 October 2002

in Joined Cases T-346/99, T-347/99 and T-348/99: Territorio Histórico de Álava — Diputación Foral de Álava and Others v Commission of the European Communities ([1])

(State aid — Decision to initiate the procedure under Article 88(2) EC — Actions for annulment — Admissibility — Tax measures — Selective nature — Legitimate expectations — Misuse of powers)

(2003/C 19/52)

(Language of the case: Spanish)

In Joined Cases T-346/99, T-347/99 and T-348/99, Territorio Histórico de Álava — Diputación Foral de Álava, Territorio Histórico de Guipúzcoa — Diputación Foral de Guipúzcoa, Territorio Histórico de Vizcaya — Diputación Foral de Vizcaya, represented by A. Creus Carreras and B. Uriarte Valiente, lawyers, v Commission of the European Communities (Agents: F. Santaolalla Gadea, G. Rozet and G. Valero Jordana): Application for annulment of the Commission's decision, notified to the Spanish authorities by letter of 29 September 1999, to initiate the procedure under Article 88(2) EC against the Spanish State in relation to tax aid in the form of a reduction in the tax base for firms in the Provinces of Álava, Viscaya and Guipúzcoa (OJ 2000 C 55, p. 2), the Court of First Instance (Third Chamber, Extended Composition), composed of: M. Jaeger, President, R. García-Valdecasas, K. Lenaerts, P. Lindh and J. Azizi, Judges; B. Pastor, Deputy Registrar, has given a judgment on 23 October 2002, in which it:

1. *Dismisses the applications;*

2. *Orders the applicants to pay their own costs together with those of the Commission.*

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(1) OJ C 79 of 18.3.2000.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 26 November 2002

in Joined Cases T-74/00, T-76/00, T-83/00 to T-85/00, T-132/00, T-137/00 and T-141/00: Artegodan GmbH and Others v Commission of the European Communities (1)

(Medicinal products for human use — Community arbitration procedures — Withdrawal of marketing authorisations — Competence — Criteria for withdrawal — Anorectics: amfepramone, clobenzorex, fenproporex, norpseudoephedrine, phentermine — Directives 65/65/EEC and 75/319/EEC)

(2003/C 19/53)

(Language of the case: German, English and French)

In Joined Cases T-74/00, T-76/00, T-83/00 to T-85/00, T-132/00, T-137/00 and T- 141/00, Artegodan GmbH, established in Lüchow (Germany), represented by U. Doepner, lawyer, with an address for service in Luxembourg, applicant in Case T-74/00, Bruno Farmaceutici SpA, established in Rome (Italy), Essential Nutrition Ltd, established in Brough (United Kingdom), Hoechst Marion Roussel Ltd, established in Denham (United Kingdom), Hoechst Marion Roussel SA, established in Brussels (Belgium), Marion Merell SA, established in Puteaux (France), Marion Merell SA, established in Barcelona (Spain), Sanova Pharma GmbH, established in Vienna (Austria), Temmler Pharma GmbH & Co. KG, established in Marburg (Germany), represented by B. Sträter and M. Ambrosius, lawyers, with an address for service in Luxembourg, applicants in Case T-76/00, Schuck GmbH, established in Schwaig (Germany), represented by B. Sträter and M. Ambrosius, lawyers, with an address for service in Luxembourg, applicant in Case T-83/00, Laboratórios Roussel L^{da}, established in Mem Martins (Portugal), represented by B. Sträter and M. Ambrosius, lawyers, with an address for service in Luxembourg, applicant in Cases T-84/00 and T-85/00, Laboratoires Roussel Diamant SARL, established in Puteaux (France), represented by B. Sträter and M. Ambrosius, lawyers, with an address for service in Luxembourg, applicant in Case T-84/00, Roussel Iberica SA, established in Barcelona (Spain), represented by B. Sträter and M. Ambrosius, lawyers, with an address for service in Luxembourg, applicant in Case T-85/00, Gerot Pharmazeutika GmbH, established in Vienna (Austria), represented by K. Grigkar, lawyer, with an address for service in Luxembourg, applicant in Case T-132/00, Cambridge Healthcare Supplies Ltd, established in Norfolk (United Kingdom), represented by D. Vaughan, K. Bacon, barristers, and S. Davis, solicitor, with an address for service in Luxembourg, applicant in Case T-137/00, Laboratoires pharmaceutiques Trenker SA, established in Brussels, represented by L. Defalque and X. Leurquin, lawyers, with an address for service in Luxembourg, applicant in Case T-141/00, v Commission of the European Communities (Agents: H. Støvlbæk, R. Wainwright and B. Wägenbaur): Application for annulment of the Commission decisions of 9 March 2000 concerning the withdrawal of marketing authorisations of medicinal products for human use containing respectively 'amfepramone' (C(2000) 453), as regards Cases T-74/00, T-76/00 and T-141/00, *inter alia* 'norpseudoephedrine', 'clobenzorex' and 'fenproporex' (C(2000) 608), as regards Cases T-83/00 to T-85/00, and 'phentermine' (C(2000) 452), as regards Cases T-132/00 and T-137/00, the Court of First Instance (Second Chamber, Extended Composition), composed of: R.M. Moura Ramos, President, V. Tiili, J. Pirrung, P. Mengozzi and A.W.H. Meij, Judges; D. Christensen, Administrator, for the Registrar, has given a judgment on 26 November 2002, in which it:

1. *Annuls the Commission Decisions of 9 March 2000 (C(2000) 452, C(2000) 453 and C(2000) 608) in so far as they relate to the medicinal products marketed by the applicants;*

2. *Orders the Commission to pay all the costs, including those incurred in the interlocutory proceedings.*

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(1) OJ C 149 of 27.5.2000, C 163 of 10.6.2000, C 192 of 8.7.2000 and C 233 of 12.8.2000.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 22 October 2002

in Joined Cases T-178/00 and T-341/00, Jan Pflugradt v European Central Bank (1)

(Staff of the European Central Bank — Amendment of employment contract — Performance appraisal)

(2003/C 19/54)

(Language of the case: German)

In Joined Cases T-178/00 and T-341/00, Jan Pflugradt, residing in Frankfurt am Main (Germany), represented in Case T-178/00 by N. Pflüger, lawyer, and in Case T-341/00 by N. Pflüger, R. Steiner and S. Mittländer, lawyers, with an address for service in Luxembourg, v European Central Bank (Agents: in

