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Information and Notices

Notice No | Contents | Page

I *Information*

Court of Justice

COURT OF JUSTICE

2004/C 47/01 Judgment of the Court (Sixth Chamber) of 11 December 2003 in Case C-127/00 (Reference for a preliminary ruling from the Bundesgerichtshof): Hässle AB v Ratiopharm GmbH (Council Regulation (EEC) No 1768/92 — Medicinal products — Supplementary protection certificate — Articles 15 and 19 — Validity of Article 19 — Concept of 'first authorisation to place ... on the market in the Community' — Legal effects of non-compliance with the relevant date referred to in Article 19) 1

2004/C 47/02 Judgment of the Court of 13 January 2004 in Case C-440/00 (Reference for a preliminary ruling from the Bundesarbeitsgericht): Gesamtbetriebsrat der Kühne & Nagel AG & Co. KG v Kühne & Nagel AG & Co. KG (Social policy — Articles 4 and 11 of Directive 94/45/EC — European Works Councils — Informing and consulting employees in Community-scale undertakings — Group of undertakings whose central management is not located in a Member State) 1

2004/C 47/03 Judgment of the Court of 13 January 2004 in Case C-453/00 (Reference for a preliminary ruling from the College van Beroep voor het bedrijfsleven): Kühne & Heitz NV v Productschap voor Pluimvee en Eieren (Poultrymeat — Export refunds — Failure to refer a question for a preliminary ruling — Final administrative decision — Effect of a preliminary ruling given by the Court after that decision — Legal certainty — Primacy of Community law — Principle of cooperation — Article 10 EC) 2

EN

(Continued overleaf)

Notice No	Contents (continued)	Page
2004/C 47/04	Judgment of the Court of 7 January 2004 in Case C-117/01 (Reference for a preliminary ruling from the Court of Appeal (England & Wales) (Civil Division): K.B. v National Health Service Pensions Agency, Secretary of State for Health (Article 141 EC — Directive 75/117/EEC — Equal treatment for men and women — Transsexual partner not entitled to a survivor's pension payable solely to a surviving spouse — Discrimination on grounds of sex)	3
2004/C 47/05	Judgment of the Court (Fifth Chamber) of 11 December 2003 in Case C-215/01 (Reference for a preliminary ruling from the Amtsgericht Augsburg): Bruno Schnitzer (Freedom to provide services — Directive 64/427/EEC — Skilled services in the plastering trade — National rules requiring foreign skilled-trade undertakings to be entered on the trades register — Proportionality)	3
2004/C 47/06	Judgment of the Court (Sixth Chamber) of 15 January 2004 in Case C-230/01 (Reference for a preliminary ruling from the Court of Appeal (England and Wales) (Civil Division): The Intervention Board for Agricultural Produce v Penycoed Farming Partnership (Regulation (EEC) No 3950/92 — Additional levy in the milk and milk products sector — Deliveries by a producer to a purchaser — Payment of levy — Recovery from the producer)	4
2004/C 47/07	Judgment of the Court of 13 January 2004 in Case C-256/01 (Reference for a preliminary ruling from the Court of Appeal (England & Wales) (Civil Division): Debra Allonby v Accrington & Rossendale College, Education Lecturing Services, trading as Protocol Professional, formerly Education Lecturing Services Secretary of State for Education and Employment (Principle of equal pay for men and women — Direct effect — Meaning of worker — Self-employed female lecturer undertaking work presumed to be of equal value to that which is undertaken in the same college by male lecturers who are employees, but under contract with a third company — Self-employed lecturers not eligible for membership of an occupational pension scheme)	4
2004/C 47/08	Judgment of the Court of 11 December 2003 in Case C-322/01 (Reference for a preliminary ruling from the Landgericht Frankfurt am Main): Deutscher Apothekerverband eV v 0800 DocMorris NV, Jacques Waterval (Articles 28 EC and 30 EC — Directives 92/28/EEC and 2000/31/EC — National legislation restricting internet sales of medicinal products for human use by pharmacies established in another Member State — Doctor's prescription required for supply — Prohibition on advertising the sale of medicinal products by mail order)	5
2004/C 47/09	Judgment of the Court (Fifth Chamber) of 11 December 2003 in Case C-364/01 (Reference for a preliminary ruling from the Gerechtshof te 's-Hertogenbosch): The heirs of H. Barbier v Inspecteur van de Belastingdienst Particulieren/Ondernemingen buitenland te Heerlen (Interpretation of Articles 48 and 52 of the EEC Treaty (subsequently Articles 48 and 52 of the EC Treaty, now, after amendment, Articles 39 EC and 43 EC), Article 67 of the EEC Treaty (subsequently Article 67 of the EC Treaty, repealed by the Treaty of Amsterdam), Articles 6 and 8a of the EC Treaty (now, after amendment, Articles 12 EC and 18 EC) — Directives 88/361/EEC and 90/364/EEC — Inheritance tax — Requirement of cross-border economic activity — Prohibition of discrimination on the basis of Member State of residence)	6

Notice No | Contents (continued) | Page

2004/C 47/10 Judgment of the Court (Fifth Chamber) of 7 January 2004 in Case C-500/01: Commission of the European Communities v Kingdom of Spain (Failure of a Member State to fulfil its obligations — Market for telecommunications services — Tariff rebalancing — Access to the local loop — Directive 90/388/EEC — Article 4(c)) 6

2004/C 47/11 Judgment of the Court (Fifth Chamber) of 7 January 2004 in Case C-58/02: Commission of the European Communities v Kingdom of Spain (Failure of a Member State to fulfil obligations — Directive 98/84/EC — Information society — Radio broadcasting — Services based on conditional access — Services consisting of conditional access — Protected services — Legal protection — Devices giving unauthorised access) 7

2004/C 47/12 Judgment of the Court (Fifth Chamber) of 7 January 2004 in Case C-60/02 (Reference for a preliminary ruling from the Landesgericht Eisenstadt): X (Counterfeit and pirated goods — No criminal penalty for the transit of counterfeit goods — Compatibility with Regulation (EC) No 3295/94) 7

2004/C 47/13 Judgment of the Court (Fifth Chamber) of 7 January 2004 in Case C-100/02 (Reference for a preliminary ruling from the Bundesgerichtshof): Gerolsteiner Brunnen GmbH & Co. v Putsch GmbH (Directive 89/104/EEC — Limitation of the effects of a trade mark in relation to indications concerning geographical origin — Use of a geographical indication as a trade mark as an element of use in accordance with 'honest practices in industrial or commercial matters') 8

2004/C 47/14 Judgment of the Court (Fifth Chamber) of 7 January 2004 in Case C-201/02 (Reference for a preliminary ruling from the High Court of Justice (England & Wales), Queen's Bench Division (Administrative Court): The Queen on the application of Delena Wells v Secretary of State for Transport, Local Government and the Regions (Directive 85/337/EEC — Assessment of the effects of certain projects on the environment — National measure granting consent for mining operations without an environmental impact assessment being carried out — Direct effect of directives Triangular situation) 8

2004/C 47/15 Judgment of the Court (Fifth Chamber) of 11 December 2003 in Case C-289/02 (Reference for a preliminary ruling from the Oberlandesgericht München): AMOK Verlags GmbH v A & R Gastronomie GmbH (Freedom to provide services — Lawyer established in one Member State working in conjunction with a lawyer established in another Member State — Legal costs to be reimbursed by the unsuccessful party in a dispute to the successful party Limitation) 9

2004/C 47/16 Judgment of the Court (Third Chamber) of 11 December 2003 in Case C-122/03: Commission of the European Communities v French Republic (Failure of a Member State to fulfil its obligations — Measures having equivalent effect — Importers and distributors of medicinal products — Submission of a certified copy or a document attesting to the holding of a marketing authorisation) 10

(Continued overleaf)

Notice No	Contents (continued)	Page
2004/C 47/17	Order of the Court (Second Chamber) of 16 October 2003 nella causa C-244/02 (Reference for a preliminary ruling from the Korkein hallinto-oikeus): Kauppatalo Hansel Oy v Imatran kaupunki (Article 104(3) — Rules of Procedure — Procurement contracts — Directive 93/36/EEC — Procedures for the award of public supply contracts — Incorrect assessment as regards the criterion for determining the most economically advantageous tender — Procurement procedure discontinued)	10
2004/C 47/18	Case C-44/03: Reference for a preliminary ruling by the Bezirksgericht Dornbirn by order of that court of 16 December 2002 in the case of Helmut Horn against Dr Karl Schelling	11
2004/C 47/19	Case C-184/03: Reference for a preliminary ruling by the Landesgericht für Zivilrechtssachen Wien by order of that court of 15 April 2003 in the case of Helmut Fröschl against Republic of Austria	12
2004/C 47/20	Case C-229/03: Reference for a preliminary ruling by the Landesgericht für Zivilrechtsachen Wien by order of that court of 7 April 2003 in the case of Monika Herbstrith against Republic of Austria	12
2004/C 47/21	Case C-438/03: Reference for a preliminary ruling by the Ufficio del guidice di pace de Bitonto by order of that Court of 6 October 2003 in the case of Antonio Cannito against Fondiaria-Sai Ass.ni.	13
2004/C 47/22	Case C-439/03: Reference for a preliminary ruling by the Ufficio del guidice di pace de Bitonto by order of that Court of 6 October 2003 in the case of Antonio Cannito against Fondiaria-Sai Ass.ni.	13
2004/C 47/23	Case C-465/03: Reference for a preliminary ruling by the Unabhängigen Finanzsenats der Außenstelle Linz by order of that Court of 20 October 2003 in the case of Kretztechnik AG against Finanzamt Linz	14
2004/C 47/24	Case C-491/03: Reference for a preliminary ruling by the Hessischen Verwaltungsgerichtshofes by order of that Court of 1 October 2003 in the case of Volkswirt Weinschänken GmbH against Stadt Frankfurt am Main	14
2004/C 47/25	Case C-502/03: Action brought on 26 November 2003 by the Commission of the European Communities against the Hellenic Republic	15
2004/C 47/26	Case C-506/03: Action brought on 1 December 2003 (fax 26 November 2003) by the Federal Republic of Germany against the Commission of the European Communities	15
2004/C 47/27	Case C-508/03: Action brought on 1 December 2003 by the Commission of the European Communities against the United Kingdom of Great Britain and Northern Ireland	16

EN

Notice No	Contents (continued)	Page

2004/C 47/28	Case C-512/03: Reference for a preliminary ruling by the Gerechthof Herzogenbusch by order of that Court of 4 December 2003 in the case of J.E.J. Blanckaert against Inspecteur van de Belastingdienst/Particulieren/Ondernemingen Buitenland te Heerlen	17
2004/C 47/29	Case C-514/03: Action brought on 8 December 2003 by the Commission of the European Communities against the Kingdom of Spain	18
2004/C 47/30	Case C-517/03: Counterclaim submitted in the defence lodged on 17 July 2001 by the Commission in Case T-85/01 Società IAMA Consulting v Commission of the European Communities, pending before the Court of First Instance and referred to the Court of Justice on 2 December 2003 by order of 25 November 2003, as a matter of jurisdiction	19
2004/C 47/31	Case C-518/03: Action brought on 9 December 2003 by the Commission of the European Communities against the Kingdom of Sweden	19
2004/C 47/32	Case C-522/03: Reference for a preliminary ruling by the Oberlandesgericht München by order of that Court of 24 June 2003 in the case of SA Scania Finance France against Rockinger Spezialfabrik für Anhängerkupplungen GmbH & Co.	20
2004/C 47/33	Case C-535/03: Reference for a preliminary ruling by the High Court of Justice (England & Wales), Queen's Bench Division (Administrative Court) by order of that court dated 10 December 2003, in the case of The Queen on the application of 1) Unitymark Ltd, 2) North Sea Fishermen's Organisation against Department for Environment, Food and Rural Affairs	20
2004/C 47/34	Case C-536/03: Reference for a preliminary ruling by the Supremo Tribunal Administrativo, Portugal, by order of that Court of 26 November 2003 in the case of António Jorge Lda against Fazenda Pública	21
2004/C 47/35	Case C-540/03: Action brought on 22 December 2003 by the European Parliament against the Council of the European Union	21
2004/C 47/36	Case C-544/03: Reference for a preliminary ruling by the Conseil d'État (Belgium) by order of that Court of 8 December 2003 in the case of S.A Mobistar against Commune de Fléron	22
2004/C 47/37	Case C-545/03: Reference for a preliminary ruling by the Conseil d'État (Belgium) by order of that Court of 8 December 2003 in the case of S.A. Belgacom Mobile against Commune de Schaerbeek	22

EN

(Continued overleaf)

Notice No	Contents (continued)	Page
2004/C 47/38	Case C-547/03 P: Appeal brought on 22 December 2003 by Asian Institute of Technology (AIT) against the order made on 15 October 2003 by the Fifth Chamber of the Court of First Instance of the European Communities in Case T-288/02 between Asian Institute of Technology (AIT) and the Commission of the European Communities	23
2004/C 47/39	Case C-548/03: Action brought on 23 December 2003 by the European Parliament against the Council of the European Union	24
2004/C 47/40	Case C-549/03: Action brought on 23 December 2003 by the European Parliament against the Council of the European Union	24
2004/C 47/41	Case C-554/03: Reference for a preliminary ruling by the Ufficio del Giudice di Pace di Gorizia by order of that Court of 27 November 2003 in the case of Azienda Agricola Tomadin Silvano and AGEA	25
2004/C 47/42	Case C-555/03: Reference for a preliminary ruling by the Tribunal du travail de Charleroi, Section de Charleroi, by order of that Court of 15 December 2003 in the case of Magali Warbecq against RYANAIR Ltd, a company incorporated under Irish law	25
2004/C 47/43	Case C-4/04: Action brought on 8 January 2004 by the Commission of the European Communities against the Republic of Austria	25
2004/C 47/44	Case C-5/04: Action brought on 9 January 2004 by the Commission of the European Communities against the Federal Republic of Germany	26
2004/C 47/45	Case C-10/04: Action brought on 13 January 2004 by the Commission of the European Communities against the Republic of Austria	26
2004/C 47/46	Removal from the register of Case C-376/99	26
2004/C 47/47	Removal from the register of Case C-101/03	26
2004/C 47/48	Removal from the register of Case C-126/02	27
2004/C 47/49	Removal from the register of Case C-35/03	27
2004/C 47/50	Removal from the register of Case C-57/03	27
2004/C 47/51	Removal from the register of Case C-80/03	27
2004/C 47/52	Removal from the register of Case C-108/03	27

