ISSN 1725-2423

Official Journal

of the European Union

C 251

Volume 46

18 October 2003

English edition

Information and Notices

Notice No | Contents | Page

(Continued overleaf)

(Continued overleaf)

(Continued on inside back cover)

EN

I

(Information)

COURT OF JUSTICE

COURT OF JUSTICE

ORDER OF THE COURT

(Second Chamber)

of 4 April 2003

in Case C-128/02 P: Bernhard Schulte [1]

(Actions for damages — Non-contractual liability — Milk — Additional levy — Reference quantities — Regulation (EEC) No 2187/93 — Compensation payable to producers — Heirs and those of similar status — Measure of the national authorities — Time bar — Appeal in part clearly inadmissible and in part clearly unfounded)

(2003/C 251/01)

(Language of the case: German)

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

In Case C-128/02 P: Bernhard Schulte, residing in Delbrück (Germany) (Lawyer: R. Freise) — Appeal against the judgment of the Court of First Instance of the European Communities (Fourth Chamber) of 7 February 2002 in Case T-261/94 Schulte v Council and Commission [2002] ECR II-441, seeking to have that judgment set aside, the other parties to the proceedings being: Council of the European Union (Agent: A.-M. Colaert, assisted by M. Núñez Müller) and Commission of the European Communities (Agent: M. Niejahr, assisted by M. Núñez Müller) — the Court (Second Chamber), composed of R. Schintgen, President of the Chamber, V. Skouris and N. Colneric (Rapporteur), Judges: A. Tizzano, Advocate General; R. Grass, Registrar, has made an order on 4 April 2003, the operative part of which is as follows:

1. *The appeal is dismissed;*

2. *Mr. Schulte is ordered to pay the costs.*

---

[1] OJ C 144 of 15.6.2002.

ORDER OF THE COURT OF JUSTICE

(First Chamber)

of 10 July 2003

in Case C-427/02 P: Giuseppe Di Pietro v Court of Auditors of the European Communities [1]

(Appeal — Officials — Prior administrative procedure — No complaint — Application manifestly inadmissible — Appeal manifestly inadmissible in part and manifestly unfounded in part)

(2003/C 251/02)

(Language of the case: Italian)

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

In Case C-427/02 P: Giuseppe Di Pietro, residing in Messina (Italy) (Lawyer: G. Monforte) — appeal against the order of the Court of First Instance of the European Communities (Third Chamber) of 27 September 2002 in Case T-254/01 Di Pietro v Court of Auditors [2002] ECR-SC I-A-177 and II-929, by which the Court declared manifestly inadmissible the application by Mr Di Pietro for the annulment of the decision of the Court of Auditors of 22 February 2001 appointing Mr Michel Hervé to the post of Secretary General of that institution, the other party to the proceedings being Court of Auditors of the

European Communities (Agents: J.-M. Stenier, M. Bavendamm and I. Ní Riagáin Düro) — the Court (First Chamber), composed of M. Wathelet, President of the Chamber, P. Jann and A. Rosas (Rapporteur), Judges; F. G. Jacobs, Advocate General; R. Grass, Registrar, has made an order on 10 July 2003, the operative part of which is as follows:

1. *The appeal is dismissed;*

2. *Mr. Di Pietro is ordered to pay the costs.*

---

(1) OJ C 19 of 25.1.2003.

Reference for a preliminary ruling by the Landesgericht für ZRS (Zivilrechtssachen) Wien by order of that Court of 30 September 2002 in the case of DLD Trading Company Import-Export spol. s.r.o. against Republic of Austria

(Case C-216/03)

(2003/C 251/03)

Reference has been made to the Court of Justice of the European Communities by order of the Landesgericht für ZRS (Zivilrechtssachen) Wien (Regional Civil Court, Vienna) of 30 September 2002, received at the Court Registry on 19 May 2003, for a preliminary ruling in the case of DLD Trading Company Import-Export spol. s.r.o. against Republic of Austria on the following questions:

1. Are Regulation (EC) No 3316/94 (1) and Regulation (EC) No 2744/981 (2) compatible with the provisions of Community law relating to exemptions from customs duties, in particular Regulation (EEC) No 918/83 (3) and the principle of the Customs union?

2. If Question 1 is answered in the affirmative:

   Did the retroactive entry into force of Regulation (EC) No 2744/98 infringe the principles of legal certainty or the protection of legitimate expectations?

3. Are Article 5(8) of Directive 69/169/EEC (4) and the national provisions transposing it, namely Paragraph 3a of the Verbrauchssteuer-befreiungsverordnung (Regulation on exemptions from excise duties) and the Umsatzsteuer-Verordnung, (Turnover Tax Regulations) (BGBl II No 326/1997), incompatible with the purposes of harmonising turnover tax and excise duty within the Member States, liberalising and facilitating travel to and from non-member countries and aligning exemptions from tax and from customs duty in the context of travel?

---

(1) OJ L 350, p. 12.
(2) OJ L 345, p. 9.
(3) OJ L 105, p. 1.
(4) OJ L 133, p. 6.

Reference for a preliminary ruling by the College van Beroep voor het bedrijfsleven by judgment of that Court of 26 June 2003 in the proceedings between 1. Cindu Chemicals B.V., 2. Rütgers VFT AG, 3. Touwen & Co B.V., 4. Pearl Paint Holland B.V., 5. Elf Atochem Nederland B.V., 6. Zijlstra & Co. Verf B.V. and 7. B.V. Chemische Producten Struyk & Co. and College voor de toelating van bestrijdingsmiddelen

(Case C-281/03)

(2003/C 251/04)

Reference has been made to the Court of Justice of the European Communities by judgment of the College van Beroep voor het bedrijfsleven (Administrative Court for Trade and Industry) of 26 June 2003, received at the Court Registry on 30 June 2003, for a preliminary ruling in the proceedings between 1. Cindu Chemicals B.V., 2. Rütgers VFT AG, 3. Touwen & Co B.V., 4. Pearl Paint Holland B.V., 5. Elf Atochem Nederland B.V., 6. Zijlstra & Co. Verf B.V. and 7. B.V. Chemische Producten Struyk & Co. and College voor de toelating van bestrijdingsmiddelen on the following question:

Does the Substances Directive permit a Member State to lay down additional conditions for the placing on the market and use of a biocidal product the active substance of which is included in Annex I to the Substances Directive?

Reference for a preliminary ruling by the College van Beroep voor het bedrijfsleven by judgment of that Court of 26 June 2003 in the proceedings between Arch Timber Protection BV and College voor de toelating van bestrijdingsmiddelen; party to these proceedings: Stichting Behoud Leefmilieu en Natuur Maas en Waal

(Case C-281/03)

(2003/C 251/05)

Reference has been made to the Court of Justice of the European Communities by judgment of the College van

Beroep voor het bedrijfsleven (Administrative Court for Trade and Industry) of 26 June 2003, received at the Court Registry on 30 June 2003, for a preliminary ruling in the proceedings between Arch Timber Protection BV and College voor de toelating van bestrijdingsmiddelen; party to these proceedings: Stichting Behoud Leefmilieu en Natuur Maas en Waal on the following question:

Does the Substances Directive permit a Member State to lay down additional conditions for the placing on the market and use of a biocidal product the active substance of which is included in Annex I to the Substances Directive?