Case T-178/00, J. Fernández Martín, V. Saintot and B. Wägenbaur, and, in Case T-341/00, V. Saintot, T. Gulliams and Wägenbaur): Application for annulment of the applicant's performance appraisal report for 1999, in Case T-178/00, and for annulment of the note of 28 June 2000 from the Director-General of the Directorate-General for Information Systems (DG IS) of the European Central Bank concerning the duties allocated to the applicant, in Case T-341/00, the Court of First Instance (Fifth Chamber), composed of: J.D. Cooke, President, R. García-Valdecasas and P. Lindh, Judges; D. Christensen, Administrator, for the Registrar, has given a judgment on 22 October 2002, in which it:

1. *Orders that Cases T-178/00 and T-341/00 shall be joined for the purposes of the judgment;*

2. *Dismisses the applications in Cases T-178/00 and T-341/00;*

3. *Orders the parties to bear their own costs.*

(1) OJ C 259 of 9.9.2000.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 20 November 2002

in Case T-251/00: Lagardère SCA and Canal+ SA v Commission of the European Communities (1)

(Competition — Regulation (EEC) No 4064/89 — Modification of a decision declaring a concentration compatible with the common market — Restrictions directly related and necessary to the implementation of the concentration ('Ancillary restrictions') — Action for annulment — Challengeable acts — Legal interest in bringing proceedings — Legal certainty — Legitimate expectations — Reasons)

(2003/C 19/55)

(Language of the case: French)

In Case T-251/00: Lagardère SCA, established in Paris, represented by A. Winckler, avocat, with an address for service in Luxembourg, Canal+ SA, established in Paris, represented by J.-P. de La Laurencie and P.-M. Louis, avocats, against Commission of the European Communities (Agents: W. Wils and F. Lelièvre) — application for annulment of the Commission's decision of 10 July 2000 amending the decision of the Commission of 22 June 2000 declaring a concentration compatible with the common market and with the European Economic Area Agreement (Case COMP/JV 40 Canal+/Lagardère and COMP/JV 47 Canal+/Lagardère/Liberty Media), the Court of First Instance (Third Chamber, Extended Composition), composed of M. Jaeger, President, R. García-Valdecasas, K. Lenaerts, P. Lindh and J. Azizi, Judges; J. Palacio González, Administrator, for the Registrar, gave a judgment on 20 November 2002, in which it:

1. *annuls the Commission's decision of 10 July 2000 amending the decision of the Commission of 22 June 2000 declaring a concentration compatible with the common market and with the European Economic Area Agreement (Case COMP/JV 40 Canal+/Lagardère and COMP/JV 47 Canal+/Lagardère/Liberty Media);*

2. *orders the defendant to pay the costs.*

(1) OJ C 335 of 25.11.2000.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 23 October 2002

in Case T-388/00: Institut für Lernsysteme GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (1)

(Community trade mark — Opposition procedure — Earlier figurative mark containing the acronym ILS — Application for Community word mark ELS — Proof of use of earlier mark — Article 43(2) and (3) of Regulation (EC) No 40/94 and Rule 22 of Regulation (EC) No 2868/95 — Relative ground for refusal — Article 8(1)(b) of Regulation (EC) No 40/94 — Statement of reasons)

(2003/C 19/56)

(Language of the case: English)

In Case T-388/00, Institut für Lernsysteme GmbH, established in Hamburg (Germany), represented by J. Schneider and A. Buddee, lawyers, with an address for service in Luxembourg, v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Agents: A. von Mühlendahl, A. di Carlo and O. Waelbroeck), the other party to the proceedings before

the Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) being ELS Educational Services, Inc., established in Culver City, California (United States): Action brought against the decision of the Third Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 18 October 2000 (Case R 074/2000-3), the Court of First Instance (Fourth Chamber), composed of: M. Vilaras, President, V. Tiili and P. Mengozzi, Judges; D. Christensen, Administrator, for the Registrar, has given a judgment on 23 October 2002, in which it:

1. *Annuls the decision of the Third Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 18 October 2000 (Case R 074/2000-3) in so far as it relates to the analysis of the likelihood of confusion between the conflicting marks;*

2. *For the rest, dismisses the application;*

3. *Orders the defendant to bear its own costs and pay two thirds of the costs incurred by the applicant. The applicant shall bear one third of its own costs.*

([1]) OJ C 79 of 10.3.2001.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 23 October 2002

in Case T-6/01: Matratzen Concord GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) ([1])

(Community trade mark — Opposition — Relative grounds for refusal — Similarity between two trade marks — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94 — Application for a figurative Community trade mark containing the word 'Matratzen' — Earlier word trade mark MATRATZEN)

(2003/C 19/57)

(Language of the case: German)

In Case T-6/01, Matratzen Concord GmbH, formerly Matratzen Concord AG, established in Cologne (Germany), represented by W.-W. Wodrich, avocat, v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Agents: A. von Mühlendahl, G. Schneider and E. Joly): Action brought against the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 31 October 2000 (Joined Cases R 728/1999-2 and R 792/1999-2), relating to opposition proceedings between Hukla Germany SA and Matratzen Concord GmbH, the Court of First Instance (Fourth Chamber), composed of: M. Vilaras, President, V. Tiili and P. Mengozzi, Judges; D. Christensen, Administrator, for the Registrar, has given a judgment on 23 October 2002, in which it:

1. *Dismisses the application;*

2. *Orders the applicant to pay the costs.*

([1]) OJ C 108 of 7.4.2001.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 20 November 2002

in Joined Cases T-79/01 and T-86/01: Robert Bosch GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) ([1])

(Community trade mark — Kit Pro and Kit Super Pro — Absolute grounds for refusal — Article 7(1)(b) of Regulation (EC) No 40/94)

(2003/C 19/58)

(Language of the case: German)

In Joined Cases T-79/01 and T-86/01, Robert Bosch GmbH, established in Stuttgart (Germany), represented by S. Völker, lawyer, with an address for service in Luxembourg, v Commission of the European Communities (Agent: G. Schneider): Actions brought against two decisions of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 31 January 2001 (Cases R 124/2000-1 and R 123/2000-1) on the registration of Kit Pro and Kit Super Pro respectively as Community trade marks, the Court of First Instance (Fourth Chamber), composed of: M. Vilaras, President, V. Tiili and P. Mengozzi, Judges; D. Christensen, Administrator, for the Registrar, has given a judgment on 20 November 2002, in which it:

1. *Dismisses the applications;*

2. *Orders the applicant to pay the costs.*

([1]) OJ C 186 of 30.6.2001.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 26 November 2002

in Case T-103/01: Michael Cwik v Commission of the European Communities ([1])

(Officials — Reorganisation of the Commission's administrative structures — Redeployment — Reasons — Interest of the service — Misuse of power — Duty of care)

(2003/C 19/59)

(Language of the case: French)