EN

Notice No	Contents (continued)	Page

2004/C 47/53	Removal from the register of Case C-142/03	27
2004/C 47/54	Removal from the register of Case C-218/03	27
	COURT OF FIRST INSTANCE	
2004/C 47/55	Order of the Court of First Instance of 15 October 2003 in Case T-288/02: Asian Institute of Technology (AIT) v Commission of the European Communities (Action for annulment — Decision to conclude a research contract — Inadmissibility)	28
2004/C 47/56	Case T-394/03: Action brought on 8 December 2003 by Flavia Angeletti against the Commission of the European Communities	28
2004/C 47/57	Case T-396/03: Action brought on 10 December 2003 by Joseph Vanhellemont against the Commission of the European Communities	29
2004/C 47/58	Case T-397/03: Action brought on 10 December 2003 by the Fédération de l'Hospitalisation Privée ('FHP') against the Commission of the European Communities	29
2004/C 47/59	Case T-399/03: Action brought on 13 December 2003 by Arnaldo Lucaccioni against the Commission of the European Communities	30
2004/C 47/60	Case T-404/03: Action brought on 16 December 2003 by A against the Court of Justice of the European Communities	31
2004/C 47/61	Case T-406/03: Action brought on 15 December 2003 by Nicolas Ravailhe against Committee of the Regions of the European Union	31
2004/C 47/62	Case T-408/03: Action brought on 12 December 2003 by the Regione Siciliana against the Commission of the European Communities	32
2004/C 47/63	Case T-414/03: Action brought on 11 December 2003 by the Regione Siciliana against the Commission of the European Communities	32
2004/C 47/64	Case T-415/03: Action brought on 18 December 2003 by Cofradía de Pescadores San Pedro de Bermeo, Vizcaya, and Others against the Council of the European Union	32
2004/C 47/65	Case T-418/03: Action brought on 22 December 2003 by La Mer Technology, Inc. against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)	33

EN

(Continued overleaf)

Notice No	Contents (continued)	Page

2004/C 47/66	Case T-420/03: Action brought on 17 December 2003 by El Corte Inglés against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) .	34
2004/C 47/67	Case T-422/03: Action brought on 23 December 2003 by Enviro Tech Europe, Ltd., and Enviro Tech International Inc. against the Commission of the European Communities	35
2004/C 47/68	Case T-423/03: Action brought on 23 December 2003 by Elisabeth Saskia Smit against Europol	36
2004/C 47/69	Case T-428/03: Action brought on 20 December 2003 by Gerhard Keinhorst against the Commission of the European Communities	36
2004/C 47/70	Case T-430/03: Action brought on 21 December 2003 by Iosif Dascalu against the Commission of the European Communities	37
2004/C 47/71	Case T-431/03: Action brought on 22 December 2003 by Liam O'Bradaigh against the Commission of the European Communities	38
2004/C 47/72	Case T-432/03: Action brought on 22 December 2003 by Jean Dehon against the European Parliament	38
2004/C 47/73	Case T-435/03: Action brought on 24 December 2003 by the Regione Siciliana against the Commission of the European Communities	39
2004/C 47/74	Case T-438/03: Action brought on 26 December 2003 by Kelvin William Stephens against Commission of the European Communities	40

II *Preparatory Acts*

. . . . . .

III *Notices*

2004/C 47/75	Last publication of the Court of Justice in the *Official Journal of the European Union*	
	OJ C 35, 7.2.2004	41

EN

I

(Information)

COURT OF JUSTICE

COURT OF JUSTICE

JUDGMENT OF THE COURT

(Sixth Chamber)

of 11 December 2003

in Case C-127/00 (Reference for a preliminary ruling from the Bundesgerichtshof): Hässle AB v Ratiopharm GmbH [1]

(Council Regulation (EEC) No 1768/92 — Medicinal products — Supplementary protection certificate — Articles 15 and 19 — Validity of Article 19 — Concept of 'first authorisation to place ... on the market in the Community' — Legal effects of non-compliance with the relevant date referred to in Article 19)

(2004/C 47/01)

(Language of the case: German)

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

In Case C-127/00: Reference to the Court under Article 234 EC by the Bundesgerichtshof (Germany) for a preliminary ruling in the proceedings pending before that court between Hässle AB and Ratiopharm GmbH, on the interpretation of Articles 15 and 19 of Council Regulation (EEC) No 1768/92 of 18 June 1992 concerning the creation of a supplementary protection certificate for medicinal products (OJ 1992 L 182, p. 1), the Court (Sixth Chamber), composed of: V. Skouris, acting for the President of the Chamber, C. Gulmann, J.N. Cunha Rodrigues, R. Schintgen and F. Macken (Rapporteur), Judges; C. Stix-Hackl, Advocate General; D. Louterman-Hubeau, Head of Division, for the Registrar, has given a judgment on 11 December 2003, in which it has ruled:

1. *Consideration of the second question referred has disclosed no factor capable of affecting the validity of Article 19 of Council Regulation (EEC) No 1768/92 of 18 June 1992 concerning the creation of a supplementary protection certificate for medicinal products.*

2. *So far as concerns medicinal products for human use, the concept of 'first authorisation to place ... on the market ... in the Community' in Article 19(1) of Regulation No 1768/92 refers solely to the first authorisation required under provisions on medicinal products, within the meaning of Council Directive 65/65/EEC of 26 January 1965 on the approximation of provisions laid down by law, regulation or administrative action relating to proprietary medicinal products, granted in any of the Member States, and does not therefore refer to authorisations required under legislation on pricing of or reimbursement for medicinal products.*

3. *A supplementary protection certificate which, contrary to the requirements of Article 19 of Regulation No 1768/92, has been delivered where the first marketing authorisation in the Community was obtained prior to the relevant date fixed by that provision is invalid pursuant to Article 15 thereof.*

[1] OJ C 163 of 10.6.2002.

JUDGMENT OF THE COURT

of 13 January 2004

in Case C-440/00 (Reference for a preliminary ruling from the Bundesarbeitsgericht): Gesamtbetriebsrat der Kühne & Nagel AG & Co. KG v Kühne & Nagel AG & Co. KG [1]

(Social policy — Articles 4 and 11 of Directive 94/45/EC — European Works Councils — Informing and consulting employees in Community-scale undertakings — Group of undertakings whose central management is not located in a Member State)

(2004/C 47/02)

(Language of the case: German)

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

In Case C-440/00: Reference to the Court under Article 234 EC by the Bundesarbeitsgericht (Germany) for a preliminary

ruling in the proceedings pending before that court between Gesamtbetriebsrat der Kühne & Nagel AG & Co. KG and Kühne & Nagel AG & Co. KG, on the interpretation of Articles 4 and 11 of Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (OJ 1994 L 254, p. 64), the Court, composed of: V. Skouris, President, P. Jann and J.N. Cunha Rodrigues (Presidents of Chambers), A. La Pergola, J.-P. Puissochet, R. Schintgen, F. Macken (Rapporteur), N. Colneric and S. von Bahr, Judges; A. Tizzano, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 13 January 2004, in which it has ruled:

1. *Articles 4(1) and 11(1) of Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees must be interpreted as meaning that:*

   — *where, in a situation such as that at issue before the national court, the central management of a Community-scale group of undertakings is not located in a Member State, central management's responsibility for providing the employees' representatives with the information essential to the opening of negotiations for the establishment of a European Works Council lies with the deemed central management under the second subparagraph of Article 4(2) of the Directive;*

   — *where central management does not, for the purpose of establishing a European Works Council, make certain information available to the deemed central management under the second subparagraph of Article 4(2) of the Directive, the latter, in order to be able to fulfil its obligation to provide information to the employees' representatives, must request the information essential to the opening of negotiations for the establishment of such a council from the other undertakings belonging to the group which are located in the Member States, and has a right to receive that information from them;*

   — *the management of each of the other undertakings belonging to the group which are located in the Member States is under an obligation to supply the deemed central management under the second subparagraph of Article 4(2) of the Directive with the information concerned where it is in possession of the information or is in a position to obtain it;*

   — *the Member States concerned are to ensure that the management of those other undertakings supplies the information to the deemed central management under the second subparagraph of Article 4(2) of the Directive.*

2. *The obligation to provide information deriving from Articles 4(1) and 11(1) of the Directive encompasses information on the average total number of employees and their distribution across the Member States, the establishments of the undertaking and the group undertakings, and on the structure of the undertaking and of the undertakings in the group, as well as the names and addresses of the employee representation which might participate in the setting up of a special negotiating body in accordance with Article 5 of the Directive or in the establishment of a European Works Council, where that information is essential to the opening of negotiations for the establishment of such a council.*

(1) OJ C 45 of 10.2.2001.

JUDGMENT OF THE COURT

of 13 January 2004

in Case C-453/00 (Reference for a preliminary ruling from the College van Beroep voor het bedrijfsleven): Kühne & Heitz NV v Productschap voor Pluimvee en Eieren (1)

(Poultrymeat — Export refunds — Failure to refer a question for a preliminary ruling — Final administrative decision — Effect of a preliminary ruling given by the Court after that decision — Legal certainty — Primacy of Community law — Principle of cooperation — Article 10 EC)

(2004/C 47/03)

(Language of the case: Dutch)

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

In Case C-453/00: Reference to the Court under Article 234 EC by the College van Beroep voor het bedrijfsleven (Netherlands) for a preliminary ruling in the proceedings pending before that court between Kühne & Heitz NV and Productschap voor Pluimvee en Eieren, on the interpretation of Community law and, in particular, the principle of cooperation arising from Article 10 EC, the Court, composed of: V. Skouris, President, P. Jann, C.W.A. Timmermans, C. Gulmann, J.N. Cunha Rodrigues and A. Rosas, Presidents of Chambers, D.A.O. Edward, A. La Pergola, J.-P. Puissochet, R. Schintgen, F. Macken, N. Colneric (Rapporteur) and S. von Bahr, Judges; P. Léger, Advocate General; L. Hewlett, Principal Administrator, for the Registrar, has given a judgment on 13 January 2004, in which it has ruled:

The principle of cooperation arising from Article 10 EC imposes on an administrative body an obligation to review a final administrative decision, where an application for such review is made to it, in order to take account of the interpretation of the relevant provision given in the meantime by the Court where

— *under national law, it has the power to reopen that decision;*

— *the administrative decision in question has become final as a result of a judgment of a national court ruling at final instance;*

— *that judgment is, in the light of a decision given by the Court subsequent to it, based on a misinterpretation of Community law which was adopted without a question being referred to the Court for a preliminary ruling under Article 234(3) EC; and*

— *the person concerned complained to the administrative body immediately after becoming aware of that decision of the Court.*

(1) OJ C 61 of 24.2.2001.

JUDGMENT OF THE COURT

of 7 January 2004

in Case C-117/01 (Reference for a preliminary ruling from the Court of Appeal (England & Wales) (Civil Division): K.B. v National Health Service Pensions Agency, Secretary of State for Health (1)

(Article 141 EC — Directive 75/117/EEC — Equal treatment for men and women — Transsexual partner not entitled to a survivor's pension payable solely to a surviving spouse — Discrimination on grounds of sex)

(2004/C 47/04)

(Language of the case: English)

In Case C-117/01: Reference to the Court under Article 234 EC by the Court of Appeal of England and Wales (Civil Division) for a preliminary ruling in the proceedings pending before that court between K.B. and National Health Service Pensions Agency, Secretary of State for Health, on the interpretation of Article 141 EC and of Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women (OJ 1975 L 45, p. 19), the Court, composed of: V. Skouris, President, C.W.A. Timmermans, J.N. Cunha Rodrigues (Rapporteur) and A. Rosas (Presidents of Chambers), D.A.O. Edward, J.-P. Puissochet, F. Macken, N. Colneric and S. von Bahr, Judges; D. Ruiz-Jarabo Colomer, Advocate General; L. Hewlett, Principal Administrator, for the Registrar, has given a judgment on 7 January 2004, in which it has ruled:

Article 141 EC, in principle, precludes legislation, such as that at issue before the national court, which, in breach of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, prevents a couple such as K.B. and R. from fulfilling the marriage requirement which must be met for one of them to be able to benefit from part of the pay of the other. It is for the national court to determine whether in a case such as that in the main proceedings a person in K.B.'s situation can rely on Article 141 EC in order to gain recognition of her right to nominate her partner as the beneficiary of a survivor's pension.

(1) OJ C 150 of 19.5.2001.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 11 December 2003

in Case C-215/01 (Reference for a preliminary ruling from the Amtsgericht Augsburg): Bruno Schnitzer (1)

(Freedom to provide services — Directive 64/427/EEC — Skilled services in the plastering trade — National rules requiring foreign skilled-trade undertakings to be entered on the trades register — Proportionality)

(2004/C 47/05)

(Language of the case: German)

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

In Case C-215/01: Reference to the Court under Article 234 EC by the Amtsgericht Augsburg (Germany) for a preliminary ruling in the proceedings before that court against Bruno Schnitzer, on the interpretation of Articles 49 EC, 50 EC, 54 EC and 55 EC and Council Directive 64/427/EEC of 7 July 1964 laying down detailed provisions concerning transitional measures in respect of activities of self-employed persons in manufacturing and processing industries falling within ISIC Major Groups 23-40 (Industry and small craft industries) (OJ, English Special Edition 1963-1964, p. 148), the Court (Fifth Chamber), composed of: D.A.O. Edward (Rapporteur), acting for the President of the Fifth Chamber, A. La Pergola and S. von Bahr, Judges; J. Mischo, Advocate General; L. Hewlett, Principal Administrator, for the Registrar, has given a judgment on 11 December 2003, in which it has ruled:

Community law on freedom to provide services precludes a business from being subject to an obligation to be entered on the trades register which delays, complicates or renders more onerous the provision of its services in the host Member State where the conditions prescribed by the directive governing recognition of professional qualifications which is applicable to pursuit of that activity in the host Member State are satisfied.

The mere fact that a business established in one Member State supplies identical or similar services in a repeated or more or less regular manner in a second Member State, without having an infrastructure there enabling it to pursue a professional activity there on a stable and continuous basis and, from the infrastructure, to hold itself out to, amongst others, nationals of the second Member State, cannot be sufficient for it to be regarded as established in the second Member State.