Reference for a preliminary ruling by the Tribunal du Travail de Bruxelles by judgment of that Court of 20 May 2003 in the case of Gregorio MY against L'Office National des Pensions (O.N.P.)

(Case C-293/03)

(2003/C 251/06)

Reference has been made to the Court of Justice of the European Communities by judgment of the Tribunal du Travail de Bruxelles (Brussels Labour Court) of 20 May 2003, received at the Court Registry on 4 July 2003, for a preliminary ruling in the case of Gregorio MY against L'Office National des Pensions (O.N.P.) (National Pensions Office) on the following questions:

Are national provisions, such as the Belgian Law of 21 May 1991 (establishing a certain relationship between the Belgian pension schemes and those of international public law bodies) and the second paragraph of Article 4 of the Belgian Royal Decree of 23 December 1996 (implementing Articles 15, 16 and 17 of the Law of 26 July 1996 modernising social security and ensuring the viability of the statutory pension schemes), or Article 11 of Annex VIII to the Staff Regulations of Officials of the European Communities, not contrary to Articles 2, 3, 17, 18, 39, 40, 42 and 283 of the EC Treaty and Article 7 of Regulation (EEC) No 1612/68 of 15 October 1968 on freedom of movement for workers within the Community [1]:

1. in that these national provisions and the Staff Regulations do not allow a citizen of the European Union, such as the plaintiff, whose professional career has been carried out first in an undertaking or in a national public service and then in the European Union civil service, or vice versa, to compare the pension benefits which he would obtain under each scheme, be it national or European, through transfer of rights acquired under the other schemes, and based on this comparison, to request transfer of these rights either from the national scheme to the European scheme or, conversely, from the European scheme to the national scheme;

2. in that by providing that the worker concerned must expressly waive the right to transfer from the Belgian scheme to the European scheme or by causing an administrative practice to that effect, without the aforementioned comparison having been made, these provisions mislead or could mislead the worker;

3. and in that these national provisions do not allow years of service as an official of the European Union to be taken into account for the purposes of the grant of an early national pension?

---

[1] English special edition Series-I I Chapter 1968(II) p. 475.

Reference for a preliminary ruling by the Bundesverwaltungsgerichts by order of that Court of 30 April 2003 in the case of Federal Republic of Germany, represented by the Bundesministerium für Wirtschaft und Technologie against ISIS Multimedia Net GmbH und Co. KG and Firma O2 (Germany) GmbH and Co. OHG

(Cases C-327/03 and C-328/03)

(2003/C 251/07)

Reference has been made to the Court of Justice of the European Communities by order of the Bundesverwaltungsgerichts (Federal Administrative Court) of 30 April 2003, received at the Court Registry on 28 July 2003, for a preliminary ruling in the case of Federal Republic of Germany, represented by the Bundesministerium für Wirtschaft und Technologie against ISIS Multimedia Net GmbH und Co. KG and Firma O2 (Germany) GmbH and Co. OHG on the following questions:

1. Is Directive 97/13/EC [1] of the European Parliament and of the Council of 10 April 1997 on a common framework for general authorisations and individual licences in the field of telecommunications services (OJ 1997 L 117, p. 15) to be interpreted as meaning that, in respect of the allocation of telephone numbers by the national regulatory authority, a fee taking account of the economic value of the telephone numbers allocated may be imposed even though a telecommunications undertaking operating on the same market and occupying a dominant position on it took over free of charge from its predecessor in law, the former State undertaking with a monopoly, a very large

quantity of telephone numbers and the retrospective imposition of fees in respect of this old stock is not possible for reasons of national law?

If the answer to Question 1 is in the affirmative:

2. In such a situation may the new entrants to the market, irrespective of the level of their other entry costs and without an associated analysis of their competitive chances in comparison with the dominant undertaking, be charged for the allocation of a telephone number a one-off fee in the amount of a particular percentage (in this case 0,1 %) of the estimated annual sales which can be attained if the telephone number is passed on to a final customer?

(1) OJ L 117, p. 15.

Action brought on 30 July 2003 by the Commission of the European Communities against the Portuguese Republic

(Case C-334/03)

(2003/C 251/08)

An action against the Portuguese Republic was brought before the Court of Justice of the European Communities on 30 July 2003 by the Commission of the European Communities, represented by A. M. Alves Vieira and S. Rating, acting as Agents, with an address for service in Luxembourg.

The applicant claims that the Court should:

(1) Declare that, by failing to ensure in practice the transposition into national law of Article 4d of Directive 90/388/EEC (1) in the latest version amended by Directive 96/19/EC (2), the Portuguese Republic has failed to fulfil its obligations; and

(2) Order the Portuguese Republic to pay the costs.

Pleas in law and main arguments

Article 13 of Law No 91/97 exempts the operators of basic telecommunications networks from the payment of fees for the installations of their networks and the granting of the necessary rights of access to the public domain. As a result of that provision, PT Comunicações, being the sole operator of basic telecommunications networks, is exempted from those charges which are, however, payable by every other operator.

The more favourable treatment reserved for PT Comunicações compared to other operators as regards the economic conditions for the granting of rights of way is not objectively justified. Reserving to PT Comunicações treatment which differs from that afforded to other operators without any objective justification whatsoever constitutes unequal treatment in respect of the granting of rights of way to PT Comunicações, which amounts to infringement of Article 4d of the Directive.

(1) Commission Directive 90/388/EEC of 28 June 1990 on competition in the markets for telecommunications services (OJ L 192 of 24 July 1990, p. 10).

(2) Commission Directive 96/19/EC of 13 March 1996 amending Directive 90/388/EEC with regard to the implementation of full competition in telecommunications markets (OJ L 74 of 22 March 1996, p. 13).

Reference for a preliminary ruling by the Tribunale Ordinario di Torino — Sezione del Giudice per le Indagini Preliminari — by order of that Court of 15 July 2003 in the case against Fabrizio Barra

(Case C-337/03)

(2003/C 251/09)

Reference has been made to the Court of Justice of the European Communities by order of the Tribunale Ordinario di Torino — Sezione del Giudice per le Indagini Preliminari — (District Court, Turin — Preliminary Investigations Section) of 15 July 2003, received at the Court Registry on 1st August 2003, for a preliminary ruling in the case against Fabrizio Barra on the following questions:

1. Must Article 44(3)(g) of the Treaty, Articles 2(1)(f) and 6 of the first directive (Directive 68/151/EEC (1)) and Article 2(2), (3) and (4) of the fourth directive (Directive 78/660/EEC (2), as amended by Directive 83/349 (3) and Directive 90/605 (4)), be interpreted as meaning that that legislation precludes a law of a Member State according to which it is not a punishable offence for companies to infringe their obligations concerning disclosure and the provision of accurate information where statements are made which, although intended to deceive members of the public with a view to securing an unjust profit, are the consequence of estimated valuations which, taken indivi-

dually, depart from actual values to an extent not greater than a certain threshold?

2. With reference to the duty of each Member State to adopt 'appropriate penalties' for the infringements established by1 the first and fourth directives (Directive 68/151/EEC and Directive 78/660/EEC), must the directives themselves and in particular the combined provisions of Article 44(3)(g) of the 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 amended by Directive 83/349 and Directive 90/605), be interpreted as meaning that that legislation precludes a law of a Member State which, in the case of infringement of the obligations imposed in order to safeguard the principle of public and accurate company information, lays down a sanctionative system which actually allows false accounting to the extent of one fifth of the company's net assets?