In Case T-103/01: Michael Cwik, an official of the Commission of the European Communities, residing in Tervuren (Belgium), represented by N. Lhoëst, avocat, with an address for service in Luxembourg, against Commission of the European Communities (Agents: J. Currall, D. Waelbroeck and J. Waldron) — application, in the first place, for annulment of the Commission decision transferring the applicant from the 'Economic Information, Publications and Documentation' Unit, which first became the 'Information: EURO, EMU' Unit and subsequently became Unit 4 'Communications Policy in regard to Monetary Union', to the 'General Coordination, Human Resources and Administration' Unit, which became Unit 1 'Human Resources Coordination; Information and Administration', within the 'Economic and Financial Affairs' Directorate-General, and, second, for compensation — the Court of First Instance (Second Chamber), composed of: R.M. Moura Ramos, President, J. Pirrung and A.W.H. Meij, Judges; D. Christensen, Administrator, for the Registrar, has given a judgment on 26 November 2002, the operative part of which is as follows:

1. *The application is dismissed;*

2. *The parties shall bear their own costs.*

([1]) OJ C 227 of 11.08.2001.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 23 October 2002

in Case T-104/01: Claudia Oberhauser v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) ([1])

(Community trade mark — Opposition — Earlier figurative mark containing the term 'miss fifties' — Application for Community word mark 'Fifties' — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94)

(2003/C 19/60)

(Language of the case: German)

In Case T-104/01, Claudia Oberhauser, established in Munich (Germany), represented by M. Graf, lawyer, v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Agent: G. Schneider), the other party to the proceedings before the Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) being Petit Liberto, SA, established in Vidreres (Spain): Action brought against the decision of the Second Chamber Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 28 February 2001 (Case R 757/1999-2), the Court of First Instance (Fourth Chamber), composed of: M. Vilaras, President, V. Tiili and P. Mengozzi, Judges; D. Christensen, Administrator, for the Registrar, has given a judgment on 23 October 2002, in which it:

1. *Dismisses the application;*

2. *Orders the applicant to pay the costs.*

([1]) OJ C 227 of 11.8.2001.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 7 November 2002

in Case T-199/01: G v Commission of the European Communities ([1])

(Officials — Social security — Refusal to reimburse medical expenses — Inefficacious treatment)

(2003/C 19/61)

(Language of the case: French)

In Case T-199/01: G, an official of the Commission of the European Communities, residing in Ispra (Italy), represented by

O. Slusny, lawyer, with an address for service in Luxembourg, against Commission of the European Communities (Agent: J. Currall) — application for the annulment of the implied rejection of the complaint lodged by the applicant against the decision of the office responsible for settling claims of 30 November 2000 refusing to reimburse expenses relating to medicinal preparations prescribed by the doctor providing treatment — the Court of First Instance (Third Chamber), composed of M. Jaeger, President, K. Lenaerts and J. Azizi, Judges; D. Christensen, Administrator, for the Registrar, gave a judgment on 7 November 2002, in which it:

1. *Dismisses the application.*

2. *Orders the parties to bear their own costs.*

([1]) OJ C 317 of 10.11.2001.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 5 November 2002

in Case T-205/01: André Ronsse v Commission of the European Communities ([1])

(Officials — Remuneration — Household allowance — Recovery of sum overpaid)

(2003/C 19/62)

(Language of the case: French)

In Case T-205/01: André Ronsse, an official of the Commission of the European Communities, residing in Brussels, represented by E. Boigelot, lawyer, with an address for service in Luxembourg, against Commission of the European Communities (Agents: J. Currall, F. Clotuche-Duvieusart and B. Wägenbaur) — application for, first, annulment of the decisions of the Commission contained in letters of 9 and 23 November 2000 and in so far as necessary in the letter of 15 January 2002 and the implied rejection of his complaint lodged on 8 February 2001, all relating to repayment of EUR 22 443,07 corresponding to the household allowance paid to the applicant from 1 January 1994 to 1 November 2000 and, secondly, reimbursement of the amounts withheld from his pension since December 2000, together with interest at the statutory rate — the Court of First Instance (First Chamber), composed of B. Vesterdorf, President, N.J. Forwood and H. Legal, Judges; J. Palacio González, Administrator, for the Registrar, gave a judgment on 5 November 2002, in which it:

1. *Dismisses the application.*

2. *Orders the parties to bear their own costs.*

([1]) OJ C 317 of 10.11.2001.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 12 November 2002

in Case T-271/01: José Manuel López Cejudo v Commission of the European Communities ([1])

(Officials — Remuneration — Dependent child and education allowances paid to the parent awarded custody of the child — Refusal to grant the other parent payment of the allowances for the purpose of calculating tax rebate and expatriation allowance — Default interest)

(2003/C 19/63)

(Language of the case: French)

In Case T-271/01: José Manuel López Cejudo, an official working for the Commission of the European Communities, residing in Brussels, represented by G. Vandersanden and L. Levi, avocats, with an address for service in Luxembourg, against Commission of the European Communities (Agent: J. Currall) — First an application for annulment of the decision of the Commission refusing to grant to the applicant, in respect of the period running from October 2000 to July 2001, the dependent child and education allowances for the purpose of calculating tax abatement and the expatriation allowance and, second, a claim for default interest on the amounts improperly recovered or not paid — the Court of First Instance (Second Chamber), composed of R.M. Moura Ramos, President, J. Pirrung and A.W.H. Meij, Judges; J. Plingers, Administrator, for the Registrar, gave a judgment on 12 November 2002, in which it:

1. *annuls the decision of the Commission, as evidenced by the applicant's salary slip for October 2000, refusing him entitlement to dependent child and education allowances to take into account for purposes of tax abatement and expatriation allowance since July 1999, as amended by the Commission's decision of 16 July 2001, insofar as the latter decision takes account of the apportionment of the entitlement to the allowances in issue and of the benefits under them only in respect of the future.*

2. *orders the Commission to pay to the applicant:*

   — *default interest, as from November 2000, on the capital amount of EUR 1 193,85 and, for each month from December 2000 and until September 2001, EUR 1 200 each month until those capital amounts are repaid to him;*

— *default interest in respect of the benefits accruing to the applicant under the allowances in issue, for each month from October 2000 until the date on which the decision of 16 July 2001 takes effect, until full payment of the amounts due.*

3. *orders the rate of default interest to be calculated on the basis of the rate fixed by the European Central Bank for main refinancing operations, applicable in the period in question, plus two points.*

4. *orders the Commission to pay the costs.*

([1]) OJ C 3 of 5.1.2002.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 25 October 2002

in Case T-5/02: Tetra Laval BV v Commission of the European Communities ([1])

(Competition — Regulation (EEC) No 4064/89 — Decision declaring a concentration incompatible with the common market — Rights of the defence — Horizontal and vertical effects — Foreseeable conglomerate effects — Leveraging — Potential competition — General effect of reinforcement)