(1) OJ C 212 of 28.7.2001.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 15 January 2004

in Case C-230/01 (Reference for a preliminary ruling from the Court of Appeal (England and Wales) (Civil Division): The Intervention Board for Agricultural Produce v Penycoed Farming Partnership (1)

(Regulation (EEC) No 3950/92 — Additional levy in the milk and milk products sector — Deliveries by a producer to a purchaser — Payment of levy — Recovery from the producer)

(2004/C 47/06)

(Language of the case: English)

In Case C-230/01: Reference to the Court under Article 234 EC by the Court of Appeal (England and Wales) (Civil Division) for a preliminary ruling in the proceedings pending before that court between The Intervention Board for Agricultural Produce and Penycoed Farming Partnership, on the interpretation of Council Regulation (EEC) No 3950/92 of 28 December 1992 establishing an additional levy in the milk and milk products sector (OJ 1992 L 405, p. 1) and Commission Regulation (EEC) No 536/93 of 9 March 1993 laying down detailed rules on the application of the additional levy on milk and milk products (OJ 1993 L 57, p. 12), the Court (Sixth Chamber), composed of: V. Skouris, acting for the President of the Sixth Chamber, J.-P. Puissochet, R. Schintgen, F. Macken and N. Colneric (Rapporteur), Judges; L.A. Geelhoed, Advocate General; L. Hewlett, Principal Administrator, for the Registrar, has given a judgment on 15 January 2004, in which it has ruled:

Articles 1 and 2 of Council Regulation (EEC) No 3950/92 of 28 December 1992 establishing an additional levy in the milk and milk products sector do not authorise the competent body to act directly, in cases other than that of direct sales, against a producer to recover the amount owed by him in respect of the additional levy on milk. However, the Member States' obligation under Article 10 EC to take measures to ensure collection of the levy in the event of the mechanism provided for in Article 2(2) of that regulation being frustrated includes the power to take direct action against the producer with a view to recovering the amount payable where it is established that the producer has not paid it to the purchaser and that the purchaser is not taking due steps to collect it from the producer. On the other hand, non-compliance with the conditions laid down in Article 7 of Commission Regulation (EEC) No 536/93 of 9 March 1993 laying down detailed rules on the application of the additional levy on milk and milk products, and in particular the absence of approval as purchaser, is not in itself relevant.

(1) OJ C 352 of 4.12.1999.

JUDGMENT OF THE COURT

of 13 January 2004

in Case C-256/01 (Reference for a preliminary ruling from the Court of Appeal (England & Wales) (Civil Division): Debra Allonby v Accrington & Rossendale College, Education Lecturing Services, trading as Protocol Professional, formerly Education Lecturing Services Secretary of State for Education and Employment (1)

(Principle of equal pay for men and women — Direct effect — Meaning of worker — Self-employed female lecturer undertaking work presumed to be of equal value to that which is undertaken in the same college by male lecturers who are employees, but under contract with a third company — Self-employed lecturers not eligible for membership of an occupational pension scheme)

(2004/C 47/07)

(Language of the case: English)

In Case C-256/01: Reference to the Court under Article 234 EC by the Court of Appeal (England and Wales) (Civil Division)

for a preliminary ruling in the proceedings pending before that court between Debra Allonby and Accrington & Rossendale College, Education Lecturing Services, trading as Protocol Professional, formerly Education Lecturing Services Secretary of State for Education and Employment, on the interpretation of Article 141 EC, the Court, composed of: V. Skouris, President, P. Jann, C.W.A. Timmermans, C. Gulmann and J.N. Cunha Rodrigues (Presidents of Chambers), A. La Pergola, J.-P. Puissochet, R. Schintgen, F. Macken, N. Colneric (Rapporteur) and S. von Bahr, Judges; L.A. Geelhoed, Advocate General; L. Hewlett, Principal Administrator, for the Registrar, has given a judgment on 13 January 2004, in which it has ruled:

1. *In circumstances such as those of the main proceedings, Article 141(1) EC must be interpreted as meaning that a woman whose contract of employment with an undertaking has not been renewed and who is immediately made available to her previous employer through another undertaking to provide the same services is not entitled to rely, vis-à-vis the intermediary undertaking, on the principle of equal pay, using as a basis for comparison the remuneration received for equal work or work of the same value by a man employed by the woman's previous employer.*

2. *Article 141(1) EC must be interpreted as meaning that a woman in circumstances such as those of the main proceedings is not entitled to rely on the principle of equal pay in order to secure entitlement to membership of an occupational pension scheme for teachers set up by State legislation of which only teachers with a contract of employment may become members, using as a basis for comparison the remuneration, including such a right of membership, received for equal work or work of the same value by a man employed by the woman's previous employer.*

3. *In the absence of any objective justification, the requirement, imposed by State legislation, of being employed under a contract of employment as a precondition for membership of a pension scheme for teachers is not applicable where it is shown that, among the teachers who are workers within the meaning of Article 141(1) EC and fulfil all the other conditions for membership, a much lower percentage of women than of men is able to fulfil that condition. The formal classification of a self-employed person under national law does not change the fact that a person must be classified as a worker within the meaning of that article if his independence is merely notional.*

4. *Article 141(1) EC must be interpreted as meaning that where State legislation is at issue, the applicability of that provision vis-à-vis an undertaking is not subject to the condition that the worker concerned can be compared with a worker of the other sex who is or has been employed by the same employer and who has received higher pay for equal work or work of equal value.*

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(1) OJ C 289 of 13.10.2001.

JUDGMENT OF THE COURT

of 11 December 2003

in Case C-322/01 (Reference for a preliminary ruling from the Landgericht Frankfurt am Main): Deutscher Apothekerverband eV v 0800 DocMorris NV, Jacques Waterval (1)

(Articles 28 EC and 30 EC — Directives 92/28/EEC and 2000/31/EC — National legislation restricting internet sales of medicinal products for human use by pharmacies established in another Member State — Doctor's prescription required for supply — Prohibition on advertising the sale of medicinal products by mail order)

(2004/C 47/08)

(Language of the case: German)

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

In Case C-322/01: Reference to the Court under Article 234 EC by the Landgericht Frankfurt am Main (Germany) for a preliminary ruling in the proceedings pending before that court between Deutscher Apothekerverband eV and 0800 DocMorris NV, Jacques Waterval, on the interpretation of Articles 28 EC and 30 EC and of Article 1(3) and (4) and Articles 2 and 3 of Council Directive 92/28/EEC of 31 March 1992 on the advertising of medicinal products for human use (OJ 1992 L 113, p. 13), in conjunction with Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the internal market ('the Directive on electronic commerce') (OJ 2000 L 178, p. 1), the Court, composed of: V. Skouris, President, P. Jann, C.W.A. Timmermans, C. Gulmann, J.N. Cunha Rodrigues and A. Rosas (Presidents of Chambers), D.A.O. Edward (Rapporteur), A. La Pergola, J.-P. Puissochet, R. Schintgen, F. Macken, N. Colneric and S. von Bahr, Judges; C. Stix-Hackl, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 11 December 2003, in which it has ruled:

1. a) *A national prohibition on the sale by mail order of medicinal products the sale of which is restricted to pharmacies in the Member State concerned, such as the prohibition laid down in Paragraph 43(1) of the Arzneimittelgesetz (Law on medicinal products) in the version of 7 September 1998, is a measure having an effect equivalent to a quantitative restriction for the purposes of Article 28 EC.*

   (b) *Article 30 EC may be relied on to justify a national prohibition on the sale by mail order of medicinal products which may be sold only in pharmacies in the Member State concerned in so far as the prohibition covers medicinal products subject to prescription. However, Article 30 EC cannot be relied on to justify an absolute*

prohibition on the sale by mail order of medicinal products which are not subject to prescription in the Member State concerned.

(c) *Questions 1(a) and 1(b) do not need to be assessed differently where medicinal products are imported into a Member State in which they are authorised, having been previously obtained by a pharmacy in another Member State from a wholesaler in the importing Member State.*

2. *Article 88(1) of Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use precludes a national prohibition on advertising the sale by mail order of medicinal products which may be supplied only in pharmacies in the Member State concerned, such as the prohibition laid down in Paragraph 8(1) of the Heilmittelwerbegesetz (Law on the advertising of medicinal products), in so far as the prohibition covers medicinal products which are not subject to prescription.*

(1) OJ C 348 of 8.12.2001.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 11 December 2003

in Case C-364/01 (Reference for a preliminary ruling from the Gerechtshof te 's-Hertogenbosch): The heirs of H. Barbier v Inspecteur van de Belastingdienst Particulieren/Ondernemingen buitenland te Heerlen (1)

(Interpretation of Articles 48 and 52 of the EEC Treaty (subsequently Articles 48 and 52 of the EC Treaty, now, after amendment, Articles 39 EC and 43 EC), Article 67 of the EEC Treaty (subsequently Article 67 of the EC Treaty, repealed by the Treaty of Amsterdam), Articles 6 and 8a of the EC Treaty (now, after amendment, Articles 12 EC and 18 EC) — Directives 88/361/EEC and 90/364/EEC — Inheritance tax — Requirement of cross-border economic activity — Prohibition of discrimination on the basis of Member State of residence)

(2004/C 47/09)

(Language of the case: Dutch)

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

In Case C-364/01: Reference to the Court under Article 234 EC by the Gerechtshof te 's-Hertogenbosch (Netherlands) for a preliminary ruling in the proceedings pending before that court between the heirs of H. Barbier and Inspecteur van de Belastingdienst Particulieren/Ondernemingen buitenland te Heerlen, on the interpretation of Articles 48 and 52 of the EEC Treaty (subsequently Articles 48 and 52 of the EC Treaty, now, after amendment, Articles 39 EC and 43 EC), Article 67 of the EEC Treaty (subsequently Article 67 of the EC Treaty, repealed by the Treaty of Amsterdam), Articles 6 and 8a of the EC Treaty (now, after amendment, Articles 12 EC and 18 EC) and the provisions of Council Directive 90/364/EEC of 28 June 1990 on the right of residence (OJ 1990 L 180, p. 26) and Council Directive 88/361/EEC of 24 June 1988 for the implementation of Article 67 of the Treaty (OJ 1988 L 178, p. 5), the Court (Fifth Chamber), composed of: P. Jann, acting as the President of the Fifth Chamber, D.A.O. Edward (Rapporteur) and A. La Pergola, Judges; J. Mischo, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 11 December 2003, in which it has ruled:

Community law precludes national legislation concerning the assessment of tax due on the inheritance of immovable property situated in the Member State concerned according to which, in order to assess the property's value, the fact that the person holding legal title was under an unconditional obligation to transfer it to another person who has financial ownership of that property may be taken into account if, at the time of his death, the former resided in that Member State, but may not be taken into account if he resided in another Member State.

(1) OJ C 331 of 24.11.2001.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 7 January 2004

in Case C-500/01: Commission of the European Communities v Kingdom of Spain (1)

(Failure of a Member State to fulfil its obligations — Market for telecommunications services — Tariff rebalancing — Access to the local loop — Directive 90/388/EEC — Article 4(c))

(2004/C 47/10)

(Language of the case: Spanish)

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

In Case C-500/01, Commission of the European Communities (Agent: S. Rating) 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 Article 4(c) of Commission Directive 90/388/EEC of 28 June 1990 on competition in the markets for telecommunications services (OJ 1990 L 192, p. 10) as amended by Commission Directive 96/19/EC of 13 March 1996 (OJ 1996 L 74, p. 13), the Kingdom of Spain has failed to fulfil its obligations under those directives and the EC Treaty, the Court (Fifth Chamber), composed of: P. Jann, acting for the President of the Fifth Chamber, D.A.O. Edward (Rapporteur) and A. La Pergola, Judges; P. Léger, Advocate General; R. Grass, Registrar, has given a judgment on 7 January 2004, in which it:

1. *Declares that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Article 4(c) of Commission Directive 90/388/EEC of 28 June 1990 on competition in the markets for telecommunications services, as amended by Commission Directive 96/19/EC of 13 March 1996, 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 56 of 2.3.2002.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 7 January 2004

in Case C-58/02: Commission of the European Communities v Kingdom of Spain (1)

(Failure of a Member State to fulfil obligations — Directive 98/84/EC — Information society — Radio broadcasting — Services based on conditional access — Services consisting of conditional access — Protected services — Legal protection — Devices giving unauthorised access)

(2004/C 47/11)

(Language of the case: Spanish)

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

In Case C-58/02, Commission of the European Communities (Agents: G. Valero Jordana and M. Shotter v Kingdom of Spain (Agent: S. Ortiz Vaamonde): Application for a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 98/84/EC of the European Parliament and of the Council of 20 November 1998 on the legal protection of services based on, or consisting of, conditional access (OJ 1998 L 320, p. 54), or, at the very least, by failing to notify the Commission of the adoption of those measures, the Kingdom of Spain has failed to fulfil its obligations under that directive, the Court (Fifth Chamber), composed of: P. Jann, acting for the President of the Fifth Chamber, D.A.O. Edward (Rapporteur) and S. von Bahr, Judges; L.A. Geelhoed, Advocate General; R. Grass, Registrar, has given a judgment on 7 January 2004, in which it:

1. *Declares that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 98/84/EC of the European Parliament and of the Council of 20 November 1998 on the legal protection of services based on, or consisting of, conditional access, 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 109 of 4.5.2002.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 7 January 2004

in Case C-60/02 (Reference for a preliminary ruling from the Landesgericht Eisenstadt): X (1)

(Counterfeit and pirated goods — No criminal penalty for the transit of counterfeit goods — Compatibility with Regulation (EC) No 3295/94)

(2004/C 47/12)

(Language of the case: German)

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

In Case C-60/02: Reference to the Court under Article 234 EC by the Landesgericht Eisenstadt (Austria) for a preliminary ruling in the criminal proceedings before that court against X, on the interpretation of Council Regulation (EC) No 3295/94 of 22 December 1994 laying down measures concerning the entry into the Community and the export and re-export from the Community of goods infringing certain intellectual property rights (OJ 1994 L 341, p. 8), as amended by Council

Regulation (EC) No 241/1999 of 25 January 1999 (OJ 1999 L 27, p. 1), the Court (Fifth Chamber), composed of: D.A.O. Edward (Rapporteur), acting for the President of the Fifth Chamber, A. La Pergola and P. Jann, Judges; D. Ruiz-Jarabo Colomer, Advocate General; R. Grass, Registrar, has given a judgment on 7 January 2004, in which it has ruled:

1. *Articles 2 and 11 of Council Regulation (EC) No 3295/94 of 22 December 1994 laying down measures concerning the entry into the Community and the export and re-export from the Community of goods infringing certain intellectual property rights, as amended by Council Regulation (EC) No 241/1999 of 25 January 1999, are applicable to situations in which goods in transit between two countries not belonging to the European Community are temporarily detained in a Member State by the customs authorities of that State.*

2. *The duty to interpret national law so as to be compatible with Community law, in the light of its wording and purpose, in order to attain the aim pursued by the latter, cannot, of itself and independently of a law adopted by a Member State, have the effect of determining or aggravating the liability in criminal law of an entity which has failed to meet the requirements of Regulation No 3295/94.*

(1) OJ C 131 of 1.6.2002.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 7 January 2004

in Case C-100/02 (Reference for a preliminary ruling from the Bundesgerichtshof): Gerolsteiner Brunnen GmbH & Co. v Putsch GmbH (1)

(Directive 89/104/EEC — Limitation of the effects of a trade mark in relation to indications concerning geographical origin — Use of a geographical indication as a trade mark as an element of use in accordance with 'honest practices in industrial or commercial matters')

(2004/C 47/13)

(Language of the case: German)

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

In Case C-100/02: Reference to the Court under Article 234 EC by the Bundesgerichtshof (Germany) for a preliminary ruling in the proceedings pending before that court between Gerolsteiner Brunnen GmbH & Co. and Putsch GmbH, on the interpretation of Article 6(1)(b) 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 (Fifth Chamber), composed of: P. Jann, acting for the President of the Fifth Chamber, C.W.A. Timmermans and D.A.O. Edward (Rapporteur), Judges; C. Stix-Hackl, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 7 January 2004, in which it has ruled:

Article 6(1)(b) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks is to be interpreted as meaning that, where there exists a likelihood of aural confusion between a word mark registered in one Member State and an indication, in the course of trade, of the geographical origin of a product originating in another Member State, the proprietor of the trade mark may, pursuant to Article 5 of Directive 89/104, prevent the use of the indication of geographical origin only if that use is not in accordance with honest practices in industrial or commercial matters. It is for the national court to carry out an overall assessment of all the circumstances of the particular case in that regard.