---

(1) English special edition...: Series-I I Chapter 1968(I), p. 41.
(2) OJ L 222 of 14.8.1978, p. 11.
(3) OJ L 193 of 18.7.1983, p. 1.
(4) OJ L 317 of 16.11.1990, p. 60.

Appeal brought on 11 August by P. Del Vaglio against the judgment delivered on 4 June 2003 by the Court of First Instance of the European Communities (Single Judge) in Joined Cases T-124/01 and T-320/01 between P. Del Vaglio and Commission of the European Communities

(Case C-352/03 P)

(2003/C 251/10)

An appeal against the judgment delivered on 4 June 2003 by the Court of First Instance of the European Communities (Single Judge) in Joined Cases T-124/01 and T-320/01 between P. Del Vaglio and Commission of the European Communities was brought before the Court of Justice of the European Communities on 11 August 2003 by P. Del Vaglio, represented by M. Famchon and B. Desrez, lawyers, with an address for service in Paris.

The appellant claims that the Court should:

A. Set aside the judgment of the Court of First Instance of 4 June 2003 in so far as it dismisses the application in Case T-124/01

and, consequently,

1. annul the decision taken by the Commission on 5 April 2000 refusing to apply the weighting for the United Kingdom to the applicant's pension from 8 May 1999 and, in so far as necessary, annul the Commission's decision of 23 February 2001 rejecting the applicant's complaint of 18 July 2000,

2. order the Commission to apply the weighting for the United Kingdom with retroactive effect to 8 May 1999,

3. order the Commission to pay damages provisionally assessed on an equitable basis at EUR 10 000 and to pay interest of 7 % on the balance of the pension payable from 8 May 1999,

4. order the Commission to pay all the costs.

B. Set aside the decision of the Court of First Instance in so far as it dismissed the application in Case T-320/01 for the period prior to 1 January 2001

and, consequently,

1. annul the decision taken by the Commission on 6 September 2001 rejecting the applicant's complaint in respect of the application to his pension of a weighting for the United Kingdom with effect from 24 September 2000,

2. order the Commission to apply a weighting for the United Kingdom with retroactive effect to 24 September 2000,

3. order the Commission to pay damages provisionally assessed on an equitable bases at EUR 15 000 and to pay interest of 7 % on the balance of the pension from 24 September 2000 until 1 April 2001.

Pleas and main arguments

The Court of First Instance erred in considering that the documents produced provided sufficient evidence of the applicant's intention to establish his residence in London only from 1 January 2001. The Court of First Instance also made an error of law in considering that the fact that the applicant was

deprived of the benefit of the inter-service meeting provided for in the regulations had not adversely affected him. In the absence of that meeting, the applicant was unable either to present his case in an appropriate manner before a group of representatives of the Commission or to know what probative documents the Commission considered to be lacking.

Reference for a preliminary ruling by the Court of Appeal (England & Wales) (Civil Division) by order of that court dated 25 July 2003, in the case of Société de produits Nestlé SA against Mars UK Ltd

(Case C-353/03)

(2003/C 251/11)

Reference has been made to the Court of Justice of the European Communities by an order of the Court of Appeal (England & Wales) (Civil Division) dated 25 July 2003, which was received at the Court Registry on 18 August 2003, for a preliminary ruling in the case of Société de produits Nestlé SA against Mars UK Ltd on the following question:

Whether the distinctive character of a mark referred to in Article 3(3) of Council Directive 89/104/EEC [1] and Article 7(3) of Council Regulation 40/94 [2] may be acquired following or in consequence of the use of that mark as part of or in conjunction with another mark?

---

[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 040, 11.02.1989, p. 1-7.

[2] Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark OJ L 011, 14.01.1994, p. 1-36.

Reference for a preliminary ruling by the High Court of Justice (England & Wales), Chancery Division, by order of that court dated 28 July 2003, in the case of Optigen Ltd against Commissioners of Customs and Excise

(Case C-354/03)

(2003/C 251/12)

Reference has been made to the Court of Justice of the European Communities by an order of the High Court of Justice (England & Wales), Chancery Division, dated 28 July 2003, which was received at the Court Registry on 18 August 2003, for a preliminary ruling in the case of Optigen Ltd against Commissioners of Customs and Excise on the following questions:

A. Under the common system of VAT, and in the light of Council Directives 67/227/EEC [1] and 77/388/EEC [2], is the entitlement of a trader to credit for a payment in respect of VAT under a transaction to be judged by reference to:

(1) only the particular transaction to which the trader was a party including the trader's purposes in entering into it, or

(2) the totality of transactions, including subsequent transactions, making up a circular chain of supply of which the particular transaction forms part including the purposes of other participants in the chain of which the trader has no knowledge and/or means of knowledge, and/or

(3) the fraudulent acts and intention, whether arising prior or subsequent to the particular transaction, of other participants in the circular chain of whose involvement the trader is unaware and of whose acts and intentions the trader has no knowledge and/or means of knowledge, or

(4) some other, and if so what, criteria?

B. Does the exclusion from the VAT regime of transactions entered into by an innocent party, but which form links in a carousel fraud by others, infringe the general principles of proportionality, equal treatment or legal certainty?

---

[1] First Council Directive 67/227/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes OJ P 071, 14.04.1967, p. 1301-1303.

[2] Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of laws of the Member States relating to turnover taxes — Common system of value added tax: uniform bassis of assessment OJ L 145, 13.06.1977, p. 1-40.

Reference for a preliminary ruling by the High Court of Justice (England & Wales), Chancery Division, by order of that court dated 28 July 2003, in the case of Fulcrum Electronics Ltd (in Liquidation) against Commissioners of Customs and Excise

(Case C-355/03)

(2003/C 251/13)

Reference has been made to the Court of Justice of the European Communities by an order of the High Court of Justice (England & Wales), Chancery Division, dated 28 July 2003, which was received at the Court Registry on 18 August 2003, for a preliminary ruling in the case of Fulcrum Electronics Ltd (in Liquidation) against Commissioners of Customs and Excise on the questions which are identical to those in Case C-354/03 [1].

---

[1] See page 6 of this Official Journal.

Action brought on 22 August 2003 by the Commission of the European Communities against the Hellenic Republic

(Case C-364/03)

(2003/C 251/14)

An action against the Hellenic Republic was brought before the Court of Justice of the European Communities on 22 August 2003 by the Commission of the European Communities, represented by G. Valero Jordana and M. Konstantinidis, of its Legal Service.

The Commission claims that the Court should:

— declare that, by failing to determine policies and strategies for the gradual adaptation of the steam-turbine and gas-turbine units of the DEI (Dimosia Epikhirisi Ilektrismou; State Electricity Undertaking) power station at Linoperamata, Crete, to the best available technology, the Hellenic Republic has failed to fulfil its obligations under Article 13 of Council Directive 84/360/EEC [1] of 28 June 1984 on the combating of air pollution from industrial plants;

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

The abovementioned DEI power station unquestionably falls within the category of industrial plants listed in Annex I to Directive 84/360 and is an 'existing plant' within the meaning of Article 2(3) of that directive. Therefore, the Hellenic Republic is obliged, under Article 13 of the directive, to implement a policy and strategy including appropriate measures for the adaptation of that plant to the best available technology. In accordance with Article 16 of the directive, that obligation has existed since 30 June 1987, but the Hellenic Republic has not yet determined appropriate policies and strategies.