(2003/C 19/64)

(Language of the case: English)

In Case T-5/02, Tetra Laval BV, established in Amsterdam (Netherlands), represented by A. Vandencasteele, D. Waelbroeck, A. Weitbrecht and S. Völcker, lawyers, v Commission of the European Communities (Agents: A. Whelan and P. Hellström): Application for annulment of Commission Decision C (2001) 3345 final of 30 October 2001 declaring a concentration to be incompatible with the common market and the EEA Agreement (Case No COMP/M.2416 — Tetra Laval/Sidel), the Court of First Instance (First Chamber), composed of: B. Vesterdorf, President, J. Pirrung and N.J. Forwood, Judges; D. Christensen, Administrator, for the Registrar, has given a judgment on 25 October 2002, in which it:

1. *Annuls Commission Decision C (2001) 3345 final of 30 October 2001 declaring a concentration to be incompatible with the common market and the EEA Agreement (Case No COMP/M.2416 — Tetra Laval/Sidel);*

2. *Orders the Commission to bear its own costs and to pay the costs of the applicant.*

([1]) OJ C 68 of 16.3.2002.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 25 October 2002

in Case T-80/02: Tetra Laval BV v Commission of the European Communities ([1])

(Competition — Regulation (EEC) No 4064/89 — Decision ordering separation of undertakings — Article 8(4) of Regulation No 4064/89 — Illegality of the decision declaring a concentration incompatible with the common market — Ensuing illegality of the divestiture decision)

(2003/C 19/65)

(Language of the case: English)

In Case T-80/02, Tetra Laval BV, established in Amsterdam (Netherlands), represented by A. Vandencasteele, D. Waelbroeck, A. Weitbrecht and S. Völcker, lawyers, v Commission of the European Communities (Agents: A. Whelan and P. Hellström): Application for annulment of the Commission Decision of 30 January 2002 setting out measures in order to restore conditions of effective competition pursuant to Article 8(4) of Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings (Case No COMP/M.2416 — Tetra Laval/Sidel), the Court of First Instance (First Chamber), composed of: B. Vesterdorf, President, J. Pirrung and N. J. Forwood, Judges; D. Christensen, Administrator, for the Registrar, has given a judgment on 25 October 2002, in which it:

(1) *Annuls the Commission Decision of 30 January 2002 setting out measures in order to restore conditions of effective competition pursuant to Article 8(4) of Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings (Case No COMP/M.2416 — Tetra Laval/Sidel);*

(2) *Orders the Commission to bear its own costs and to pay those of the applicant, including those relating to the interim proceedings.*

([1]) OJ C 156 of 29.6.2002.

ORDER OF THE COURT OF FIRST INSTANCE

of 7 October 2002

in Case T-24/01: Claire Staelen v Council of the European Union and European Parliament [1]

(Officials — Open competition — Delegation of the appointing authority's powers — Inadmissibility)

(2003/C 19/66)

(Language of the case: French)

In Case T-24/01: Claire Staelen, member of the temporary staff of the European Parliament, residing in Bridel (Luxembourg), represented by J. Choucroun, lawyer, with an address for service in Luxembourg, against Council of the European Union (Agents: F. Anton and A. Pilette) and European Parliament (Agents: J.F. De Wachter and D. Moore) — application for annulment of the entire marking procedure in respect of the written tests for Competition EUR/A/151/98 or, otherwise, annulment of the decision of the selection board refusing to admit her to the tests subsequent to test VII.A.d) and, in the alternative, for compensation in respect of the non-material damage allegedly suffered — the Court of First Instance (Fourth Chamber), composed of M. Vilaras, President of the Chamber, V. Tiili and P. Mengozzi, Judges; H. Jung, Registrar, made an order on 7 October 2002, the operative part of which is as follows:

1. *The application in Case T-24/01 is dismissed as clearly inadmissible in so far as it is brought against the Council.*

2. *Each of the parties shall bear its own costs in the present action in so far as it is brought against the Council, including those relating to the proceedings for interim relief.*

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[1] OJ C 95, 24.3.2001.

ORDER OF THE COURT OF FIRST INSTANCE

of 21 October 2002

in Case T-97/01: Christos Gogos v Commission of the European Communities [1]

(No need to give a judgment)

(2003/C 19/67)

(Language of the case: Greek)

In Case T-97/01: Christos Gogos, an official of the Commission of the European Communities, represented by C. Tagaras, lawyer, against Commission of the European Communities (Agents: H. Tserepa-Lacombe and J. Currall) — application for, essentially, annulment of the decision of the selection board for internal competition COM/A/17/96 not to include the applicant in the list of successful candidates on the ground that he did not obtain the minimum requisite number of marks in the oral test and seeking compensation for the material and non-material damage allegedly suffered — the Court of First Instance (Second Chamber), composed of N.J. Forwood , President, J. Pirrung and A.W.H. Meij, Judges; H. Jung, Registrar, made an order on 21 October 2002, the operative part of which is as follows:

1. *There is no need to adjudicate on the present application.*

2. *The Commission shall bear the whole of the costs.*

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[1] OJ C 186, 30.6.2001.

ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE

of 17 October 2002

in Case T-215/02 R: Santiago Gómez-Reino v Commission of the European Communities

(Procedure for interim relief — Officials — Admissibility — Act adversely affecting an official)

(2003/C 19/68)

(Language of the case: French)

In Case T-215/02 R: Santiago Gómez-Reino, an official of the Commission of the European Communities, residing in Brussels, represented by M.-A. Lucas, lawyer, against Commission of the European Communities (Agents: H.P. Hartvig and J. Currall) — application for interim measures requiring, first, the production of certain documents, second, the suspension of a number of decisions or prohibiting decisions to be taken relating to internal investigations conducted by the European Anti-Fraud Office (OLAF) and, third, the adoption of measures under Article 24 of the Staff Regulations — the

President of the Court of First Instance made an order on 17 October 2002, the operative part of which is as follows:

1. *The application for interim relief is rejected.*

2. *Costs are reserved.*

Action brought on 14 October 2002 by Michel Soubies against Commission of the European Communities

(Case T-325/02)

(2003/C 19/69)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 14 October 2002 by Michel Soubies, residing in Brussels, represented by Albert Coolen, Jean-Noël Louis and Etienne Marchal, avocats.

The applicant claims that the Court should:

— annul the decision of 26 November 2001 of the Secretary General of the Commission posting the applicant, as A 3 adviser ad personam, to Unit SG/F.2 'Institutional matters';

— order the defendant to pay the costs.

Pleas in law and main arguments

The applicant, an official in Grade A 3, is challenging the decision of the appointing authority to appoint him adviser ad personam in Unit SG/F.2 'Institutional matters', where the head of unit was appointed in Grade A 5.