(1) OJ C 144 of 15.6.2002.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 7 January 2004

in Case C-201/02 (Reference for a preliminary ruling from the High Court of Justice (England & Wales), Queen's Bench Division (Administrative Court): The Queen on the application of Delena Wells v Secretary of State for Transport, Local Government and the Regions (1)

(Directive 85/337/EEC — Assessment of the effects of certain projects on the environment — National measure granting consent for mining operations without an environmental impact assessment being carried out — Direct effect of directives Triangular situation)

(2004/C 47/14)

(Language of the case: English)

In Case C-201/02: Reference to the Court under Article 234 EC by the High Court of Justice of England and Wales, Queen's

Bench Division (Administrative Court), for a preliminary ruling in the proceedings pending before that court between The Queen on the application of Delena Wells and Secretary of State for Transport, Local Government and the Regions, on the interpretation of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, the Court (Fifth Chamber), composed of: P. Jann (Rapporteur), acting for the President of the Fifth Chamber, D.A.O. Edward and A. La Pergola, Judges; P. Léger, Advocate General; L. Hewlett, Principal Administrator, for the Registrar, has given a judgment on 7 January 2004, in which it has ruled:

1. *Article 2(1) of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, read in conjunction with Article 4(2) thereof, is to be interpreted as meaning that, in the context of applying provisions such as section 22 of the Planning and Compensation Act 1991 and Schedule 2 to that Act, the decisions adopted by the competent authorities, whose effect is to permit the resumption of mining operations, comprise, as a whole, a 'development consent' within the meaning of Article 1(2) of that directive, so that the competent authorities are obliged, where appropriate, to carry out an assessment of the environmental effects of such operations.*

   In a consent procedure comprising several stages, that assessment must, in principle, be carried out as soon as it is possible to identify and assess all the effects which the project may have on the environment.

2. *In circumstances such as those of the main proceedings, an individual may, where appropriate, rely on Article 2(1) of Directive 85/337, read in conjunction with Articles 1(2) and 4(2) thereof.*

3. *Under Article 10 EC the competent authorities are obliged to take, within the sphere of their competence, all general or particular measures for remedying the failure to carry out an assessment of the environmental effects of a project as provided for in Article 2(1) of Directive 85/337.*

   The detailed procedural rules applicable in that context are a matter for the domestic legal order of each Member State, under the principle of procedural autonomy of the Member States, provided that they are not less favourable than those governing similar domestic situations (principle of equivalence) and that they do not render impossible in practice or excessively difficult the exercise of rights conferred by the Community legal order (principle of effectiveness).

   In that regard, it is for the national court to determine whether it is possible under domestic law for a consent already granted to be revoked or suspended in order to subject the project to an assessment of its environmental effects, in accordance with the requirements of Directive 85/337, or alternatively, if the individual so agrees, whether it is possible for the latter to claim compensation for the harm suffered.

(1) OJ C 180 of 27.7.2002.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 11 December 2003

in Case C-289/02 (Reference for a preliminary ruling from the Oberlandesgericht München): AMOK Verlags GmbH v A & R Gastronomie GmbH (1)

(Freedom to provide services — Lawyer established in one Member State working in conjunction with a lawyer established in another Member State — Legal costs to be reimbursed by the unsuccessful party in a dispute to the successful party Limitation)

(2004/C 47/15)

(Language of the case: German)

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

In Case C-289/02: Reference to the Court under Article 234 EC by the Oberlandesgericht München (Germany) for a preliminary ruling in the proceedings pending before that court between AMOK Verlags GmbH and A & R Gastronomie GmbH, on the interpretation of Articles 12 EC and 49 EC, the Court (Fifth Chamber), composed of: P. Jann (Rapporteur), acting for the President of the Fifth Chamber, A. La Pergola and S. von Bahr, Judges; J. Mischo, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 11 December 2003, in which it has ruled:

1. *Article 49 EC, Article 50 EC and Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services must be interpreted as not precluding a judicial rule of a Member State limiting to the level of the fees which would have resulted from representation by a lawyer established in that State the reimbursement, by an unsuccessful party in a dispute to the successful party, of costs in respect of the services provided by a lawyer established in another Member State.*

2. *Article 49 EC and Directive 77/249 must, however, be construed as precluding a judicial rule of a Member State which provides that the successful party to a dispute, in which that party has been represented by a lawyer established in another Member State, cannot recover from the unsuccessful party, in addition to the fees of that lawyer, the fees of a lawyer practising before the court seised of the dispute who, under the national legislation in question, was required to work in conjunction with the first lawyer.*

(1) OJ C 261 of 26.10.2002.

JUDGMENT OF THE COURT

(Third Chamber)

of 11 December 2003

in Case C-122/03: Commission of the European Communities v French Republic (1)

(Failure of a Member State to fulfil its obligations — Measures having equivalent effect — Importers and distributors of medicinal products — Submission of a certified copy or a document attesting to the holding of a marketing authorisation)

(2004/C 47/16)

(Language of the case: French)

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

In Case C-122/03, Commission of the European Communities (Agents: H. Støvlbæk and B. Stromsky) v French Republic (Agents: G. de Bergues and C. Bergeot-Nunes): Application for a declaration that, by imposing, pursuant to Article R. 5142-15 of the Code de la santé publique, on traders importing or distributing in France medicinal products which are already covered by a marketing authorisation for the French or Community market a requirement that they submit, when first so requested by the monitoring authorities, either a certified copy issued by the Agence française de securité sanitaire des produits de santé of the French marketing authorisation or of the registration of the medicinal product, or a document issued by that Agency attesting that the imported medicinal product has obtained a marketing authorisation issued by the European Community, the French Republic has failed to fulfil its obligations under Article 28 EC, the Court (Third Chamber), composed of: C. Gulmann (Rapporteur), acting for the President of the Third Chamber, J.-P. Puissochet and F. Macken, Judges; L.A. Geelhoed, Advocate General; R. Grass, Registrar, has given a judgment on 11 December 2003, in which it:

1. *Declares that by imposing, pursuant to Article R. 5142-15 of the Code de la santé publique, on traders importing or distributing in France medicinal products which are already covered by a marketing authorisation for the French or Community market a requirement that they submit, when first so requested by the monitoring authorities, either a certified copy issued by the Agence française de securité sanitaire des produits de santé of the French marketing authorisation or of the registration of the medicinal product, or a document issued by that Agency certifying that the imported medicinal product has obtained a marketing authorisation issued by the European Community, the French Republic has failed to fulfil its obligations under Article 28 EC;*

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

(1) OJ C 112 of 10.5.2003.

ORDER OF THE COURT

(Second Chamber)

of 16 October 2003

nella causa C-244/02 (Reference for a preliminary ruling from the Korkein hallinto-oikeus): Kauppatalo Hansel Oy v Imatran kaupunki (1)

(Article 104(3) — Rules of Procedure — Procurement contracts — Directive 93/36/EEC — Procedures for the award of public supply contracts — Incorrect assessment as regards the criterion for determining the most economically advantageous tender — Procurement procedure discontinued)

(2004/C 47/17)

(Language of the case: Finnish)

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

In Case C-244/02: Reference to the Court under Article 234 EC by the Korkein hallinto-oikeus (Finland) for a preliminary ruling in the proceedings pending before that court between Kauppatalo Hansel Oy and Imatran kaupunki, on the interpretation of Council Directive 93/36/EEC of 14 June 1993 coordinating procedures for the award of public supply contracts (OJ 1993 L 199, p. 1), as amended by European Parliament and Council Directive 97/52/EC of 13 October 1997 amending Directives 92/50/EEC, 93/36/EEC and 93/37/EEC concerning the coordination of procedures for the award of public service contracts, public supply contracts and public works contracts respectively (OJ 1997 L 328, p. 1), the Court (Second Chamber), composed of: R. Schintgen, President of the Chamber, V. Skouris (Rapporteur) and N. Colneric, Judges; L.A. Geelhoed, Advocate General; R. Grass, Registrar, has made an order on 16 October 2003, the operative part of which is as follows:

Council Directive 93/36/EEC of 14 June 1993 coordinating procedures for the award of public supply contracts, as amended by Directive 97/52/EC of the European Parliament and the Council of 13 October 1997 amending Directives 92/50/EEC, 93/36/EEC and 93/37/EEC concerning the coordination of procedures for the award of public service contracts, public supply contracts and public works contracts respectively, must be interpreted as meaning that a contracting authority which has commenced a procedure for the award of a contract on the basis of the lowest price may discontinue the procedure, without awarding a contract, when it discovers after examining and comparing the tenders that, because of errors committed by itself in its preliminary assessment, the content of the invitation to tender makes it impossible for it to accept the most economically advantageous tender, provided that, when it adopts such a decision, it complies with the fundamental rules of Community law on public procurement such as the principle of equal treatment.

(1) OJ C 219 of 14.9.2002.

Reference for a preliminary ruling by the Bezirksgericht Dornbirn by order of that court of 16 December 2002 in the case of Helmut Horn against Dr Karl Schelling

(Case C-44/03)

(2004/C 47/18)

Reference has been made to the Court of Justice of the European Communities by order of the Bezirksgericht (District court) Dornbirn of 16 December 2002, received at the Court the Court Registry on 6 February 2003, for a preliminary ruling in the case of Helmut Horn against Dr Karl Schelling on the following questions:

1. Are the provisions of Article 49 et seq. EC and Article 12 EC to be interpreted as precluding, on the basis of the report of the three EU wise men, the EU sanctions and thus as meaning that in the present case one of the defendants' fundamental rights guaranteed under EU law was infringed? Under those sanctions

   (a) official bilateral diplomatic contacts at political level are no longer to be entertained with an Austrian government so composed;

   (b) Austrian candidates are no longer to be supported in selection procedures for international organisations; and

   (c) Austrian ambassadors are no longer to be received at political level (ministerial contacts) but henceforth only at technical level (contacts with officials) and that in bilateral international relations there is no business as usual with Austria?

2. Are Articles 49 and 12 EC to be interpreted as meaning that they do not apply to measures under Article 7 EC and/or analogous bilateral foreign policy measures of individual Member States?

3. Are Articles 49 and 12 EC to be interpreted as meaning that there are other principles in the imposition of sanctions under Article 7 EC for the avoidance of discrimination than for other measures of State action? If appropriate it would be necessary to clarify what formal or substantive preconditions must be observed in that connection.

4. Are the provisions of Article 81 EC to be interpreted as meaning that the prohibitions laid down therein also apply to actions of the Member States themselves or only to undertakings and associations of undertakings? Should the latter be the case then it must be determined whether Articles 49 and 12 EC are to be interpreted as meaning that actions of Member States which fail to observe the principles laid down in Article 81 EC in any event infringe the prohibitions on discrimination laid down in Articles 49 and 12 EC?

5. Are Articles 49 and 12 EC to be interpreted as meaning that demands for a boycott of the economy or parts of the economy of a Member State or measures likely to affect the economy of a Member State in such a way that competitive disadvantages may arise in that Member State are in any event unlawful and not permissible? Which conditions must be satisfied in order that in this respect no infringements of the abovementioned provisions are committed and to what extent are individual measures of individual states in that connection also to be attributed to other states acting jointly?

6. Are the provisions of the EC Treaty, in particular Article 7 EC, to be interpreted as meaning that a foreign policy in regard to the imposition of sanctions is no longer available to the individual EU Member States or, in regard to the imposition of sanctions against individual EU Member States, does the possibility of a bilateral foreign policy on the part of the individual Member States subsist?

7. Are the provisions of the EC Treaty to be interpreted as meaning that the imposition of sanctions without any formal procedure being pending under Article 7 EC and without any examination or in the absence of the substantive preconditions for sanctions under Article 7 EC, even though those sanctions were published in the form of a measure of the European Union (EU Council), constitute an act contrary to Community law or indeed a non-act which is therefore irrelevant and unlawful as a sovereign act?

8. Are the provisions of the EC Treaty founding state liability under the criteria laid down by the Court of Justice where rights directly conferred on EC citizens by the EC Treaty are grossly and culpably infringed to be interpreted as meaning that relevant restrictions on state liability under the national legal order, or also on the basis of decisions of national courts (in particular to the effect that claims for compensation in regard to foreign policy measures are precluded), are in any event unlawful?

Reference for a preliminary ruling by the Landesgericht für Zivilrechtssachen Wien by order of that court of 15 April 2003 in the case of Helmut Fröschl against Republic of Austria

(Case C-184/03)

(2004/C 47/19)

Reference has been made to the Court of Justice of the European Communities by order of the Landesgericht für Zivilrechtssachen Wien (Regional Court for civil cases, Vienna) of 15 April 2003, received at the Court Registry on 5 May 2003, for a preliminary ruling in the case of Helmut Fröschl against Republic of Austria on the following questions:

1. In 1998 was it contrary to then directly applicable Community law, in particular Articles 12, 43 and 49 of the EC Treaty, to interpret Paragraph 373c(3)(a), (b) and (c) of the Gewerbeordnung 1994 (Trade Code, GewO 1994), BGBl No 194, in the version of BGBl No I 63/1997, and the Regulation of the Federal Minister for Economic Affairs on the grant of exemption from the prescribed proof of competence for nationals of Member States of the Agreement on the European Economic Area, BGBl No 775/1993, in such a way that a national photographer is prohibited from exercising his trade because the qualifications set out there for proof of competence have been acquired by him in Austria and not in another State of the EEA?