---

[1] OJ L 188, 16.7.1984, p. 20.

Action brought on 27 August 2003 by the Hellenic Republic against the Commission of the European Communities

(Case C-370/03)

(2003/C 251/15)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 27 August 2003 by the Hellenic Republic, represented by G. Kanellopoulos, a Member of the State Legal Service, with an address for service in Luxembourg at the Greek Embassy, 27 rue Marie-Adelaïde.

The applicant asks the Court to:

— annul Commission Decision 2003/481/EC in so far as concerns the particular chapter concerning the charging to the budget of the Member State rather than to the EAGGF Guarantee Section the sum not recoverable by the Greek authorities of DR 14 272 278 (EUR 41 884,90);

— order that the financial consequences of the non-recovery of the above sum should be borne by the Community.

Pleas in law and main arguments

— Infringement of an essential procedural requirement since Greece was not invited by the Commission to a discussion in accordance with Article 8(1) of Regulation No 1663/96;

— Infringement/misapplication of Article 8(2) of Regulation No 729/70 since there was an error as to the facts in so far as misassessment of irregularities or negligence is concerned;

— Infringement of an essential procedural requirement since there is an insufficient statement of reasons (Article 253 EC).

Action brought on 8 September 2003 by the Commission of the European Communities against the Grand Duchy of Luxembourg

(Case C-375/03)

(2003/C 251/16)

An action against the Grand Duchy of Luxembourg was brought before the Court of Justice of the European Communities on 8 September 2003 by the Commission of the European Communities, represented by W. Wils, acting as Agent, with an address for service in Luxembourg.

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

1. declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2000/30/EC of the European Parliament and of the Council of 6 June 2000 on the technical roadside inspection of the roadworthiness of commercial vehicles circulating in the Community [1] and, in any event, by failing to communicate them to the Commission, Luxembourg has failed to fulfil its obligations under that directive;

2. order Luxembourg to pay the costs.

Pleas in law and main arguments

The period prescribed for implementing the directive expired on 10 August 2002.

[1] OJ L 203 of 10.08.2000, p. 1.

Appeal brought on 10 September 2003 by Rafael Pérez Escolar against the order delivered on 25 June 2003 by the Court of First Instance of the European Communities (Fourth Chamber, Extended Composition) in Case T-41/01 between Rafael Pérez Escolar and the Commission of the European Communities

(Case C-379/03 P)

(2003/C 251/17)

An appeal against the order delivered on 25 June 2003 by the Court of First Instance of the European Communities (Fourth Chamber, Extended Composition) in Case T-41/01 between Rafael Pérez Escolar and the Commission of the European Communities was brought before the Court of Justice of the European Communities on 10 September 2003 by Rafael Pérez Escolar represented by Fernando Moreno Pardo.

The appellant claims that the Court should:

— Accept the application, its copies and annexes, allow the present appeal subject to the relevant procedure and set aside the order of the Court of First Instance of 25 June 2003, by declaring admissible the action for failure to act brought before the Court of First Instance, and in the event that it considers it appropriate, hear and decide the case itself by declaring that the Commission, by failing to adopt any decision whatsoever on the complaint submitted by the appellant's representatives on 23 February 1999 on the State aid granted by the Banco Español de Credito S.A. and Banco Santander S.A., had failed to act;

— Alternatively, in the event that the Court does not consider it appropriate to hear and determine the case itself, the Court should refer the case back to the Court of First Instance in order for it to hear and determine the substance of the case;

— In any event, order the Commission of the European Communities to pay all the costs arising from the proceedings both at first instance and on appeal.

Pleas and main arguments

The Court of First Instance erred in law in holding that the applicant did not have *locus standi* to bring an action for failure to act against the Commission for not adopting any decision whatever on the complaint submitted. The Court of First Instance held that the criteria for *locus standi* for the purposes of an action for failure to act under Article 232 EC are the

same as the express formal requirements laid down by Article 230 EC. Moreover, that excessively restrictive interpretation impairs effective judicial protection.

Secondly, the Court of First Instance considered that the requirement of direct and individual concern amounts to being a requirement that a person should be a 'party concerned' within the meaning of Article 88(2) EC; it also took the view that waiver of the share warrant required by the State aid package is not sufficient to result in the applicant's being directly and individually concerned, and wrongly held that the applicant is trying to obtain compensation for the damage suffered during the Commission's procedure investigating whether the measure complied with Community law.

Action brought on 15 September 2003 by the Commission of the European Communities against the Kingdom of Belgium

(Case C-389/03)

(2003/C 251/18)

An action against the Kingdom of Belgium was brought before the Court of Justice of the European Communities on 15 September 2003 by the Commission of the European Communities, represented by A. Bordes, acting as Agent, with an address for service in Luxembourg.

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

1. declare that, by not adopting the laws, regulations and administrative provisions necessary to comply with Council Directive 1999/74/EC of 19 July 1999 laying down minimum standards for the protection of laying hens [1], the Kingdom of Belgium has failed to fulfil its obligations under that directive;

2. order the Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

The time-limit for transposition of the directive expired on 1 January 2002.

---

[1] OJ 1999 L 203, p. 53.

COURT OF FIRST INSTANCE

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 5 August 2003

in Joined Cases T-116/01 and T-118/01: P & O European Ferries (Vizcaya), SA and Diputación Foral de Vizcaya v Commission of the European Communities [1]

(State aid — Actions for annulment — Decision terminating a review procedure initiated under Article 88(2) EC — Concept of State aid — Purchase of services by the State at the market price — Aid having a social character granted without discrimination related to the origin of the products concerned — Failure to order a Member State to produce the necessary information — Obligation to refund aid — Legitimate expectations of recipients — Statement of reasons)

(2003/C 251/19)

(Language of the case: Spanish and English)

In Joined Cases T-116/01 and T-118/01, P&O European Ferries (Vizcaya) SA, formerly Ferries Golfo de Vizcaya SA, established in Bilbao (Spain), represented by Sir Jeremy Lever QC, D. Beard, barrister, J. Ellison, solicitor, and J. Folguera Crespo, lawyer, v Commission of the European Communities (Agent: J. Flett): Application for annulment of Commission Decision 2001/247/EC of 29 November 2000 on the aid scheme implemented by Spain in favour of the shipping company Ferries Golfo de Vizcaya (OJ 2001 L 89, p. 28), the Court of First Instance (First Chamber, Extended Composition), composed of: B. Vesterdorf, President, K. Lenaerts, J. Azizi, M. Jaeger and H. Legal, Judges; J. Palacio González, Principal Administrator, for the Registrar, has given a judgment on 5 August 2003, in which it:

1. *Dismisses the actions;*

2. *Orders the applicant, in each case, to bear its own costs and those incurred by the Commission;*

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

[1] OJ C 212 of 28.07.2001 and C 227 of 11.08.2001.