In support of his claims, he alleges:

— breach of the obligation to state reasons;

— breach of the procedure for filling middle-management posts, infringement of Articles 4, 5, 27 and 29 of the Staff Regulations and breach of the principles of good management and sound administration and of the principle that officials should have reasonable career prospects.

In that regard, the applicant takes the view that, having failed to adopt general rules authorising the reversal of management duties, the Secretary General improperly adopted the contested decision. The duties actually carried out by the applicant since the adoption of that decision are moreover manifestly inferior to those normally carried out by an official in Grade A 3.

Action brought on 31 October 2002 by the Gestoras Pro Amnistía association, Juan Mari Olano Olano and Julen Zelarain Errasti against Council of the European Union

(Case T-333/02)

(2003/C 19/70)

(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 31 October 2002 by the Gestoras Pro Amnistía association, whose offices are in Hernani (Spain), Juan Mari Olano Olano, residing in Gainza (Spain), and Julen Zelarain Errasti, residing in San Sebastián (Spain), represented by Didier Rouget, lawyer.

The applicants claim that the Court should:

— order the defendant to pay compensation amounting to EUR 1 000 000 to the Gestoras Pro Amnistía association and EUR 100 000 to each of the other two applicants, Juan Mari Olano Olano and Julen Zelarain Errasti;

— find that those amounts give rise to default interest at the rate of 4.5 % per annum with effect from the date of the judgment of the Court of First Instance and until actual payment is effected;

— order the defendant to bear its own costs and to pay those incurred by the applicants.

Pleas in law and main arguments

The Gestoras Pro Amnistía association and two representatives are seeking compensation for the damage allegedly suffered as a result of the abovementioned association's name having been included in the list of terrorist persons, groups and bodies, pursuant to Common Position 2001/931/CFSP [1], adopted on 27 December 2001, confirmed by Council Common Position 2002/340/CFSP [2], adopted on 2 May 2001, and Council Common Position 2002/940/CFSP [3], adopted on 17 June 2002.

The pleas in law and main arguments put forward are identical to those in Case T-338/02.

(1) Common Position 2001/931/CFSP of 27 December 2001 on the application of specific measures to combat terrorism, OJ L 344, of 28.12.2001, p. 93.
(2) Council Common Position of 2 May 2002 updating Common Position 2001/931/CFSP on the application of specific measures to combat terrorism, OJ L 116, of 3.5.2002, p. 75.
(3) Council Common Position of 17 June 2002 updating Common Position 2001/931/CFSP on the application of specific measures to combat terrorism and repealing Common Position 2002/340/CFSP, OJ L 160, of 18.6.2002, p. 32.

Action brought on 13 November 2002 by B.V. Bureau Wijsmuller Scheepvaart-Transport en Zeesleepvaart Maatschappij against the Commission of the European Communities

(Case T-340/02)

(2003/C 19/71)

(Language of the case: Dutch)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 13 November 2002 by B.V. Bureau Wijsmuller Scheepvaart-Transport en Zeesleepvaart Maatschappij, with its registered office in IJsmuiden (Netherlands), represented by M.J.J.M. Essers.

The applicant claims that the Court should:

(1) Primarily, annul the Commission's decision of 19 June 2002 (C(2002) 2158 final) concerning State aid provided by the Netherlands for the activities of Netherlands tugboats operating within seaports and on inland waterways of the Community;

(2) In the alternative, annul Articles 2 and 3 of the contested Commission decision, in which the Commission requires the Netherlands Government inter alia to adopt all measures necessary to recover the aid from recipients, with the exception of that aid which was granted prior to 12 September 1990;

(3) Order the Commission to pay the costs of the proceedings.

Pleas in law and main arguments

The pleas in law submitted are identical to those in Case T-326/02.

Action brought on 8 November 2002 by Metro-Goldwin-Mayer Lion Corporation against the Office for Harmonization in the Internal Market

(Case T-342/02)

(2003/C 19/72)

(Language of the case: English)

An action against the Office for Harmonization in the Internal Market was brought before the Court of First Instance of the European Communities on 8 November 2002 by Metro-Goldwin-Mayer Lion Corporation, Santa Monica, California (United States of America), represented by Fernand de Visscher, Emmanuel Cornu, Eric De Gryse, Donatienne Moreau, avocats. A further party to the proceedings before the Board of Appeal was Moser Grupo Media, S.L., Santa Eulalia Del Rio (Baleares - Spain).

The applicant claims that the Court should:

— uphold the claim for annulment;

— annul the Decision of the Third Board of Appeal of 5 September 2002;

— confirm the decision of the Opposition Division of 19 February 2001 insofar as it upholds the Opposition number B 47730 for all the contested goods and services and rejects application for registration nº 409664 in its entirety on the basis of applicant's national registrations of the trademark 'MGM';

— annul the decision of the Opposition Division of 19 February 2001 insofar as it does not admit as ground for rejection applicant's CTM nº 141820 of the trademark 'MGM' or, in subsidiary order, insofar as it does not admit as ground for rejection the earlier national trade mark registrations in Austria, Greece and the United Kingdom;

— condemn the Office to the costs of the proceedings.

Pleas in law and main arguments

Applicant for the Community trade mark:	Moser Grupo Media, S.L.
The Community trade mark concerned:	The figurative trade mark 'Moser Grupo Media, s.l.' for goods and services in classes 9, 16, 38, 39 and 41 (application nº 409664)
Proprietor of the right to the trade mark or sign asserted by way of opposition in the opposition proceedings:	The applicant, Metro-Goldwin-Mayer Lion Corporation
Trade mark or sign asserted by way of opposition in the opposition proceedings:	Several national rights and community trade mark application nº 141820 of the word mark 'MGM' for goods and services in classes 9, 38 and 41
Decision of the Opposition Division:	Rejection of the community trade mark application nº 409664 of Moser Grupo Media, disregarding some of the earlier rights and community trade mark application nº 141820 by the applicant in the present case for the word mark 'MGM'
Decision of the Board of Appeal:	Rejection of the appeal by the opponent, applicant in the present case, as inadmissible
Grounds of claim:	— Infringement of Article 58 of Regulation 40/94 [1]in so far as the applicant is adversely affected by the decision of the Opposition Division. According to the applicant, it is still possible for Moser Grupo Media to convert its community trade mark application in other countries with the advantage of using the date of its Community trade mark application. This would not have been possible if the trade mark application had been rejected on the grounds of the applicant's Community trade mark application.
	— Violation of Articles 42 and 8 of Regulation 40/94. According to the applicant, an opposition can be based on an earlier community trade mark application that is not yet registered as a trade mark.