   If question 1 is answered in the affirmative:

   According to the settled case-law of the Court of Justice (e.g. Joined Cases C-46/93 and C-48/93 [1]; Case C-453/99 [2]), is the payment of the costs which the plaintiff has to incur in domestic proceedings, including his recourse to public law courts, in order to have a law contrary to Community law set aside and for which national law does not provide in the event of irregular legislative measures (Paragraph 1 AHG — 'in enforcement of the Laws ...'), also to be classified as a damages claim?

(1) Brasserie du Pêcheur SA v Bundesrepublik Deutschland and The Queen v Secretary of State for Transport, ex parte: Factortame Ltd and Others [1996] ECR I-1029.
(2) Courage Ltd v Bernard Crehan [2001] ECR I-6297.

Reference for a preliminary ruling by the Landesgericht für Zivilrechtsachen Wien by order of that court of 7 April 2003 in the case of Monika Herbstrith against Republic of Austria

(Case C-229/03)

(2004/C 47/20)

Reference has been made to the Court of Justice of the European Communities by order of the Landesgericht für Zivilrechtsachen Wien (Regional civil court, Vienna) of 7 April 2003, received at the Court Registry on 26 May 2003, for a preliminary ruling in the case of Monika Herbstrith against Republic of Austria on the following questions:

1. Is EU law concerning equal treatment of men and women at work, in particular Directive 76/207/EEC [1], directly applicable, so that, as to amount, a claim for compensation under Paragraph 15(1) of the B-GBG may be obtained to the full extent of the damage occasioned, irrespective of any limitation under Austrian domestic legislation or, in the absence of any such direct applicability of EU law, is there a claim founded on state liability for compensation to the full extent of the damage?

2. In the assessment of claims in respect of the foregoing is the rule concerning the burden of proof in Article 4 of Council Directive 97/80/EC [2] directly applicable and, if so,

   (a) does that apply on the basis that an expert opinion within the meaning of Paragraph 22(1) of the B-GBG is sufficient for the purposes of attestation if it appears conclusively and unreservedly that there is discrimination and it cannot be ruled out that such discrimination arose for gender-related reasons, with the result that in the case giving rise to this reference the opinion of the federal committee on equal treatment of 9 November 1998 satisfies this requirement

(b) does that apply notwithstanding an opinion as mentioned above on the basis that where the plaintiff proves or even where the plaintiff substantiates that in the filling of the post the applicant preferred to the plaintiff was less well-qualified than the plaintiff the rule of evidence under this directive comes into effect

(c) and on the basis that proof to the contrary may only be regarded as conclusive if it leads to the factual finding that the candidate appointed was better suited or that in actual fact a non-gender-related reason was the decisive factor in the appointment of a less well-suited candidate?

(1) OJ 1976 L 39, p. 40.
(2) OJ 1997 L 14, p. 6.

Reference for a preliminary ruling by the Ufficio del guidice di pace de Bitonto by order of that Court of 6 October 2003 in the case of Antonio Cannito against Fondiaria-Sai Ass.ni.

(Case C-438/03)

(2004/C 47/21)

Reference has been made to the Court of Justice of the European Communities by order of the Ufficio del guidice di pace de Bitonto of 6 October 2003, received at the Court Registry on 16 October 2003, for a preliminary ruling in the case of Antonio Cannito against Fondiaria-Sai Ass.ni. on the following questions:

1. Do the facts as found in Judgment No 2199 of the Consiglio di Stato (Council of State) of 23 April 2002 and in Judgment No 6139 of the Tribunale Amministrativo Regionale (Regional Administrative Court) Lazio (Rome) of 5 July 2001, which are deemed to be set out here in full, constitute infringements of Community law, in particular of Articles 81 and 82 EC?

2. Does an infringement of Articles 81 and 82 EC imply an obligation on the part of the person committing it to compensate end users, and all those who demonstrate that they have suffered any injury, for damage suffered?

3. In assessing the amount of damages, in addition to the restitution of sums charged in breach of Community rules, is the national court required (again as a matter of Community law) to award the injured party a sum by way of punitive damages against those persons responsible for the prohibited agreement or abuse of a dominant position?

4. Does Community law also require the payment of damages for non-material loss?

5. As a matter of Community law, is the national court required of its own motion to order the payment of punitive damages or damages for non-material loss?

6. Is the limitation period of one year for bringing an action for damages for breach of Articles 81 and 82 EC under Italian law too short and therefore in conflict with Community law?

7. As a matter of Community law, for the purposes of the limitation period for bringing an action for damages, does time begin to run from the day on which the infringement of Articles 81 and 82 EC was committed or the day on which that infringement came to an end?

8. Does Community law require national courts to disapply national rules in conflict with Community law or rather to interpret them so as to comply with Community law?

Reference for a preliminary ruling by the Ufficio del guidice di pace de Bitonto by order of that Court of 6 October 2003 in the case of Antonio Cannito against Fondiaria-Sai Ass.ni.

(Case C-439/03)

(2004/C 47/22)

Reference has been made to the Court of Justice of the European Communities by order of the Ufficio del guidice di pace de Bitonto of 6 October 2003, received at the Court Registry on 16 October 2003, for a preliminary ruling in the case of Antonio Cannito against Fondiaria-Sai Ass.ni. on the following questions:

1. Do the facts as found in Judgment No 2199 of the Consiglio di Stato (Council of State) of 23 April 2002 and in Judgment No 6139 of the Tribunale Amministrativo Regionale (Regional Administrative Court) Lazio (Rome) of 5 July 2001, which are deemed to be set out here in full, constitute infringements of Community law, in particular of Articles 81 and 82 EC?

2. Does an infringement of Articles 81 and 82 EC imply an obligation on the part of the person committing it to compensate end users, and all those who demonstrate that they have suffered any injury, for damage suffered?

3. In assessing the amount of damages, in addition to the restitution of sums charged in breach of Community rules, is the national court required (again as a matter of Community law) to award the injured party a sum by way of punitive damages against those persons responsible for the prohibited agreement or abuse of a dominant position?

4. Does Community law also require the payment of damages for non-material loss?

5. As a matter of Community law, is the national court required of its own motion to order the payment of punitive damages or damages for non-material loss?

6. Is the limitation period of one year for bringing an action for damages for breach of Articles 81 and 82 EC under Italian law too short and therefore in conflict with Community law?

7. As a matter of Community law, for the purposes of the limitation period for bringing an action for damages, does time begin to run from the day on which the infringement of Articles 81 and 82 EC was committed or the day on which that infringement came to an end?

8. Does Community law require national courts to disapply national rules in conflict with Community law or rather to interpret them so as to comply with Community law?

Reference for a preliminary ruling by the Unabhängigen Finanzsenats der Außenstelle Linz by order of that Court of 20 October 2003 in the case of Kretztechnik AG against Finanzamt Linz

(Case C-465/03)

(2004/C 47/23)

Reference has been made to the Court of Justice of the European Communities by order of the Unabhängigen Finanzsenats der Außenstelle Linz of 20 October 2003, received at the Court Registry on 5 November 2003, for a preliminary ruling in the case of Kretztechnik AG against Finanzamt Linz on the following questions:

1. In becoming listed on a stock market and in issuing shares in that connection to new shareholders in return for the issue price, does a public limited company make a supply for consideration within the meaning of Article 2(1) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment? [1]

2. If the first question is answered in the affirmative: are Article 2(1) and Article 17 of the Sixth Directive to be interpreted as meaning that all services obtained in connection with a listing on the stock market are to be attributed to an exempt supply and that for that reason there is no right to a deduction of input tax?

3. If the first question is answered in the negative: is there a right under Article 17(1) and (2) of the Sixth Directive to deduct input tax on the ground that the services in respect of which a deduction of input tax is claimed (advertising, agent's fees, and legal and technical advice) are used for the purposes of the undertaking's taxable transactions?

[1] OJ L 145, p. 1.

Reference for a preliminary ruling by the Hessischen Verwaltungsgerichtshofes by order of that Court of 1 October 2003 in the case of Volkswirt Weinschänken GmbH against Stadt Frankfurt am Main

(Case C-491/03)

(2004/C 47/24)

Reference has been made to the Court of Justice of the European Communities by order of the Hessischen Verwaltungsgerichtshofes of 1 October 2003, received at the Court Registry on 20 November 2003, for a preliminary ruling in the case of Volkswirt Weinschänken GmbH against Stadt Frankfurt am Main on the following questions:

1. A local beverage duty bye-law defines as the subject-matter of that duty 'the sale of alcoholic beverages for immediate consumption', and as such a sale 'any sale for consumption on the premises'. Is this duty another indirect tax on products subject to excise duty for the purposes of Article 3(1) and (2) of Council Directive 92/12/EEC [1] of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products, or is it a tax on the supply of services relating to products subject to excise duty, within the meaning of the second subparagraph of Article 3(3) of Directive 92/12/EEC?

2. If the answer to the second alternative in question 1. above is in the affirmative:

   Does the proviso 'subject to the same proviso' contained in the second subparagraph of Article 3(3) of Directive 92/12/EEC refer, also on taxation of the supply of services relating to products subject to excise duty as defined by Article 3(1) of Directive 92/12/EEC, only to the condition laid down in the first subparagraph of Article 3(3) of that directive, namely 'provided, however, that those taxes do not give rise to border-crossing formalities in trade between Member States', or in such a case must 'specific purposes' for the tax, as laid down in Article 3(2) of the directive, also exist?

(1) OJ L 76, p. 1.

Action brought on 26 November 2003 by the Commission of the European Communities against the Hellenic Republic

(Case C-502/03)

(2004/C 47/25)

An action against the Hellenic Republic was brought before the Court of Justice of the European Communities on 26 November 2003 by the Commission of the European Communities, represented by M. Konstantinidis, of its Legal Service.

The Commission claims that the Court should:

— declare that, by failing to take all the measures necessary:

  — to ensure that waste is disposed of without endangering human health and without harming the environment,

  — to prohibit the abandonment, disposal and uncontrolled treatment of waste, to ensure that any holder of waste has it handled by a private or public waste collector or by an undertaking which carries out disposal, or disposes of it himself, in accordance with the measures taken under Article 4,

  — to ensure that the establishments or undertakings which carry out disposal operations operate under a permit from the competent authority or under a permit which meets the legal requirements, has

  failed to fulfil its obligations under Articles 4, 8 and 9 of Council Directive 75/442/EEC (1) on waste, as amended by Directive 91/156/EEC. (2)

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

According to the most recent records (December 2002), 1458 unlawful and uncontrolled waste tips are operating which receive waste from 47 % of the country's population.

The Greek authorities informed the Commission that the programme to reduce unlawful and uncontrolled waste disposal sites and their replacement with lawful landfill sites meeting public health requirements will only be completed at the end of 2007.

The Commission considers that, inasmuch as it is allowing the unlawful and uncontrolled sites to operate on its territory, the Hellenic Republic is in breach of its obligations under Articles 4, 8 and 9 of Directive 75/442/EEC on waste, as amended by Directive 91/156/EEC.

(1) OJ L 194 of 25.07.1975, p. 39.
(2) OJ L 78 of 26.3.1991, p. 32.

Action brought on 1 December 2003 (fax 26 November 2003) by the Federal Republic of Germany against the Commission of the European Communities

(Case C-506/03)

(2004/C 47/26)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 1 December 2003 (fax 26 November 2003) by the Federal Republic of Germany, represented by Wolf-Dieter Plessing, Ministerialrat in the Federal Ministry of Finance, and Christoph von Donat, Rechtsanwalt, with an address for service at the Federal Ministry for Finance, Berlin (Germany).

The applicant claims that the Court should:

1. annul the decision of the Commission to set payment of the balance of the Community subsidy for carrying out the NELS Eurofix study (EU/D/99/170), granted under Commission Decision C(1999) 1834 final/5 of 2 July 1999, at EUR 80 450,71 in so far as it declares the expenditure connected with the IPR contract between NODECA NELS CAO and GAUSS Research Foundation (NODECA/2000/040) not eligible for subsidy;

2. order the Commission to pay the costs of the case.

Pleas in law and main arguments

1. As the first ground for its action, the applicant alleges substantive breach of secondary Community law and general principles of law. The decision not to recognise the acquisition of Eurofix as expenditure qualifying for subsidy and to fix the amount of the balance of the aid at a correspondingly lower figure is not only in breach of Council Regulation (EC) No 2236/95 of 18 September 1995 laying down general rules for the granting of Community financial aid in the field of trans-European networks [1] in conjunction with Commission Decision C(1999) 1834 final/5 of 2 July 1999 on the grant of a Community subsidy of up to EUR 0,7 million for study No EU/D/99/170. By its decision the Commission has also clearly erred in its assessment and at the same time has thwarted the applicant's legitimate expectation that Commission legal measures will continue to apply, has infringed the principle of legal certainty and has not acted in accordance with the principle of proper administration.

2. As the second ground for its action, the applicant points to formal breaches of Community law, since no clear basis for the contested decision can be seen, even on an overview of the events, which is capable of justifying the decision. If, by its decision, the Commission intended a change to the eligible expenses underlying the approval, the contested decision would moreover be formally unlawful, because it should not have been taken by way of delegation. The applicant raises this as the third ground for its action.

3. The fourth ground for the action concerns the breach of the principle of cooperation in good faith between the Commission and Member States in accordance with Article 10 EC.

(1) OJ 1995 L 228 p. 1.

Action brought on 1 December 2003 by the Commission of the European Communities against the United Kingdom of Great Britain and Northern Ireland

(Case C-508/03)

(2004/C 47/27)

An action against the United Kingdom of Great Britain and Northern Ireland was brought before the Court of Justice of the European Communities on 1 December 2003 by the Commission of the European Communities, represented by X. Lewis and F. Simonetti, acting as agents, with an address for service in Luxembourg.

The Applicant claims that the Court should:

1) declare that by failing to apply correctly Articles 2(1) and 4(2) of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment [1] in relation to the proposed urban development project at White City as a project listed in Annex II, paragraph 10 (b) of the Directive, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under that Directive;

2) declare that by failing to apply correctly Articles 2(1) and 4(2) of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment in relation to the proposed urban development project at Crystal Palace as a project listed in Annex II, paragraph 10 (b) of the Directive, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under that Directive;

3) declare that by failing to ensure the correct application of Articles 2(1), 4(2), 5(2) and 8 of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment as amended by Directive 97/11/EC [2] when development consent is granted for projects in a multi-stage consent procedure, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under that Directive;

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

Pleas in law and main arguments

The White City Development

The Commission submits that the competent authority could not reasonably have reached the conclusion that an impact assessment was unnecessary when it based such a conclusion principally or solely on the fact that the land in question had been previously developed. That criterion for excluding the need of an impact assessment is an innovation of Government Circular 15/68. Directive 85/337/EEC contains no such test and it is submitted that, by relying on a ground for excluding an impact assessment which is not found in the aforementioned Directive, the United Kingdom has failed to apply Articles 2(1) and 4(2) of that Directive correctly in the case of the proposed urban development project at White City.