ORDER OF THE COURT OF FIRST INSTANCE

of 9 July 2003

in Case T-216/01: Reisebank AG v Commission of the European Communities [1]

(Action for annulment — Application for access to documents — Decision of the Hearing Officer — Admissibility)

(2003/C 251/20)

(Language of the case: German)

In Case T-216/01: Reisebank AG, established in Frankfurt am Main (Germany), represented by M. Klusmann and F. Wiemer, lawyers, against the Commission of the European Communities (Agent: S. Rating) — application for annulment of the Hearing Officer's decision of 14 August 2001 refusing to allow the applicant access to certain documents concerning the closure of the proceeding in Case COMP/E-1/37.919 — bank fees for currency exchange in the Euro zone, initiated against other banks — the Court of First Instance (Fifth Chamber), composed of R. García-Valdecasas, President, P. Lindh and J. D. Cooke, Judges; H. Jung, Registrar, has made an order on 9 July 2003, in which it:

1. *Dismisses the action as inadmissible.*

2. *Orders the applicant to bear its own and the defendant's costs, including the costs of the interlocutory proceedings in Case T-216/01 R.*

[1] OJ C 331 of 24.11.01.

ORDER OF THE COURT OF FIRST INSTANCE

of 9 July 2003

in Case T-219/01: Commerzbank AG v Commission of the European Communities [1]

(Action for annulment — Application for access to documents — Decision of the Hearing Officer — Admissibility)

(2003/C 251/21)

(Language of the case: German)

In Case T-219/01: Commerzbank AG, established in Frankfurt am Main (Germany), represented by H. Satzki and B. Maassen, lawyers, against the Commission of the European Communities (Agent: S. Rating) — application for annulment of the Hearing Officer's decision of 17 August 2001 refusing to allow the applicant access to certain documents concerning the closure of the proceeding in Case COMP/E-1/37.919 — bank fees for currency exchange in the Euro zone, initiated against other banks — the Court of First Instance (Fifth Chamber), composed of R. García-Valdecasas, President, P. Lindh and J. D. Cooke, Judges; H. Jung, Registrar, has made an order on 9 July 2003, in which it:

1. *Dismisses the action as inadmissible.*

2. *Orders the applicant to bear its own and the defendant's costs, including the costs of the interlocutory proceedings in Case T-219/01 R.*

[1] OJ C 369 of 22.12.01.

ORDER OF THE COURT OF FIRST INSTANCE (FIFTH CHAMBER)

of 9 July 2003

in Case T-250/01: Dresdner Bank AG v Commission of the European Communities [1]

(Action for annulment — Application for access to documents — Decision of the Hearing Officer — Admissibility)

(2003/C 251/22)

(Language of the case: German)

In Case T-250/01: Dresdner Bank AG, established in Frankfurt am Main (Germany), represented by W. Bosch and M. Hirsch, lawyers, against the Commission of the European Communities (Agent: S. Rating) — application for annulment of the Hearing Officer's decision of 16 August 2001 refusing to allow the applicant access to certain documents concerning the closure of the proceeding in Case COMP/E-1/37.919 — bank fees for currency exchange in the Euro zone, initiated against other banks — the Court of First Instance (Fifth Chamber), composed of R. García-Valdecasas, President, P. Lindh and J. D. Cooke, Judges; H. Jung, Registrar, has made an order on 9 July 2003, in which it:

1. *Dismisses the action as inadmissible.*

2. *Orders the applicant to bear its own and the defendant's costs.*

[1] OJ C 3 of 5.1.02.

ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE

of 5 August 2003

in Case T-158/03 R: Industria Químicas del Vallés, SA v Commission of the European Communities

(Interlocutory proceedings — Application to suspend application — Prima facie case — Urgency — Weighing of interests)

(2003/C 251/23)

(Language of the case: Spanish)

In Case T-158/03 R: Industria Químicas del Vallés, SA, established in Barcelona (Spain), represented by C. Fernández Vicién, P. González-Espejo and J. Sabater Marotias, lawyers, against Commission of the European Communities (Agents: B. Doherty and S. Pardo Quintillán) — application to suspend application of Commission Decision 2003/308/EC of 2 May 2003 concerning the non-inclusion of metalaxyl in Annex I to Council Directive 91/414/EEC and the withdrawal of authorisations granted to plant-protection products containing this active substance (OJ 2003 L 113, p. 8), the President of the Court made an order on 5 August 2003, the operative part of which is as follows:

1. *The interlocutory application is dismissed;*

2. *The costs are reserved.*

Action brought on 25 July 2003 by the 'CB' Bank Cards Group against the Commission of the European Communities

(Case T-266/03)

(2003/C 251/24)

(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 25 July 2003 by the 'CB' Bank Cards Group, whose registered office is in Paris, represented by Alain Georges and Javier Ruiz Calzado, lawyers.

The applicant claims that the Court should:

— annul the Commission's Decision C(2003) 1524/9 of 7 May 2003, ordering the CB Bank Cards Group and its subsidiaries to submit to an investigation under Article 14(3) of Council Regulation No 17 [1];

— order the removal from the file of all documents seized and other evidence brought to the knowledge of the Commission during the investigation, and their return to the Group;

— order the Commission to pay the costs incurred by the Group in connection with the present action for annulment.

Pleas in law and main arguments

In support of its action, the applicant pleads, first, infringement of the duty to state reasons for the contested decision. As the Commission failed to state the presumptions it wished to verify, the applicant found itself unable to grasp the scope of its duty of cooperation while at the same time preserving its defence rights. It was also unable to discover whether the investigation ordered concerned certain measures already notified to the Commission or other practices. The applicant also makes a second plea, alleging infringement of the principle of proportionality. It first argues that the infringement of the duty to state reasons, alleged in its first plea, has prevented either the competent national authorities or the Court of First Instance itself from reviewing the proportionality of the investigation ordered. In the alternative, it argues that recourse to an investigation under Article 14(3) is disproportionate, since the Commission's investigation of the notification by the Group was still in progress and there has been a long and constant tradition of cooperation by the Group with the Commission's services.

[1] First Regulation implementing Articles 85 and 86 of the Treaty (OJ, English Special Edition, 1959-1962, p. 87).

Action brought on 30 July 2003 by Socratec — Satellite Navigation Consulting, Research & Technology-GmbH against the Commission of the European Communities

(Case T-269/03)

(2003/C 251/25)

(Language of the case: German)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 30 July 2003 by Socratec — Satellite Navigation Consulting, Research & Technology-GmbH, Regensburg (Germany), represented by M. Adolf and M. Lüken, lawyers.

The applicant claims that the Court should:

— annul the Commission's Decision of 30 April 2003 (Case COMP/M.2903);

— in the alternative, annul the Commission's Decision of 30 April 2003 (Case COMP/M.2903) in so far as the decision allows the participating undertakings DaimlerChrysler Services AG, Deutsche Telekom AG and Cofiroute SA to provide telematic services by means of the toll system commissioned by the Federal Republic of Germany;

— in the further alternative, order the Commission to require DaimlerChrysler Services AG, Deutsche Telekom AG and Cofiroute SA to postpone completion of the notified joint venture Toll Collect GmbH until the condi-

tions in Article 2 of the Commission's Decision COMP/M.2903 have been met;

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

Pleas and main arguments

The applicant is a German undertaking which is active, in particular, in the area of telematic services for commercial vehicles. It is challenging the Commission's decision of 30 April 2003, by which the Commission found the acquisition of joint control over the newly formed joint venture, Toll Collect GmbH, by DaimlerChrysler AG, Deutsche Telekom AG and Compagnie Financière et Industrielle des Autoroutes SA (Cofiroute) compatible with the common market and with the EEA Agreement.