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

Action brought on 15 November 2002 by Roland Schintgen against Commission of the European Communities

(Case T-343/02)

(2003/C 19/73)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 15 November 2002 by Roland Schintgen, residing in Keispelt (Luxembourg), represented by Lucas Vogel, lawyer.

The applicant claims that the Court should:

— annul the decision adopted by the appointing authority on 16 July 2002 rejecting the complaint lodged by the applicant on 28 February 2002 requesting the annulment of the elections to the local staff committee, the appointment of the elected members to the staff committee and the refusal by the Commission to annul the aforementioned elections and declare that the local staff committee in Luxembourg, formed following the said elections, was not validly constituted;

— annul, in so far as necessary, the abovementioned elections to the local staff committee in Luxembourg, together with the appointment of the elected members consequent thereupon and annul the refusal by the Commission to annul the elections and declare unlawful the composition of the local staff committee in Luxembourg which resulted therefrom;

— order the defendant to pay the costs of proceedings and the expenses necessarily incurred for the purpose of the proceedings, in particular the travel and subsistence expenses and the remuneration of lawyers.

Pleas in law and main arguments

By his application, the applicant seeks the annulment of the decision of the appointing authority rejecting his complaint requesting the annulment of the elections to the local staff committee in Luxembourg of November 2001.

According to the applicant, the list put forward by the 'Solidarité Européenne' union obtained only one of the 20 seats to be filled on the local staff committee, whereas the number of votes for the members of that union constituted 25,523 % of the total votes cast.

In support of his arguments, the applicant alleges:

— infringement of Article 9(3) of the Staff Regulations,

— infringement of Article 1 of Annex II to the Staff Regulations,

— infringement of Article 6 of the rules on the composition and functioning of the staff committee,

— manifest error of assessment.

The applicant claims that the abovementioned provisions require a faithful representation, on the local staff committee, of all the tendencies expressed through the ballot box. Such representation is not sufficiently guaranteed where more than a quarter of the total votes cast by officials results in the appointment of only 1/20th of the members of the staff committee.

Action brought on 21 November 2002 by European Dynamics against the Commission of the European Communities

(Case T-345/02)

(2003/C 19/74)

(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 21 November 2002 by European Dynamics (Athens), represented by W. Knapp, Rechtsanwalt, and D. Spanou, Advocate.

The applicant claims that the Court should:

1. annul the Commission's (EUROSTAT) decision to eliminate European Dynamics from the procurement procedure for the Call for Tenders 2002/S 106-083279 - Lot 1 for the 'Further development of the Collaborative Software CIRCA';

2. order the Commission (EUROSTAT) to evaluate the tender submitted by European Dynamics in the above mentioned procurement procedure and allow European Dynamics to participate fully and on the same basis as all the other tenderers;

3. order the Commission to pay European Dynamics' legal and other fees and expenses incurred in connection with this application.

Pleas in law and main arguments

The applicant is a company involved in the area of information technology and communications. It participated in the Call for Tenders 2002/S 106 -083279, for 'Eurostat information systems: information and communication technologies for the Community statistical system' and, more particularly, Lot 1 of the Call for Tenders, 'further development of the collaborative software CIRCA'. The applicant's tender was rejected by the defendant because of the absence of details concerning the educational and professional qualifications in the curriculum vitae of at least one of the experts, in a team of 27 persons.

In support of its application, the applicant submits that the decision to reject its tender breaches the principle of proportionality. The tender was rejected because of the absence of details in one curriculum vitae, whereas the tender requirements referred in broad and general terms to the experience of the team, without any further specification.

The applicant furthermore alleges that the contested decision is vitiated by a manifest error of assessment. According to the applicant, the defendant failed to exercise its power to seek clarification on this matter and therefore breached its duty of care and the principle of good administration.

The applicant also claims that by not seeking clarification and thereby eliminating the applicant's tender, the defendant did not respect the equal treatment of tenderers. According to the applicant, an evaluation committee does not enjoy an unfettered discretion to seek or not to seek clarification concerning an individual tender regardless of objective considerations and free from judicial supervision.

The applicant finally submits that the defendant committed serious procedural irregularities. More particularly, the defendant did not respect the principle of good administration, the right of parties to be heard and the duty to state reasons for its decisions.

Action brought on 22 November 2002 by Cableuropa, S.A., Región de Murcia de Cable, S.A., Valencia de Cable, S.A., Mediterránea Sur Sistemas de Cable, S.A., y Mediterránea Norte Sistemas de Cable, S.A. against Commission of the European Communities

(Case T-346/02)

(2003/C 19/75)

(Language of the case: Spanish)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 22 November 2002 by Cableuropa, S.A. (having its registered office in Aravaca, Madrid), Región de Murcia de Cable, S.A. (having its registered office in Murcia, Spain), Valencia de Cable, S.A. (having its registered office in Madrid), Mediterránea sur Sistemas de Cable, S.A. (having its registered office in Alicante, Spain) y Mediterránea Norte Sistemas de Cable, S.A. (having its registered office in Castellón, Spain), represented by Luis Felipe Castresana Sánchez and Gonzalo Samaniego Bordiu, lawyers.

The applicants claim that the Court should:

— annul the decision of the Commission of 14 August 2002 referring Case COMP/M.2845 - Sogecable/Canalsatélite Digital/Vía Digital to the competent authorities in the Kingdom of Spain pursuant to Article 9 of Council Regulation (EEC) No 4064/89;

— order the parties to bear their own costs.

Pleas in law and main arguments

The decision contested by the present application concerns the notification, pursuant to Article 4 of Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings [1], of a planned concentration by which Sogecable SA, controlled by Promotora de Informaciones S.A (Prisa) and Groupe Canal +S.A., the latter belonging to the Vivendi Universal group, signs an agreement with the Admira Media S.A. group, belonging to the Telefónica S.A group, with the aim of merging Sogecable and DTS Distribuidora de Televisión Digital S.A. (Vía Digital), controlled by Admira, by means of an exchange of shares. According to the notification, following the successful completion of the abovementioned operation, the resulting undertaking would come under the joint control of Prisa and Groupe Canal+.

In support of its arguments, the applicants allege:

— lack of competence of the Commission, in that it is not empowered to refer a case to the authorities of a Member State when the markets concerned affect intra-Community trade and more than one Member State;

— infringement of Article 9 of the abovementioned regulation on concentrations in that the contested decision makes a 'blank' reference to the national authorities;

— failure to observe the obligation to provide reasons, specifically as regards the exceptional nature of the reference in cases in which the markets in question affect a substantial part of the common market.

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[1] OJ 1989 L 395, p. 1.