The Crystal Palace Development

The Commission maintains that, by not requiring an impact assessment for the Crystal Palace development, the United Kingdom has exceeded its margin of discretion under Directive 85/377/EEC. The Commission submits that the margin of discretion afforded a Member State under Article 4(2) of the Directive is not unlimited. The limits of that discretion are circumscribed by Article 2(1) of the Directive — i.e. an impact assessment is required where a project, by virtue of its size, nature or location, is likely to have significant environmental effects. The Commission submits that, according to those criteria, the project is likely to have such effects.

Multi-stage procedure governing applications for planning permission

The Commission does not question the legality of dividing the planning process into two stages *per se*, but submits that the manner in which planning authorisation is actually divided into two stages in the United Kingdom leads to results which are incompatible with Directive 85/337/EEC.

A large urban development project may escape assessment at the outline planning stage and no impact assessment is possible (under English law) at the second, reserved matters stage. Consequently, a large urban development project which is likely to have significant effects on the environment is not considered as a whole but in separate parts. The practical result is that the likely effects on the environment are not considered in the light of the project as a whole.

Even if an environmental impact assessment is carried out at the outline planning stage, it may be inadequate because it is based on the information provided in the outline planning application which may be insufficient to evaluate the effects of the development as a whole on the environment. Thus, the impact assessment will be carried out on an incomplete basis.

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(1) OJ 1985 L 175, p. 40.
(2) OJ 1997 L 73, p. 5.

Reference for a preliminary ruling by the Gerechthof Herzogenbusch by order of that Court of 4 December 2003 in the case of J.E.J. Blanckaert against Inspecteur van de Belastingdienst/Particulieren/Ondernemingen Buitenland te Heerlen

(Case C-512/03)

(2004/C 47/28)

Reference has been made to the Court of Justice of the European Communities by order of the Gerechthof Herzogenbusch of 4 December 2003, received at the Court Registry on 8 December 2003, for a preliminary ruling in the case of J.E.J. Blanckaert against Inspecteur van de Belastingdienst/Particulieren/Ondernemingen Buitenland te Heerlen on the following questions:

1. Is a foreign taxpayer, who is a resident of a Member State and does not receive any income from employment in the Netherlands, but only from savings and investments, and who is therefore not obliged to pay, and does not pay, any social security contributions to the Netherlands national insurance schemes, entitled under EC law to Netherlands tax credits for national insurance schemes (general old-age insurance, general insurance for dependants and general insurance against special medical expenses) in the calculation of his taxable income from savings and investments, in the case where resident taxpayers are entitled to those tax credits in the calculation of their taxable income from savings and investments because they are regarded as insured and as obliged to pay social security contributions to the Netherlands national insurance schemes, even if they do not receive any income in the Netherlands from employment, but only from savings and investments, and for that reason do not pay any social security contributions in the Netherlands either?

2. In answering the first question, is it relevant that the foreign taxpayer in question earns in excess of or less than 90 % of his family income in the Netherlands? In particular:

— Is the Schumacker test for residents and non-residents applicable only in the case of subjective or person-related tax aspects, such as the right to a personal or family-related tax-free allowance, or does it also apply to non-person-related tax aspects, such as the tax rate?

— When deciding whether to treat a non-resident as a resident, are Member States allowed to apply a quantitative rule (such as the 90 % rule), despite the fact that this does not guarantee that all discrimination will be removed?

3. Is the right of option as referred to in Article 2.5 of the Wet IB 2001 an adequate procedural remedy which ensures that the party concerned may make use of his rights as guaranteed under the EC Treaty and rules out all forms of discrimination?

   If so, is this also an adequate remedy in the present case where the party concerned only receives income from savings and investments, given that the party concerned is unable to benefit from the right of option, as has been considered under 4.3?

Action brought on 8 December 2003 by the Commission of the European Communities against the Kingdom of Spain

(Case C-514/03)

(2004/C 47/29)

An action against the Kingdom of Spain was brought before the Court of Justice of the European Communities on 8 December 2003 by the Commission of the European Communities, represented by Maria Patakia and Luis Escobar, acting as Agents, with an address for service in Luxembourg.

The applicant claims that the Court should:

1. Declare that:

   — by requiring, in the implementing legislation, that private security firms and the members of their staff should possess Spanish nationality;

   — by requiring, in connection with the rules applicable to foreign registrations, that private security firms should:

   (a) be a legal person in every particular case,

   (b) possess a particular amount of share capital, regardless of the fact that those firms are not subject to the same obligations in the State of their establishment;

   (c) lodge security at the Caja General de Depósitos, regardless of the fact that security may have been paid in the Member State of origin,

   (d) have a minimum number of employees;

   — by requiring the employees of a foreign private security firm to obtain a new specific permit in Spain when they have already obtained a comparable permit in the State of that firm's establishment; and by not making occupations in the field of private security subject to the Community rules on the recognition of professional qualifications,

   the Kingdom of Spain has failed to fulfil its obligations under Articles 43 and 49 of the EC Treaty and under Directives 89/48/EEC [1] and 92/51/EEC [2] and

2. Order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

The Spanish legislation concerning private security services contravenes Community legislation, more particularly Articles 43 and 49 of the EC Treaty, and also, in connection with recognition of professional qualifications, Directives 89/48/EEC and 92/51/EEC.

Undertakings that wish to carry out private security activities on Spanish soil must be authorised to do so by registering with the Ministry of the Interior, which authorisation is granted only if certain requirements relating to the form of the undertaking, share capital, the lodging of security in the Caja General de Depósitos and the number of the undertaking's employees and of its armoured vehicles are satisfied. Moreover, the Spanish legislation requires each and every member of the staff of an undertaking intending to provide private security services in Spain to obtain a specific permit granted if the person satisfies a series of requirements, and produce more than the evidence provided for in order to ensure that he or she possesses the knowledge and abilities needed for the performance of his or her duties. Those requirements do not serve to guarantee the attainment of the objectives pursued, which are public safety or the protection of the persons for whom the private security services are provided.

Furthermore, there exists no provision of Spanish law which demands that account should be taken of compliance by a foreign private security firm, or by its staff, with the guarantees and requirements imposed in another Member State. As a result, those are measures which have the effect of discouraging foreign undertakings that wish to carry on activities in Spain.

(1) Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration (OJ 1989 L 19, p. 16).
(2) Council Directive 92/51/EEC of 18 June 1992 on a second general system for the recognition of professional education and training to supplement Directive 89/48/EC (OJ 1992 L 209, p. 25).

Counterclaim submitted in the defence lodged on 17 July 2001 by the Commission in Case T-85/01 Società IAMA Consulting v Commission of the European Communities, pending before the Court of First Instance and referred to the Court of Justice on 2 December 2003 by order of 25 November 2003, as a matter of jurisdiction

(Case C-517/03)

(2004/C 47/30)

On 2 December 2003 the Court of First Instance, by order of 25 November 2003, referred to the Court of Justice a counterclaim submitted by the Commission of the European Communities, represented by Eugenio de March and Alberto Dal Ferro, acting as Agents, in its defence in Case T-85/01 Società IAMA Consulting v Commission of the European Communities.

The Commission claims that the Court should:

— Uphold its counterclaim and order Società IAMA Consulting to repay the sum of LIT 1 099 405 866 (EUR 567 796) plus interest, in accordance with Article 94 of Regulation No 341/93;

— In any event order Società IAMA Consulting to pay the costs

Pleas in law and main arguments

Under Article 23.3 of the contracts, the applicant before the Court of First Instance, Società IAMA Consulting, is required to reimburse the Commission for any sums overpaid.

Part of the Community contribution is attributable to the expenses incurred by IAMA Consulting before 1 November 1997 (and not re-invoiced to IAMA International) in a total amount of LIT 913 874 209, of which LIT 576 432 631 related to the REGIS Project and LIT 337 441 578 to the REFIAG Project.

The remainder derives from the amendments to expenditure, made during the audit, amounting to a total of LIT 185 531 657, of which LIT 60 603 671 related to the REGIS Project and LIT 124 927 986 to the REFIAG Project.

Action brought on 9 December 2003 by the Commission of the European Communities against the Kingdom of Sweden

(Case C-518/03)

(2004/C 47/31)

An action against the Kingdom of Sweden was brought before the Court of Justice of the European Communities on 9 December 2003 by the Commission of the European Communities, represented by K. Banks and K. Simonsson, Agents, with an address for service in Luxembourg.

The Commission claims that the Court should:

1. declare that, by failing to adopt, or to communicate to the Commission, the laws, regulations and administrative provisions necessary to implement Directive 98/44/EC (1) of the European Parliament and the Council of 6 July 1998 on the legal protection of biotechnological inventions, Sweden has failed to fulfil its obligations under that directive; and

2. order Sweden to pay the costs of the case.

Pleas in law and main arguments

The period within which the directive was to be implemented expired on 30 July 2000.

([1]) OJ 1998 L 213, p. 13.

Reference for a preliminary ruling by the Oberlandesgericht München by order of that Court of 24 June 2003 in the case of SA Scania Finance France against Rockinger Spezialfabrik für Anhängerkupplungen GmbH & Co.

(Case C-522/03)

(2004/C 47/32)

Reference has been made to the Court of Justice of the European Communities by order of the Oberlandesgericht München of 24 June 2003, received at the Court Registry on 6 November 2003, for a preliminary ruling in the case of SA Scania Finance France against Rockinger Spezialfabrik für Anhängerkupplungen GmbH & Co. on the following questions:

1. Is point 2 of Article 27 of the Brussels Convention of 27 September 1968, as amended by the Fourth Convention on Accession of 29 November 1996, in conjunction with the first paragraph of Article IV of the Protocol to the Brussels Convention of 27 September 1968, as amended by the Fourth Convention on Accession of 29 November 1996, to be interpreted as meaning that judicial documents may be served on a defendant, who at the time of service of the document instituting proceedings is domiciled in a Contracting State other than the State of the court, only in accordance with the conventions concluded between the Contracting States?

2. If not, is Article 12 EC to be interpreted as precluding a national rule under which service of a judicial document on a defendant who, at the time of the service, is domiciled in another Member State is deemed constituted by a domestic service whereby the bailiff of the court lodges the document instituting proceedings with the public prosecution service, which forwards the documents for transfer by contractual or diplomatic means, and, by registered letter with notice of delivery, notifies the foreign party of the service which has been effected?

Reference for a preliminary ruling by the High Court of Justice (England & Wales), Queen's Bench Division (Administrative Court) by order of that court dated 10 December 2003, in the case of The Queen on the application of 1) Unitymark Ltd, 2) North Sea Fishermen's Organisation against Department for Environment, Food and Rural Affairs

(Case C-535/03)

(2004/C 47/33)

Reference has been made to the Court of Justice of the European Communities by an order of the High Court of Justice (England & Wales), Queen's Bench Division (Administrative Court) dated 10 December 2003, which was received at the Court Registry on 19 December 2003, for a preliminary ruling in the case of The Queen on the application of 1) Unitymark Ltd, 2) North Sea Fishermen's Organisation against Department for Environment, Food and Rural Affairs, on the following questions:

Are:

(1) paragraph 4(b), and the part of paragraph 6(a) which refers to paragraph 4(b), of Annex XVII of Council Regulation 2341/2002 of 20 December 2002 ([1]); and/or

(2) paragraph 4(b), and the part of paragraph 6(a) which refers to paragraph 4(b), of Annex XVII of Council Regulation 2341/2002 of 20 December 2002 as amended by Regulation 671/2003 of 10 April 2003 ([2]); and/or

(3) Article 1 of Commission Decision 2003/185 of 14 March 2003 ([3]) insofar as the Commission refuses to extend, under paragraph 6(b) of Annex XVII of Council Regulation 2341/2002, the number of days available to vessels carrying the gear in the class referred to in paragraph 4(b) of that Annex, by two days,

unlawful in their application to open gear beam trawlers because they are:

(a) contrary to Articles 33 (ex 39) and 34 (ex 40) EC,

(b) contrary to Articles 28 (ex 30) and 29 (ex 34) EC,

(c) disproportionate,

(d) discriminatory, and/or

(e) contrary to the fundamental freedom to pursue a trade or business?

(1) fixing for 2003 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where catch limitations are required (OJ L 356, 31.12.2002, p. 12).
(2) amending Regulation (EC) No 2341/2002 fixing for 2003 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where catch limitations are required (OJ L 97, 15.04.2003, p. 11).
(3) on the allocation of additional days absent from port to Member States in accordance with Annex XVII of Council Regulation (EC) No 2341/2002 (Text with EEA relevance) (notified under document number C(2003) 762) (OJ L 71, 15.03.2003, p. 28).

Reference for a preliminary ruling by the Supremo Tribunal Administrativo, Portugal, by order of that Court of 26 November 2003 in the case of António Jorge Lda against Fazenda Pública

(Case C-536/03)

(2004/C 47/34)

Reference has been made to the Court of Justice of the European Communities by order of the Supremo Tribunal Administrativo, Portugal, of 26 November 2003, received at the Court Registry on 22 December 2003, for a preliminary ruling in the case of António Jorge Lda against Fazenda Pública on the following questions:

— In what sense must Article 19 of the Sixth Council Directive of 17 May 1977 (77/388/EEC) be interpreted? [1]

— Is Article 23 (4) of the CIVA [2] compatible with the abovementioned provision, when interpreted to the effect that, where the taxable person is an undertaking engaged in the real-estate business, carrying out works in two sectors of activity, one being the construction of buildings for sale (exempt from VAT) and the other contract work (subject to VAT), in order to calculate the pro rata or percentage deduction of VAT borne by that taxable person on the purchase of goods and services intended for both activities, is it necessary to include in the denominator of the fraction for calculation not only the annual turnover but also the value of work in progress at the end of each year which has not yet been put on the market and for which no value, total or partial, has been received?

— Or to the effect that only turnover is covered?

(1) Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ L 145, 13.06.1977, p. 1).
(2) CIVA (Value Added Tax Code).

Action brought on 22 December 2003 by the European Parliament against the Council of the European Union

(Case C-540/03)

(2004/C 47/35)

An action against the Council of the European Union was brought before the Court of Justice of the European Communities on 22 December 2003 by the European Parliament, represented by H. Duintjer Tebbens and A. Caiola, acting as Agents, with an address for service in Luxembourg.