The applicant submits that the Commission approved the notified concentration following, above all, its acceptance of the commitments proposed by DaimlerChrysler Services AG and Deutsche Telekom AG and that in doing so it wrongly assessed the effects of the concentration on the market for telematic services even in the light of the commitments. Furthermore, the Commission wrongly accepted that the commitments were adequate to solve and wholly eliminate the competition problem.

The applicant also submits that the Commission's definition of the relevant geographic market was wrong and that its definition of the relevant product market was incomplete.

Finally, the applicant claims that the Commission infringed its rights of defence so far as the proposed commitments are concerned.

Action brought on 4 August 2003 by María Dolores Fernández Gómez against Commission of the European Communities

(Case T-272/03)

(2003/C 251/26)

(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 4 August 2003 by María Dolores Fernández Gómez, residing in Brussels, represented by Juan Ramón Iturriagagoitia and Karine Delvolvé, lawyers.

The applicant claims that the Court should:

— annul the decision of the appointing authority of 12 May 2003 rejecting the applicant's request that the employment contract be renewed;

— in the alternative, annul the reference to the Rule against Overlapping contained in administrative notice of 14 November 1996 entitled New Policy under Article 2 (a) of the CEOS;

— in the alternative, order the defendant to make good the damage suffered as a result of the unjustified refusal to extend the applicant's contract of employment amounting, subject to all necessary reservations, to EUR 101 328,60, together with default interest;

— order the defendant to pay all the costs.

Pleas in law and main arguments

The applicant worked for the Commission as a national expert on secondment from 1 December 1997 to 30 November 2000. She was then engaged as a member of the temporary staff from 1 December 2000 to 15 February 2001. Since 16 February 2001 she has been covered by a 3-year contract which may be extended by a further year. That contract expires on 30 November 2003 and the applicant requested that it be extended by a year.

The applicant states that the request was rejected by the Commission on the basis of the consistent practice of taking account of the length of service as national expert on secondment when applying the anti-overlap rule. According to that rule, non-official staff at the Commission must not serve for a total in excess of 6 years.

In support of her application, the applicant alleges, first, infringement of the Conditions of Employment of Other Servants of the European Communities, in particular Article 8 thereof, infringement of other staff rules of the institutions and error of law. According to the applicant, the Commission was not entitled to take into account the period during which she had worked as a national expert on secondment when calculating her total time at the Commission.

The applicant further alleges: breach of the duty to give reasons for decisions, the duty to have regard for the welfare of officials and of the principle of sound administration; manifest error of assessment; breach of the principle of legitimate expectations; and, finally, misuse of powers.

Action brought on 1 August 2003 by Merck Sharp & Dohme Limited and 8 others against the Commission of the European Communities

(Case T-273/03)

(2003/C 251/27)

(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 1 August 2003 by Merck Sharp & Dohme Limited, Hoddesdon, (United Kingdom), Merck Sharp & Dohme B.V., Haalem, (Netherlands), Laboratoires Merck Sharp & Dohme-Chibret, Paris, (France), MSD Sharp & Dohme GmbH, Haar, (Germany), Merck Sharp & Dohme (Italia) SpA., Rome, (Italy), Merck Sharp & Dohme, LDA, Paço de Arcos, (Portugal), Merck Sharp & Dohme de Espana S.A., Madrid, (Spain), Merck Sharp & Dohme Ges.m.b. H., Vienna, (Austria), and VIANEX S.A., Nea Erythrea, (Greece), represented by Mr G. Berrisch and Mr P. Bogaert, lawyers.

The applicants claim that the Court should:

— annul the contested Decision;

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

Pleas in law and main arguments

The applicants are Marketing Authorization Holders of the medicinal product RENITEC and associated trade names. RENITEC contains the active ingredient 'enalapril' and is used in treatment of hypertension and heart failure.

The applicants challenge the Commission Decision C(2003) 1752 of 21 May 2003 concerning the placing on the market of medicinal products for human use containing the substance 'enalapril' by which the Commission harmonised the Summary of Product Characteristics ('SPC') for RENITEC and associated trade names. The contested Decision was adopted as a result of a referral procedure under Article 30 of Directive 2001/83/EC of the European Parliament and the Council [1].

The applicants argue that the initiation of the Article 30 procedure was illegal and that that entails the illegality of the contested Decision. The opening of the procedure was not properly based on public health considerations. Furthermore, the referral and the opening of the procedure covered the entire content of the SPC. This goes beyond the permissible scope of an Article 30 referral, and such a procedure does not allow for the adoption of a harmonised SPC. Moreover, the opening of the procedure lacked proper reasoning.

Furthermore, the applicants submit that the harmonisation of the SPCs in the contested Decision was illegal, since the Commission did not have the power to adopt the Decision. In the alternative, the applicants argue that even if the Commission could, in principle, have harmonised the SPCs for RENITEC, the Commission has failed to identify any public health reasons justifying the harmonisation of the SPCs.

The applicants finally claim that the contested Decision is illegal because binding time-limits of the Directive were not observed and because the Commission and the Committee for Proprietary Medicinal Products failed to provide sufficient reasoning.

---

[1] Directive 2001/83/EC of the European Parliament and of the Council on the Community code relating to medicinal products for human use (OJ L 311 of 28.11.2001, p. 67).

Action brought on 4 August 2003 by Focus Magazin Verlag GmbH against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-275/03)

(2003/C 251/28)

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

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) was brought before the Court of First Instance of the European Communities on 4 August 2003 by Focus Magazin Verlag GmbH, Munich (Germany), represented by U. Gürtler, lawyer. ECI Telecom Ltd., Petach Tikva (Israel) was also a party to the proceedings before the Board of Appeal.

The applicant claims that the Court should:

— annul Decision No 2055/2001 of the Opposition Division of the defendant of 27 August 2001 in opposition proceedings B 288680;

— annul the decision of the Fourth Board of Appeal of the defendant of 30 April 2003 in appeal proceedings R 913/2001-4;

— instruct the defendant to make a determination on the merits in opposition proceedings B 288680, taking account of the legal view of the matter formed by the adjudicating court;

— order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

Applicant for Community trade mark:	ECI Telecom Ltd.
Community trade mark sought:	Word mark 'Hi-FOCuS' in respect of goods and services in Classes 9 and 38 — application No 1 338 029
Proprietor of mark or sign cited in the opposition proceedings:	The applicant
Mark or sign cited in opposition:	The German mark 'FOCUS' (No 394 07 564) in respect of goods and services in Classes 3, 5, 6, 7, 8, 9, 14, 15, 16, 18, 20, 21, 24, 25, 26, 28, 29, 30, 33, 34, 38, 39, 41 and 42
Decision of the Opposition Division:	Rejection of the opposition
Decision of the Board of Appeal:	Dismissal of the applicant's appeal
Pleas in law:	— Submission in the opposition proceedings of adequate evidence of the applicant's earlier right; — Infringement of the applicant's right to a hearing; — Infringement of the applicant's right of due process; — Infringement of Article 42 of Regulation (EC) No 40/94 [1] and Rule 20(3) of Regulation (EC) No 2868/95 [2].

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

[2] Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark (OJ 1995 L 303, p. 1).