Action brought on 22 November 2002 by Aunacable, S.A.Unipersonal, Retecal Sociedad Operadora de Telecomunicaciones de Castilla y León, S.A., Euskaltel, S.A., Telecable de Avilés, S.A. Unipersonal, Telecable de Oviedo, S.A. Unipersonal, Telecable de Gijón, S.A. Unipersonal, R Cable y Telecomunicaciones Galicia, S.A., and Tenaria S.A. against Commission of the European Communities

(Case T-347/02)

(2003/C 19/76)

(Language of the case: Spanish)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 22 November 2002 by Aunacable, S.A.Unipersonal (having its registered office in Madrid), Retecal Sociedad Operadora de Telecomunicaciones de Castilla y León, S.A. (having its registered office in Boecilli, Valladolid, Spain), Euskaltel, S.A.(having its registered office in Zamudio-Bizkaia), Telecable de Avilés, S.A. Unipersonal (registered in Avilés), Telecable de Oviedo, S.A. Unipersonal (having its registered office in Oviedo), Telecable de Gijón, S.A. Unipersonal (having its registered office in Gijón), R Cable y Telecomunicaciones Galicia, S.A.(having its registered office in A Coruña, Spain) and Tenaria S.A.(having its registered office in Cordovilla, Navarra, Spain), represented by Antonio Creus Carreras, Natalia Lacalle Mangas and José Mª Jiménez Laiglesia, lawyers.

The applicants claim that the Court should:

— annul the decision of the Commission of 14 August 2002 referring Case COMP/M.2845 - Sogecable/Canalsatélite Digital/Vía Digital to the competent authorities in the Kingdom of Spain pursuant to Article 9 of Council Regulation (EEC) No 4064/89;

— order the Commission to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are essentially those previously put forward in Case T-346/02 CABLEUROPA and Others v Commission.

The applicants allege, in particular, breach of the principle of good administration, inasmuch as the Commission not only abandoned a practice and a consolidated policy in decisions to refer cases to the market affected by the operation in question, it also failed to take into account a case which is closely linked to the concentration operation and involving the same parties. In any event, the Commission is better placed than the national authorities to analyse the abovementioned operation for, among other reasons, the overriding questions of Community interest which the later raises.

Action brought on 22 November 2002 by the company Sephora against Office for Harmonization in the Internal Market (trade marks and designs) (OHIM)

(Case T-349/02)

(2003/C 19/77)

(Language of the case: French)

An action against Office for Harmonization in the Internal Market (trade marks and designs) (OHIM) was brought before the Court of First Instance of the European Communities on 22 November 2002 by Sephora, whose registered office is in Levallois-Perret (France), represented by Michel-Paul Escande, lawyer.

The applicant claims that the Court should:

— annul the decision of the Second Board of Appeal of the Office for Harmonization in the Internal Market (trade marks and designs) of 9 September 2002 (Case R 425/2000-2);

— order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for the Community trade mark:	INTER SERVICE S.r.l.
The Community trade mark concerned:	SEPHORA (registration application No 593.806 for goods in Classes 9, 18 and 25
Proprietor of the right to the trade mark or sign asserted by way of opposition in the opposition proceedings:	The applicant
Trade mark or sign asserted by way of opposition in the opposition proceedings:	French word mark SEPHORA for goods in Classes 35 and 42
Decision of the Opposition Division:	Opposition rejected
Decision of the Board of Appeal:	Appeal rejected
Grounds of claim:	Misapplication of Article 8(4) of Regulation No 40/94

Action brought on 26 November 2002 by Ikegami Electronics (Europe) GmbH against the Council of the European Union

(Case T-350/02)

(2003/C 19/78)

(Language of the case: English)

An action against the Council of the European Union was brought before the Court of First Instance of the European Communities on 26 November 2002 by Ikegami Electronics (Europe) GmbH, Neuss, Germany, represented by Mr Laurent Ruessmann, lawyer with an address for service in Luxembourg.

The applicant claims that the Court should:

— annul Article 2 of Council Regulation (EC) No 1696/2002;

— order the Council to pay the costs.

Pleas in law and main arguments

The applicant is engaged in the sale and distribution of professional camera models produced by its Japanese parent company, Ikegami Tsushinki Co Ltd.

The applicant seeks annulment of Article 2 of Council Regulation (EC) No 1696/2002 ([1]), amending the annex to Council Regulation (EC) No 2042/2000 ([2]) imposing a definitive anti-dumping duty on imports of television camera systems originating in Japan, to the extent that it limits the application of the decision to imports of models from the date of receipt by the Commission of the request for exemption, namely 12 October 2001.

The applicant submits that professional camera models which cannot be qualified as broadcast cameras were excluded from the scope of the anti-dumping measures by the investigation which found dumping and injury to the Community Industry for broadcast cameras. Regulation 1696/2002 recognizes that the models in question, listed in the annex, cannot be qualified as broadcast cameras. According to the applicant however, the regulation limits the temporal application of the exclusion from the anti-dumping measure for those models and indicates that anti-dumping duties are to be imposed on any imports of those models prior to 12 October 2001. Therefore, the applicant claims that the decision contained in article 2 of Regulation No 1696/2002 constitutes a violation of Council Regulation (EC) No 384/96 on protection against dumped imports from countries not members of the European Community ([3]), as amended, and the WTO anti-dumping code ([4]), according to which the imposition of anti-dumping duties is only allowed on products included in the scope of an investigation and injury caused by those products.

The applicant furthermore invokes the arbitrariness of the contested decision and a manifest error of assessment. According to the applicant, the contested decision presumes that imports prior to the date of the request must have been professional cameras which could be qualified as broadcast cameras, and therefore subject to anti-dumping duties. This presumption is arbitrary since no basis is set forth for this conclusion and the objective findings in Regulation 1696/2002 in fact support the opposite conclusion. The applicant also indicates that there is no serious risk of circumvention of the anti-dumping duties if the decision were applicable regardless of the date of importation. Given that the regulation confirms that the models are not broadcast cameras, there is no reason why the importer would declare the models as broadcast cameras which are subject to the anti-dumping duties.

The applicant finally invokes a violation of the principle of equal treatment. According to the applicant, an earlier modification of the annex was applicable irrespective of the date of importation without there being any objective differences justifying this different treatment.

([1]) Council Regulation (EC) No 1696/2002 of 23 September 2002 amending the Annex to Regulation (EC) No 2042/2000 imposing a definitive anti-dumping duty on imports of television camera systems originating in Japan (OJ L 259, p. 1).

([2]) Council Regulation (EC) No 2042/2000 of 26 September 2000 imposing a definitive anti-dumping duty on imports of television camera systems originating in Japan (OJ L 244, p. 38).

([3]) Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (OJ L 56, p. 1).

([4]) Uruguay Round of Multilateral Trade Negotiations (1986- 1994) — Annex 1 — Annex 1A — Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (WTO-GATT 1994) (OJ L 336, p. 103).