The European Parliament claims that the Court should:

— Annul, pursuant to Article 230 EC, the last subparagraph of Article 4(1), Article 4(6) and Article 8 of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification [1];

— Order the defendant to pay the costs.

Pleas in law and main arguments

This action for annulment is aimed at defending fundamental rights, especially the rights of minors, in the Community legal order. The Directive, whilst providing for valid rules for codifying the law governing family reunification for third-country nationals, nevertheless contains a number of provisions which are unacceptable having regard to fundamental rights, including the right to family life and the right not to be discriminated against, compliance with which must be ensured in the legal order of the European Union pursuant to Article 6 of the Treaty on European Union.

The right to family life as recognised by Article 8 of the 1950 European Convention on Human Rights (ECHR) and interpreted in the case-law of the European Court of Human Rights can be restricted only for certain reasons and each case calls for a balancing of the interests of the third-country nationals concerned and those of the host State. Derogations from the right to family reunification which are expressly authorised by the aforementioned provisions of the directive go beyond the permitted restrictions and violate the fundamental right to family life and the right not to be discriminated against as guaranteed by the ECHR and as they result from the constitutional traditions common to the Member States of the EU as general principles of Community law, as established by Article 6(2) of the Treaty on European Union.

(1) OJ 2003 L 251, p. 12.

Reference for a preliminary ruling by the Conseil d'État (Belgium) by order of that Court of 8 December 2003 in the case of S.A Mobistar against Commune de Fléron

(Case C-544/03)

(2004/C 47/36)

Reference has been made to the Court of Justice of the European Communities by order of the Conseil d'État (Belgium) of 8 December 2003, received at the Court Registry on 23 December 2003, for a preliminary ruling in the case of S.A Mobistar against Commune de Fléron on the following questions:

1. Should Article 49 of the EC Treaty be interpreted as precluding the introduction, by a national or local authority, of a tax on mobile and personal communications infrastructures used to carry on activities covered by licences and authorisations?

2. Given that Article 3c of Commission Directive 90/388/EEC of 28 June 1990 (1), as inserted by Commission Directive 96/2/EC of 16 January 1996 (2) amending Directive 90/388/EEC with regard to mobile and personal communications, refers to the lifting of 'all restrictions', does that article preclude the introduction, by a national or local authority, of a tax on mobile and personal communications infrastructures used to carry on activities covered by licences and authorisations?

(1) Commission Directive 90/388/EEC of 28 June 1990 on competition in the markets for telecommunications services (OJ L 192, 24.7.1990, p. 10).

(2) Commission Directive 96/2/EEC of 16 January 1996 amending Directive 90/388/EEC with regard to mobile and personal communications (OJ L 20, 26.1.1996, p. 59).

Reference for a preliminary ruling by the Conseil d'État (Belgium) by order of that Court of 8 December 2003 in the case of S.A. Belgacom Mobile against Commune de Schaerbeek

(Case C-545/03)

(2004/C 47/37)

Reference has been made to the Court of Justice of the European Communities by order of the Conseil d'État (Belgium) of 8 December 2003, received at the Court Registry on 23 December 2003, for a preliminary ruling in the case of S.A. Belgacom Mobile against Commune de Schaerbeek on the following questions:

1. Should Article 49 of the EC Treaty be interpreted as precluding the introduction, by a national or local authority, of a tax on mobile and personal communications infrastructures used to carry on activities covered by licences and authorisations?

2. Given that Article 3c of Commission Directive 90/388/EEC of 28 June 1990 [1], as inserted by Commission Directive 96/2/EC of 16 January 1996 [2] amending Directive 90/388/EEC with regard to mobile and personal communications, refers to the lifting of 'all restrictions', does that article preclude the introduction, by a national or local authority, of a tax on mobile and personal communications infrastructures used to carry on activities covered by licences and authorisations?

(1) Commission Directive 90/388/EEC of 28 June 1990 on competition in the markets for telecommunications services (OJ L 192, 24.7.1990, p. 10).
(2) Commission Directive 96/2/EEC of 16 January 1996 amending Directive 90/388/EEC with regard to mobile and personal communications (OJ L 20, 26.1.1996, p. 59).

Appeal brought on 22 December 2003 by Asian Institute of Technology (AIT) against the order made on 15 October 2003 by the Fifth Chamber of the Court of First Instance of the European Communities in Case T-288/02 between Asian Institute of Technology (AIT) and the Commission of the European Communities

(Case C-547/03 P)

(2004/C 47/38)

An appeal against the order made on 15 October 2003 by the Fifth Chamber of the Court of First Instance of the European Communities in Case T-288/02 between Asian Institute of Technology (AIT) and the Commission of the European Communities was brought before the Court of Justice of the European Communities on 22 December 2003 by Asian Institute of Technology (AIT), represented by H. Teissier du Cros, avocat, with an address for service in Luxembourg.

The applicant claims that the Court should:

1. set aside the contested order dated 15 October 2003 of the Court of First Instance of the European Communities;

2. refer the case back to the Court of First Instance;

3. otherwise arrange for and open the oral procedure;

4. after which, annul the decision of the European Commission of 20 or 27 February 2002 to conclude a research contract with T. Lefevre, who states that he is the Director of the 'Center for Energy — Environment Research & Development'.

Pleas in law and main arguments

(a) Procedural irregularity

The Court of First Instance dismissed the AIT's application in Case T-288/02 as manifestly inadmissible, relying on the provisions of Article 111 of its Rules of Procedure. Manifest inadmissibility may be raised only at the start of the proceedings and cannot in any case be based on further investigation. If a ground of inadmissibility is revealed by a measure of inquiry, it is then governed by Article 113 of the Rules of Procedure of the Court of First Instance and not by Article 111. The safeguard in respect of non-manifest inadmissibility means that, in contrast to Article 111, where the cancellation of the oral procedure is automatic, such cancellation is within the discretionary power of the Court of First Instance in cases of non-manifest inadmissibility. In this case, the Court of First Instance has made a finding of manifest inadmissibility based on the results of an additional enquiry, thus depriving the party of the guarantee that cancellation of the oral procedure is subject to the CFI's discretion.

(b) Error of assessment as to admissibility having regard to the fourth subparagraph of Article 230 of the EC Treaty

Since it is understood that the AIT is not the 'addressee' of the decision to award the contract, the CFI should have applied the test in Plaumann, with the flexibility which the Court of Justice has brought to that case-law in order to give a less restrictive interpretation to the second paragraph of Article 173 (now the fourth paragraph of Article 230 of the EC Treaty). 'CEERD/FIHRDS' to which the Commission awarded the contract, is a competitor of 'CEERD/AIT', and even an unfair competitor. The award of the contract to 'CEERD/FIHRDS' by the Commission, which has deprived the AIT of the competitive advantages flowing from the fact that the 'CEERD/AIT' is one of its departments, adversely and substantially affects it in its competitive position. The contested decision also impairs the AIT's entitlement to use its name and logo 'CEERD', a prejudice which distinguishes its situation in relation to all other economic operators. The contested contract concerns the AIT directly and individually because it substantially affects its competitive position, even though it is not a trader.

(c) In the alternative, breach of the AIT's right to an effective remedy guaranteed by Article 47 of the Charter of Fundamental Rights of the European Union.

Action brought on 23 December 2003 by the European Parliament against the Council of the European Union

(Case C-548/03)

(2004/C 47/39)

An action against the Council of the European Union was brought before the Court of Justice of the European Communities on 23 December 2003 by the European Parliament, represented by C. Pennera and A. Neergaard, acting as Agents, with an address for service in Luxembourg.

The European Parliament claims that the Court should:

— annul Council Directive 2003/93/EC amending Directive 77/799/EEC concerning mutual assistance by the competent authorities of the Member States in the field of direct and indirect taxation (1);

— maintain the effects of the annulled directive until the European Parliament and the Council have adopted, on the appropriate legal basis, new legislation;

— order the defendant to pay the costs.

Pleas in law and main arguments

Directive 2003/93/EC and Regulation (EC) No 1798/03 should be annulled because they should have been based on Article 95 EC and not on Article 93 EC. The difference in legal basis is not merely formal, but directly affects the European Parliament's prerogatives. Indeed, according to Article 93 EC the Council acts unanimously after merely consulting the Parliament, whereas, under Article 95 EC, the co-decision procedure applies.

According to the field of application determined by the Treaty, for provisions which have as their object improvement of the conditions for the establishment and functioning of the internal market, the general rule is Article 95 EC. Article 93 EC provides otherwise in relation to indirect taxation, in derogation, as lex specialis, from Article 95 EC. The ancillary provisions on administrative measures in fiscal matters, such as cooperation between tax authorities enabling or facilitating the collection of tax, are not specifically covered by that provision. The directive and the regulation have therefore been adopted in breach of essential procedural requirements and of the EC Treaty.

(1) OJ L 264, 15.10.2003, p. 23.

Action brought on 23 December 2003 by the European Parliament against the Council of the European Union

(Case C-549/03)

(2004/C 47/40)

An action against the Council of the European Union was brought before the Court of Justice of the European Communities on 23 December 2003 by the European Parliament, represented by C. Pennera and A. Neergaard, acting as Agents, with an address for service in Luxembourg.

The European Parliament claims that the Court should:

— annul Council Regulation No 1798/2003 of 7 October 2003 on administrative cooperation in the field of value added tax and repealing Regulation (EEC) No 218/92 (1);

— maintain the effects of the annulled regulation until the European Parliament and the Council have adopted, on the appropriate legal basis, new legislation;

— order the defendant to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments relied upon are identical to those in Case C-548/03.

(1) OJ L 264, 15.10.2003, p. 1.

Reference for a preliminary ruling by the Ufficio del Giudice di Pace di Gorizia by order of that Court of 27 November 2003 in the case of Azienda Agricola Tomadin Silvano and AGEA

(Case C-554/03)

(2004/C 47/41)

Reference has been made to the Court of Justice of the European Communities by order of the Ufficio del Giudice di Pace di Gorizia (Magistrate, Gorizia) of 27 November 2003, received at the Court Registry on 29 December 2003, for a preliminary ruling in the case of Azienda Agricola Tomadin Silvano and AGEA on the following question:

Must Article 1 of Regulation (EEC) No 856/84 [1] of 31 March 1984 and Articles 1 to 4 of Regulation No 3950/921 [2] of 28 December 1992 be interpreted as meaning that the additional levy on milk and milk products is in the nature of an administrative penalty with the result that producers are liable to pay it only where quantities allocated have been exceeded by them intentionally or as a result of negligence?

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(1) OJ L 90, 1.4.1984, p. 10.
(2) OJ L 405, 31.12.1992, p. 1.

Reference for a preliminary ruling by the Tribunal du travail de Charleroi, Section de Charleroi, by order of that Court of 15 December 2003 in the case of Magali Warbecq against RYANAIR Ltd, a company incorporated under Irish law

(Case C-555/03)

(2004/C 47/42)

Reference has been made to the Court of Justice of the European Communities by order of the Tribunal du travail de Charleroi, Section de Charleroi, of 15 December 2003, received at the Court Registry on 24 December 2003, for a preliminary ruling in the case of Magali Warbecq against RYANAIR Ltd, a company incorporated under Irish law on the following questions:

1. For the purposes of Article 19(2) of Council Regulation No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [1], what are the relevant criteria for determining the Contracting State on the territory of which an employee habitually performs his work, when that employee is employed as a member of the air crew of an undertaking engaged in international air passenger transport?

2. Which place should be considered as the place where or from which such an employee in fact performs most of his duties for his employer when the duties under the contract of employment are to be performed partly on the ground (airport) of a Contracting State and partly on an aircraft which has the nationality of another Contracting State which also recruited the employee?

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(1) OJ L 12, 16.1.2001, p. 1.

Action brought on 8 January 2004 by the Commission of the European Communities against the Republic of Austria

(Case C-4/04)

(2004/C 47/43)

An action against the Republic of Austria was brought before the Court of Justice of the European Communities on 8 January 2004 by the Commission of the European Communities, represented by Karen Banks and Dr Claudia Schmidt, Agents, with an address for service in Luxembourg.

The Commission claims that the Court should:

1. declare that, by failing to adopt, or to communicate to the Commission, the laws, regulations and administrative provisions necessary to implement Directive 98/44/EC [1] of the European Parliament and the Council of 6 July 1998 on the legal protection of biotechnological inventions, the Republic of Austria has failed to fulfil its obligations under that directive; and

2. order the Republic of Austria to pay the costs of the case.

Pleas in law and main arguments

The period within which the directive was to be implemented expired on 30 July 2000.

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(1) OJ 1998 L 213, p. 13.

Action brought on 9 January 2004 by the Commission of the European Communities against the Federal Republic of Germany

(Case C-5/04)

(2004/C 47/44)

An action against the Federal Republic of Germany was brought before the Court of Justice of the European Communities on 9 January 2004 by the Commission of the European Communities, represented by Karen Banks and Dr Claudia Schmidt, Agents, with an address for service in Luxembourg.

The Commission claims that the Court should:

1. declare that, by failing to adopt, or to communicate to the Commission, the laws, regulations and administrative provisions necessary to implement Directive 98/44/EC [1] of the European Parliament and the Council of 6 July 1998 on the legal protection of biotechnological inventions, the Federal Republic of Germany has failed to fulfil its obligations under that directive; and

2. order the Federal Republic of Germany to pay the costs of the case.

Pleas in law and main arguments

The period within which the directive was to be implemented expired on 30 July 2000.

(1) OJ 1998 L 213, p. 13.

Action brought on 13 January 2004 by the Commission of the European Communities against the Republic of Austria

(Case C-10/04)

(2004/C 47/45)

An action against the Republic of Austria was brought before the Court of Justice of the European Communities on 13 January 2004 by the Commission of the European Communities, represented by G. Rozet and H. Kreppel, Agents, with an address for service in Luxembourg.

The applicant claims that the Court should:

1. declare that, by failing to adopt or in any event to inform the Commission of the laws, regulations and administrative provisions necessary in order to comply fully with Council Directive 1999/63/EC [1] of 21 June 1999 concerning the Agreement on the organisation of working time of seafarers concluded by the European Community Shipowners' Association (ECSA) and the Federation of Transport Workers' Unions in the European Union (FST) — Annex: European Agreement on the organisation of working time of seafarers, the Republic of Austria has failed to fulfil its obligations under Article 3 of that directive; and

2. order the Republic of Austria to pay the costs of the case.

Pleas in law and main arguments

The period within which the directive was to be implemented expired on 30 June 2002.

(1) OJ 1999 L 167, p. 33.