Action brought on 5 August 2003 by Galileo International Technology LLC and 13 Others against the Commission of the European Communities

(Case T-279/03)

(2003/C 251/29)

(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 5 August 2003 by Claude Delcorde, Jean-Noël Louis, Julie-Anne Delcorde and Spyros Maniatopoulos, lawyers, represented by Claude Delcorde, Jean-Noël Louis, Julie-Anne Delcorde and Spyros Maniatopoulos, lawyers, with an address for service in Luxembourg.

The applicants claim that the Court should:

— Prohibit the Commission from making any use of the word 'Galileo' in relation to the satellite radio navigation system project and to cease causing directly or indirectly any third party whatsoever to use that word in the context of that project, and prohibit it from having any part whatsoever in the use of that word by any third party;

— order the Commission to pay the applicants, acting jointly and severally, the amount of EUR 50 million as compensation for the material damage suffered;

In the alternative,

— in the event that the Commission continues to use the word 'Galileo', order it to pay the applicants an amount of EUR 240 million;

— order the Commission to pay the applicant, as from the date of filing of the application, default interest calculated by reference to the ECB rate plus 2 per cent;

— order the defendant to pay the costs.

Pleas in law and main arguments

The applicants, who are the proprietors of a number of trade marks and company names containing the word 'Galileo' as an essential component, argue that the adoption of that word by the Commission as the name for the Community project on the European satellite radio navigation system infringes their trade mark rights.

The action is based on Article 288 of the EC Treaty. The applicants claim there is a likelihood of confusion based on the alleged similarity between the signs in question and between the goods and services sold by the applicants and the subject-matter of the Community project. They also claim that the Commission acted unfairly and negligently with regard to their rights, and plead infringement of the principle of proportionality.

Action brought on 8 August 2003 by Van Mannekus & Co. B.V. against the Council of the European Union

(Case T-280/03)

(2003/C 251/30)

(Language of the case: German)

An action against the Council of the European Union was brought before the Court of First Instance of the European Communities on 8 August 2003 by Van Mannekus & Co. B.V., Schiedam (Netherlands), represented by H. Bleier, lawyer.

The applicant claims that the Court should:

— annul Council Regulation (EC) No 986/2003 of 5 June 2003 amending the antidumping measures imposed by Regulation (EC) No 360/2000 on imports of dead-burned (scintered) magnesia originating in the People's Republic of China [1];

— order the Council of the European Union to pay all the costs.

Pleas in law and main arguments

By the contested regulation the Council altered the nature of antidumping duties on imports of dead-burned magnesia originating in the People's Republic of China on the basis of a partial interim review.

The pleas in law and arguments of the applicant are the same as in Case T-278/03 (Van Mannekus v Council).

---

[1] OJ L 143, p. 5.

Action brought on 5 August 2003 by Xanthippi Liakoura against the Council of the European Union

(Case T-281/03)

(2003/C 251/31)

(Language of the case: French)

An action against the Council of the European Union was brought before the Court of Justice of the European Communities on 5 August 2003 by Xanthippi Liakoura, residing in Brussels, represented by Jean A. Martin, lawyer.

The applicant claims that the Court should:

— annul the decision of the Council of 5 May 2003 in so far as it does not:

1. delete, from the definitive report for the period from 1 July 1999 to 30 June 2001, the following words included under general observations: 'She is encouraged to resume tasks of coordination and distribution of work in the Pool which she has performed efficiently in the past';

2. include a reference in that report to her 'capacity for mobility and versatility';

— order the Council to pay the costs.

Pleas in law and main arguments

The applicant takes issue with the appointing authority's refusal to delete one phrase and include another in her staff report for the period from 1 July 1999 to 30 June 2001.

In support of her application, she relies inter alia on the following pleas:

— failure to have regard to the purpose of optional observations in so far as the fact that she was being 'encouraged to resume tasks of coordination and distribution of work in the Pool' is in no way a justification of the assessment of 'very good' under the headings concerned;

— inconsistency in the marks;

— failure to have regard to the observations of the Reports Committee;

— that she was the victim of harassment at her workplace;

— that she had amply and undeniably demonstrated a capacity for mobility and versatility. It would therefore be in keeping with the Staff Regulations for that merit to be specifically referred to in the staff report at issue.

Action brought on 8 August 2003 by Paul Ceuninck against Commission of the European Communities

(Case T-282/03)

(2003/C 251/32)

(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 8 August 2003 by Paul Ceuninck, residing in Hertsberge (Belgium), represented by G. Vandersanden and A. Finchelstein, lawyers.

The applicant claims that the Court should:

— annul the entire selection procedure following notice of vacant post COM/051/02 and annul that notice;

— annul the decision to appoint another person taken by the appointing authority on 13 September 2002 and also, consequently, the decision rejecting the applicant's candidature for that post;

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicant submitted his candidature for a vacant post as counsellor at the European Anti-Fraud Office. The applicant's candidature for the post was rejected.

In support of his action, the application claims that there has been a breach of Article 7(1) of the Staff Regulations, an abuse of power and of procedure, a manifest error of assessment, a breach of essential procedural requirements in drawing up the vacancy notice, a breach of the principle of institutional impartiality and of the principle that an institution must have regard to the welfare of its officials, a breach of Part 1, Point 2 of the Commission's Decision of 21 December 2000, a breach of the rights of the defence, in particular the right to be heard, of the principle of equality of arms, of the principle of equality, of the principle that an institution must have regard to the welfare of its officials, of the principle that officials should have reasonable career prospects and of the principle that a decision must contain a statement of reasons. Last, the applicant claims that the Director General of OLAF was not competent to make a determination in respect of the complaint and to reject it.

Action brought on 5 August 2003 by Rosalinda Aycinena against Commission of the European Communities

(Case T-284/03)

(2003/C 251/33)

(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 5 August 2003 by Rosalinda Aycinena, residing in Brussels, represented by Sébastien Orlandi, Albert Coolen, Jean-Noël Louis and Etienne Marchal, lawyers.

The applicant claims that the Court should:

— annul the decision of 26 March 2003 revising the applicant's classification on recruitment classifying her at the first step of Grade LA 6;

— order the defendant to pay the costs.

Pleas in law and main arguments

In support of her claims, the applicant alleges breach of the obligation to provide reasons for decisions, manifest error of assessment, breach of the principle that officials should have reasonable career prospects (Article 5(3) of the Staff

Regulations) and breach of the principle of equality of treatment and non-discrimination.

Specifically, for the marketing year 2000/2001, the Commission took as its basis for calculating production aid the export prices of tomatoes from the United States, Israel and Turkey. It follows that the defendant did not take into account the export prices of China, although in 1999 it was the world's second largest producer of tomatoes. That basis for calculation significantly reduced production aid.

In support of their claims, the applicants argue that the conditions in the Bergadem case-law are fulfilled in the present case.

The applicants claim that that omission infringes the relevant basic regulation (2), that the regulation confers rights on individuals and that the powers of the Commission when Regulation No 1519/2000 was adopted were extremely limited, consisting merely in identifying the reference countries for the purposes of calculating the amount of the aid.

Finally, the Commission infringed the principles of good administration and legitimate expectations by failing to make the effort needed to learn the Chinese prices and by refusing, once it was notified of those prices, to amend the regulation.

(1) OJ L 174 of 13.7.2000, p. 29.
(2) OJ L 297 of 21.11.1996, p. 29.