Action brought on 25 November 2002 by Creative Technology Limited against the Office for Harmonization in the Internal Market

(Case T-352/02)

(2003/C 19/79)

(Language of the case: English)

An action against the Office for Harmonization in the Internal Market was brought before the Court of First Instance of the European Communities on 25 November 2002 by Creative Technology Limited, Singapore, represented by Dr Michael Edenborough, barrister, Mr Stephen Jones, solicitor, and Mr Paul Rawlinson, solicitor.

A further party to the proceedings before the Board of Appeal was Mr José Vila Ortiz, Valencia, Spain. The applicant claims that the Court should:

— order that the Community trade park application No 673 327 proceed to registration;

— annul the decision of the Opposition Division No 154/2001;

— annul the decision of the Fourth Board of Appeal No R 265/2001-4;

— order that the opponent pays to the applicant the costs incurred bu the applicant in connection with this appeal and the appeal before the Board of Appeal and the opposition before the Opposition Division.

Pleas in law and main arguments

Applicant for the Community trade mark:	Creative Technology Limited.
The Community trade mark concerned:	the community trade mark application No 673327 for the word mark 'PC WORKS' for goods in class 9 (apparatus for recording, transmitting and reproducing sound or images, loudspeakers, a. o.).
Proprietor of the right to the trade mark or sign asserted by way of opposition in the opposition proceedings:	Mr José Vila Ortiz.
Trade mark or sign asserted by way of opposition in the opposition proceedings:	the Spanish figurative mark 'W WORK PRO', registered under No 1925320, in relation to goods in class 9 (sound electronical equipments, loudspeakers, sound reproducing apparatus, a. o.).
Decision of the Opposition Division:	Rejection of the Community trade mark application.
Decision of the Board of Appeal:	Dismissal of the appeal brought by Creative Technology Limited.
Grounds of claim:	the applicant submits that undue weight was given to the common element 'Work' in both marks and insufficient consideration was given to the fact that the goods in question are only bought after careful examination of the features of the goods, thus reducing the likelihood of confusion amongst the relevant public.

Action brought on 3 December 2002 by Chum Limited against the Office for Harmonisation in the Internal Market

(Case T-359/02)

(2003/C 19/80)

(Language of the case: English)

An action against the Office for Harmonisation in the Internal Market was brought before the Court of First Instance of the European Communities on 3 December 2002 by Chum Limited, Toronto (Canada), represented by Michael Gilbert, Solicitor. A further party to the proceedings before the Board of Appeal was Star TV AG, Schlieren (Switzerland).

The applicant claims that the Court should:

— set aside the Decision of the Second Board of Appeal of OHIM, dated 17th September, 2002 in Appeal No. R1140/2000-2,

— order that the Community Trade Mark application No. 890145 be registered for the services in Class 38 and Class 41,

— order that costs be awarded to the Applicant in this Appeal, in Appeal No. R1140/2000-2 and in Opposition No. 184525.

Pleas in law and main arguments

Applicant for the Community Trade-mark:	Chum Limited
The Community trade-mark concerned:	Word mark 'STAR TV' — application No 890145, relating to goods in classes 38 and 41.
Proprietor of the right to the trade mark or sign asserted by way of opposition in the opposition proceedings:	Star TV AG
Trade-mark or sign asserted by way of opposition in the opposition procedings:	Figurative trade-mark composed of the words 'STAR TV' superposing a big black and white star, accompanied by 3 smaller stars and a small moon (international registration No 638769, covering Austria, Germany, the Benelux, France and Italy), relating to goods in classes 38 and 41.
Decision of the Opposition Division:	Rejection of the Community Trade-mark.
Decision of the Board of Appeal:	Refusal of the Appeal.
Grounds of the claim:	Incorrect application of Article 8(1)(b) of Regulation (EC) No 40/94.

Removal from the register of Joined Cases T-160/01 and T-264/01 [1]

(2003/C 19/81)

(Language of the case: French)

By order of 5 November 2002 the President of the Third Chamber of the Court of First Instance of the European Communities ordered the removal from the register of Joined Cases T-160/01 and T-264/01: Léon Rappe v Commission of the European Communities.

[1] OJ C 289 of 13.10.2001 and C 369 of 22.12.2001.

Removal from the register of Case T-294/01 [1]

(2003/C 19/82)

(Language of the case: Spanish)

By order of 24 October 2002 the President of the Third Chamber of the Court of First Instance of the European Communities ordered the removal from the register of Case T-294/01: Lucía Aparicio Chofré v Commission of the European Communities.

[1] OJ C 44 of 16.2.2002.

Removal from the register of Case T-331/01 [1]

(2003/C 19/83)

(Language of the case: English)

By order of 14 November 2002 the President of the First Chamber of the Court of First Instance of the European Communities ordered the removal from the register of Case T-331/01: Huntstown Air Park Limited and Omega Aviation Services Limited v Commission of the European Communities.

[1] OJ C 109 of 4.5.2002.

Removal from the register of Case T-172/02 [1]

(2003/C 19/84)

(Language of the case: French)

By order of 4 November 2002 the President of the Fourth Chamber of the Court of First Instance of the European Communities ordered the removal from the register of Case T-172/02: Laurent Druet v Commission of the European Communities.

[1] OJ C 180 of 27.7.2002.

Removal from the register of Case T-199/02 [1]

(2003/C 19/85)

(Language of the case: French)

By order of 22 October 2002 the President of the Fourth Chamber of the Court of First Instance of the European Communities ordered the removal from the register of Case T-199/02: Michel van Beek v Commission of the European Communities.

[1] OJ C 202 of 24.8.2002.

III

(Notices)

(2003/C 19/86)

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

OJ C 7, 11.1.2003

Past publications

OJ C 323, 21.12.2002

OJ C 305, 7.12.2002

OJ C 289, 23.11.2002

OJ C 274, 9.11.2002

OJ C 261, 26.10.2002

OJ C 247, 12.10.2002

These texts are available on:

EUR-Lex: http://europa.eu.int/eur-lex

CELEX: http://europa.eu.int/celex

CORRIGENDA

Corrigendum to the Official Journal notice in respect of Case T-258/02

(Official Journal of the European Communities C 274 of 9 November 2002)

(2003/C 19/87)

In the Official Journal notice in respect of Case T-258/02 Hendrikus Boukes v Parliament, the first paragraph under 'Pleas in law and main arguments' should be replaced by the following:

'The applicant in the present case challenges the refusal by the appointing authority to recognise, for the purpose of applying the relevant provisions of the Staff Regulations, his marriage to another person of the same sex, contracted under the Netherlands Law of 21 December 2000, which entered into force on 1 April 2001.'