Action brought on 18 August 2003 by Agraz SA and 110 others against the Commission of the European Communities

(Case T-285/03)

(2003/C 251/34)

(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 18 August 2003 by the company Agraz SA and 110 other companies, represented by J.-L. da Cruz Vilaça, R. Oliveira, M.-J. Melícias and D. Choussy, laywers.

The applicants claim that the Court should:

— order the defendant to pay each applicant company the balance of the production aid together with interest at a rate fixed by the Court of First Instance as from 12 July 2000 (or, in the alternative, as from 13 July 2000 or, further in the alternative, as from 16 July 2000) and until the actual day of payment;

— order the Commission to pay the costs, including those incurred by the applicants.

Pleas in law and main arguments

The present application seeks recognition of the extra-contractual liability of the Community arising from the damage allegedly suffered by the applicants as the result of the method used to calculate the amount of production aid for processed tomato products for the marketing year 2000/2001 under Commission Regulation (EC) No 1519/2000 of 12 July 2000 setting for the 2000/01 marketing year the minimum price and the amount of production aid for processed tomato products (1).

Action brought on 15 August 2003 by The Gillette Company against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-286/03)

(2003/C 251/35)

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

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) was brought before the Court of First Instance of the European Communities on 15 August 2003 by The Gillette Company, Boston (USA), represented by L. Kouker, lawyer. Wilkinson Sword GmbH, Solingen (Germany), was also a party to the proceedings before the Board of Appeal.

The applicant claims that the Court should:

— annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 17 April 2003 in Case No R 221/2002-4;

— order the defendant Office to pay the costs of the proceedings.

Pleas in law and main arguments

Applicant for Community trade mark:	The applicant
Community trade mark sought:	Figurative mark 'XTREME RIGHT GUARD SPORT' in respect of goods in Class 3 (non-medicated preparations for use in the bath or shower; anti-perspirants; deodorants; all included in Class 3) — application No 1486745
Proprietor of mark or sign cited in the opposition proceedings:	Wilkinson Sword GmbH
Mark or sign cited in opposition:	The German figurative marks 'WILKINSON SWORD EXTREME' (Nos 399 23 715 and 399 45 175) in respect of goods in Class 3 (shaving cosmetics)
Decision of the Opposition Division:	Rejection of the opposition
Decision of the Board of Appeal:	Annulment of the decision of the Opposition Division and refusal of the applicant's application for registration
Pleas in law:	— Infringement of Article 8(1)(b) of Regulation (EC) No 40/94; — No likelihood of confusion; — No similarity between the opposing marks.

Action brought on 13 August 2003 by TeleTech Holdings, Inc. against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case T-288/03)

(2003/C 251/36)

(Language of the case: Spanish)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) was brought before the Court of First Instance of the European Communities on 13 August 2003 by TeleTech Holdings, Inc., established in Denver, Colorado, (USA), represented by E. Armijo Chávarri and A. Castán Pérez-Gómez, lawyers.

The applicant claims that the Court should:

— annul the decision of the First Board of Appeal of OHIM of 28 May 2003 in Case R-412/2000-1 and, subject to the appropriate procedural steps, give judgment upholding either the applicant's principal claim or its alternative claim.

Pleas in law and main arguments

Community trade mark in respect of which declaration of invalidity sought:	Word mark 'TELETECH GLOBAL VENTURES' — Registered trade mark No 134.908, for products in Classes 35 and 38.
Owner of the Community trade mark in respect of which declaration of invalidity sought:	The applicant.
Person applying for a declaration of invalidity:	Teletech International S.A. (owner of the national word mark 'TELETECH INTERNATIONAL'), in respect of certain goods within Class 35 (business management for technical services, customer relations and call centres) and Class 38 (telecommunications services).
Decision of the Cancellation Division:	Application upheld in part
Decision of the Board of Appeal:	Appeal upheld, solely in so far as the contested decision declared the Community mark in issue invalid in respect of 'business management assistance services consisting of facilities management and site selection services'.

Pleas in law:

— Breach of the principles of the coexistence of Community marks and national marks and signs and of the applicant's rights of defence.

— In the alternative, infringement of Article 8(1)(b) of Regulation (EC) No 40/94.

— annul the belated express rejection by the appointing authority on 11 June 2003 of the applicant's administrative appeal;

— order the Commission to pay all the costs.

Pleas in law and main arguments

Action brought on 21 August 2003 by Carla Giulietti against Commission of the European Communities

(Case T-293/03)

(2003/C 251/37)

(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 21 August 2003 by Carla Giulietti, residing in Brussels, represented by P.-P. van Gehuchten and J. Sambon, lawyers, with an address for service in Luxembourg.

The applicant claims that the Court should:

— annul the decision taken by the Selection Board in competition COM/A/6/01 to exclude the applicant on the ground of lack of professional experience, that decision being contained in the letter from DG ADMIN to the applicant dated 16 October 2002;

— annul the confirmative decision of 21 November 2002;

The applicant was a candidate in General Competition COM/A/6/01 to constitute a reserve for the recruitment of administrators in the fields of external relations and management of aid to non-member countries. The notice of competition contained the requirement of professional experience at a level commensurate with that of the duties described, for a minimum period of three years. However, it was stated that officials and other servants of the European Communities were not required to have the abovementioned professional experience if they had served in category B for at least three years and had successfully completed a university course.

Upon submitting her candidature, the applicant submitted as evidence of her professional experience the fact that she had served for more than three years as President of the Management Board of the Foundation 'Eau pour le Sahel'. By the contested decision, the Selection Board excluded her on the ground that she did not have the professional experience required.

In support of her action, the applicant claims that the clause relating to professional experience infringed the principle of equality owing to the fact that such experience is required only for external candidates, while it is not a requirement for candidates who are already officials or other servants of the European Communities. She also alleges infringement of the principle of legality and a manifest error of assessment in the application by the Selection Board of the clause relating to professional experience.

Action brought on 25 August 2003 by Jean-Louis Gibault against the Commission of the European Communities

(Case T-294/03)

(2003/C 251/38)

(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 25 August 2003 by Jean-Louis Gibault, Wattrelos, (France), represented by F. Tuytschaever, lawyer.

The applicant claims that the Court should:

— Annul the open competition COM/A/6/01 in the field of external relations or, in a subsidiary way, annul the decision of the Selection Board to exclude the applicant from the list of successful candidates;

— order the defendant bear the applicant's costs.

Pleas in law and main arguments

In support of his application the applicant invokes an alleged violation by the Appointing Authority of the duty to give reasons, as well as of the principle of equal treatment and more specifically the principle of non-discrimination on the basis of nationality (Article 27 of the Staff Regulations). In the context of this latter plea the applicant claims that there are excessive nationality imbalances between German nationals and nationals of other Member States in the total number of successful candidates. According to the applicant, these imbalances could only have resulted from the fact that the nature and the institutional settings of the examination were such as to favour German nationals and to put nationals of other member States at a disadvantage.

III

(Notices)

(2003/C 251/39)

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

OJ C 239, 4.10.2003

Past publications

OJ C 226, 20.9.2003

OJ C 213, 6.9.2003

OJ C 200, 23.8.2003

OJ C 184, 2.8.2003

OJ C 171, 19.7.2003

OJ C 158, 5.7.2003

These texts are available on:

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

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