Removal from the register of Case C-376/99 [1]

(2004/C 47/46)

By order of 17 September 2003 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-376/99: Federal Republic of Germany v Commission of the European Communities.

(1) OJ C 352, 4.12.1999.

Removal from the register of Case C-101/03 [1]

(2004/C 47/47)

By order of 21 October 2003 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-101/03: Commission of the European Communities v Italian Republic.

(1) OJ C 118, 18.5.2002.

Removal from the register of Case C-126/02 (1)

(2004/C 47/48)

By order of 23 October 2003 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-126/02: Commission of the European Communities v Kingdom of Belgium.

(1) OJ C 144, 15.6.2002.

Removal from the register of Case C-35/03 (1)

(2004/C 47/49)

By order of 6 November 2003 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-35/03: Commission of the European Communities v Italian Republic.

(1) OJ C 70, 22.3.2003.

Removal from the register of Case C-57/03 (1)

(2004/C 47/50)

By order of 21 October 2003 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-57/03: Commission of the European Communities v Italian Republic.

(1) OJ C 83, 5.4.2003.

Removal from the register of Case C-80/03 (1)

(2004/C 47/51)

By order of 21 October 2003 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-80/03: Commission of the European Communities v Kingdom of the Netherlands.

(1) OJ C 83, 5.4.2003.

Removal from the register of Case C-108/03 (1)

(2004/C 47/52)

By order of 10 September 2003 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-108/03: Commission of the European Communities v Kingdom of Spain.

(1) OJ C 112, 10.5.2003.

Removal from the register of Case C-142/03 (1)

(2004/C 47/53)

By order of 11 November 2003 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-142/03: Commission of the European Communities v Kingdom of Spain.

(1) OJ C 146 of 21.6.2003.

Removal from the register of Case C-218/03 (1)

(2004/C 47/54)

By order of 10 September 2003 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-218/03: Commission of the European Communities v Hellenic Republic.

(1) OJ C 158, 5.7.2003.

COURT OF FIRST INSTANCE

ORDER OF THE COURT OF FIRST INSTANCE

of 15 October 2003

in Case T-288/02: Asian Institute of Technology (AIT) v Commission of the European Communities [1]

(Action for annulment — Decision to conclude a research contract — Inadmissibility)

(2004/C 47/55)

(Language of the case: French)

In Case T-288/02 Asian Institute of Technology (AIT), established in Pathumthani (Thailand), represented by H Teissier du Cros, lawyer, with an address for service in Luxembourg, against the Commission of the European Communities (Agents: P. Kuijper and B Schöfer) — application for the annulment of the decision of the European Commission of 22 February 2002 to conclude a research contract within the framework of the 'Asia-Invest' programme with the Centre for Energy-Environment Research and Development — the Court of First Instance (Fifth Chamber), composed of P. Lindh, President, R García-Valdecasas and J.D. Cooke, Judges; H. Jung, Registrar, made an order on 15 October 2003, the operative part of which is as follows:

(1) *The action is dismissed as clearly inadmissible.*

(2) *The parties are ordered to bear their own costs in the main proceedings and in the proceedings for interim relief.*

[1] OJ C 289, 23.11.2002.

Action brought on 8 December 2003 by Flavia Angeletti against the Commission of the European Communities

(Case T-394/03)

(2004/C 47/56)

(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 December 2003 by Flavia Angeletti, residing in Nice (France), represented by Juan Ramón Iturriagagoitia and Karine Delvolvé, lawyers.

The applicant claims that the Court should:

— annul the medical findings of 22 February 2003, notified on 7 October 2003 and received on 14 October 2003 by Flavia Angeletti;

— annul the decision of the Commission of 7 October 2003, received on 14 October 2003, refusing to recognise the occupational origin of the applicant's medical complaint;

— annul the decision of the Commission of 17 October 2003, corrected by letter of 27 October 2003, charging to the applicant part of the fees and expenses charged by members of the medical committee;

— annul the mandate of the medical committee, communicated to the applicant on 18 April 2003, as a preparatory act;

— annul the letter of 5 May 2003 containing a refusal to allow the forwarding to the medical committee of a scan carried out on 21 February 2003, as a preparatory act;

— annul the decision of 30 January 2001, and uphold the request of the applicant made by way of her complaint of 4 September 2000, and the opinion of the medical committee of 5 November 1999;

— order the Commission to pay the fees and expenses of the medical committee in full;

— order the Commission to pay, in their entirety, the fees and expenses incurred by the applicant in the context of the irregular opinion of the medical committee and of the decision of the institution taken on the basis thereof, together with interest thereon;

— order the Commission to pay all the costs.

Pleas in law and main arguments

The applicant, a former official of the Commission, worked for several years in the Berlaymont building which was at the time contaminated with asbestos. In 1996, the applicant sought recognition of her illness as an occupational disease and, in 1998, she requested that a medical committee be consulted in accordance with Article 21 of the Rules on Sickness Insurance for Officials of the European Communities. That medial committee initially adopted a majority opinion in 2000 but, following a complaint from the applicant, the defendant decided to refer the matter back to it. By letter of 7 October 2003, the Commission informed the applicant that the medical committee had lodged its opinion. By the same letter, the Commission informed the applicant that it confirmed its decision not to recognise the applicant's medical complaint as being occupational in origin. By letters of 17 and 27 October 2003, the Commission charged to the applicant part of the fees and expenses of the members of the medical committee.

In support of her claims, the applicant alleges irregularity of the opinion of the medical committee and of the decisions and acts relating thereto, breach of the duty to have regard for the welfare of officials as regards the decision concerning the fees and expenses, breach of the principle of sound administration, misuse of powers and breach of legitimate expectations.

Action brought on 10 December 2003 by Joseph Vanhellemont against the Commission of the European Communities

(Case T-396/03)

(2004/C 47/57)

(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 10 December 2003 by Joseph Vanhellemont, residing in Brussels, represented by Lucas Vogel, lawyer.

The applicant claims that the Court should:

— annul the decision adopted by the appointing authority on 26 August 2003 and notified on 5 September 2003, rejecting the complaint made by the applicant on 1 April 2003 seeking the annulment of a decision of the chairperson of the electoral bureau of 10 January 2003 who, after two requests of 23 December 2002, refused to recount the votes cast in the elections for the Brussels local staff committee, held between the 2 and 14 December 2002,

— so far as necessary, also annul the decisions against which the complaint was brought, namely:

  — the decision of the Commission mpt to take any steps to rectify any errors in counting committed during the 2002 staff committee elections to elect the Brussels local staff committee;

  — the decision communicated on 10 January 2003 by the chairperson of the electoral bureau, following two requests submitted by the applicant, dated 23 December 2002;

— order the Commission to pay EUR 29 635 by way of damages;

— order the defendant to pay the costs.

Pleas in law and main arguments

In support of his application, the applicant alleges manifest error of assessment, breach of the duty to have regard for the welfare of officials and of the principle of sound administration and infringement of Article 1 of Annex II to the Staff Regulations.

Action brought on 10 December 2003 by the Fédération de l'Hospitalisation Privée ('FHP') against the Commission of the European Communities

(Case T-397/03)

(2004/C 47/58)

(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 10 December 2003 by the Fédération de l'Hospitalisation Privée ('FHP'), established in Paris, represented by Silvestre Tandeau de Marsac, avocat.

The applicant claims that the Court should:

— Declare that the Commission of the European Communities has failed to act with regard to the complaint filed under number A/40342-H3;

— Declare that the Commission of the European Communities failed to fulfil its obligations under the Treaty establishing the European Community by failing to adopt a decision following the complaint lodged by the applicant on 8 December 2000;

— Order the Commission of the European Communities to pay the costs incurred by the applicant, amounting to a minimum of EUR 25 000.

Pleas in law and main arguments

The applicant states that it is acting on behalf of two organisations which on 8 December 2000 had lodged a complaint with the Commission concerning the methods of public-sector hospital financing by the French State and, more specifically, an integrated plan in two protocols signed on 13 and 14 March 2000, under which the French Minister for employment and solidarity undertook to procure additional funding for those hospitals. According to the applicant, the Commission has never stated its position on the statements made in that complaint.

In support of its action, the applicant alleges infringement of Articles 87 and 88 of the EC Treaty and of Council Regulation (EC) No 659/19991 ([1]). It states that the period of 39 months which has passed since the complaint was lodged exceeds the reasonable time within which the Commission has to adopt a decision.

([1]) 1 Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, OJ 1999 L 83, p. 1.

Action brought on 13 December 2003 by Arnaldo Lucaccioni against the Commission of the European Communities

(Case T-399/03)

(2004/C 47/59)

(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 13 December 2003 by Arnaldo Lucaccioni, residing in St-Leonard-on-Sea (United Kingdom), represented by Juan Ramón Iturriagagoitia Bassas and Karine Delvolvé, lawyers.

The applicant claims that the Court should:

— annul the decision of the Commission of 10 March 2003 in implement of the judgment of the Court of First Instance of the European Communities of 26 February 2003 in Case T-212/01;

— annul the report of 25 October 2000 of the doctor in charge of the applicant's case, notified to the applicant on 10 March 2003, and the task entrusted to him;

— order the Commission to pay the costs;

— in the alternative, declare that the report of 25 October 2000 must be disregarded in the procedure considering the aggravation of the applicant's occupational disease and, if necessary, in the procedure for reopening a request that the disease be recognised as an occupational disease.

Pleas in law and main arguments

On 7 June 2000, the applicant, a former official of the Commission who was granted retirement on the ground of total permanent invalidity as a result of an occupational disease, submitted a request on the basis of an alleged aggravation of his occupational disease. By decision notified to the applicant by letter of 16 November 2000, the Commission suspended the procedure provided for by Article 22 of the Rules on the insurance of officials of the European Communities against the risk of accident and of occupational disease and decided not to take action on the applicant's request. As a result of an action brought by the applicant, that decision of the Commission was annulled by the Court of First Instance by judgment of 26 February 2003 ([1]). On 10 March 2003, the Commission wrote to the applicant following the judgment delivered by the Court in order to transmit to him of the report of the doctor in charge of his case and to inform him that it could not grant his request because what was involved was a draft decision as referred to in Article 21 of the Rules.

By the present application, the applicant seeks the annulment of the decision contained in the letter of 10 March 2003 and of the doctor's report. In support of his claims, he alleges failure to comply with the judgment of the Court of 26 February 2003 in Case T-212/01, breach of the rights of defence, material errors, and breach of the duty to state reasons.

([1]) Case T-212/01, published in OJ 2001 C 331, p. 25. Judgment Notice in OJ 2003 C 112, p. 31.

Action brought on 16 December 2003 by A against the Court of Justice of the European Communities

(Case T-404/03)

(2004/C 47/60)

(Language of the case: French)

An action against the Court of Justice of the European Communities was brought before the Court of First Instance of the European Communities on 16 December 2003 by A, represented by Clara Marhuenda, lawyer, with an address for service in Luxembourg.

The applicant claims that the Court should:

— annul the two decisions adopted by the defendant, in its capacity as appointing authority, on 10 April 2003 and 6 June 2003 and, in so far as necessary, the decision of the defendant's complaints committee of 16 September 2003 rejecting the applicant's complaint;

— order the defendant to pay to the applicant EUR 1 as token damages for the non-material damage suffered;

— order the defendant to pay the costs.

Pleas in law and main arguments

Following several absences of the applicant, an official of the Court of Justice, on sick leave, the defendant, in its capacity as appointing authority, referred the matter to an invalidity committee in order to determine whether the official could be granted retirement on grounds of invalidity.

The committee met on 9 April 2003 and decided that the official was fit to return to duties, but proposed that the official be granted half-time working hours on medical grounds. By letter of 10 April 2003, the Court of Justice called on the applicant to return to work and granted authorisation for half-time working until 6 June 2003 inclusive. By decision of 6 June 2003, the half-time working hours on medical grounds was extended by 5 weeks and the applicant was requested to return to work full-time on 14 July 2003.

By the present application, the applicant contests those two decisions, claiming that the opinion of the medical committee on which they are based is vitiated by a defective statement of reasons. The applicant further claims that at least two members of the committee did not have available all the information necessary in order to make a decision in full knowledge of the case.

Action brought on 15 December 2003 by Nicolas Ravailhe against Committee of the Regions of the European Union

(Case T-406/03)

(2004/C 47/61)

(Language of the case: French)

An action against the Committee of the Regions of the European Union was brought before the Court of First Instance of the European Communities on 15 December 2003 by Nicolas Ravailhe, residing in Amiens (France), represented by Jean Philippe Brodsky, lawyer.

The applicant claims that the Court should:

— order the defendant to reinstate the applicant in his post and restore his rights under the Staff Regulations as a member of the temporary staff of the Committee of the Regions with effect from 1 March 2003, taking account of his salary and allowances as a member of the temporary staff (March 2003-April 2003), subsequently as unemployed (May 2003-October 2003) and of any other income received until he is actually reinstated;

— In the alternative, order the defendant to pay to the applicant compensation in accordance with Article 47 of the Conditions of Employment of Other Servants of the European Communities, namely three months' salary and allowances as a member of the temporary staff in Grade A 7, step 3, together with default interest with effect from 15 June 2003;

— order the defendant to pay to the applicant damages of EUR 15 000 by way of compensation for the non-material damage suffered;

— order the defendant to pay the costs.

Pleas in law and main arguments

In support of his application, the applicant alleges infringement of Articles 2(b) and 8 of the Conditions of Employment of Other Servants of the European Communities and, in the alternative, failure to observe the period of notice laid down in Articles 47 and 74 of those Conditions. Furthermore, he alleges breach of the duty to have regard for the welfare of officials and the principles of legitimate expectations, sound administration and the interests of the service.

Action brought on 12 December 2003 by the Regione Siciliana against the Commission of the European Communities

(Case T-408/03)

(2004/C 47/62)

(Language of the case: Italian)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 12 December 2003 by the Regione Siciliana, represented by A. Cingolo, avvocato dello Stato.

The applicant claims that the Court should:

— Annul Commission Decision BUDG/C5/ME/jlsD(2003)358046 of 6 October 2003 on the detailed rules for the recovery of the contribution paid by the European Regional Development Fund (ERDF) for the 'Aragona Favara' and 'Piana di Catania' projects, Debit Notes No 3240304871 of 14 August 2003 and No 3240303927 of 13 August 2003, and the other acts resulting from it; Order the Commission of the European Communities to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are the same as those put forward in Case T-392/03 Regione Siciliana v Commission (1).

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

Action brought on 11 December 2003 by the Regione Siciliana against the Commission of the European Communities

(Case T-414/03)

(2004/C 47/63)

(Language of the case: Italian)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 11 December 2003 by the Regione Siciliana, represented by G. Aiello, avvocato dello Stato.

The applicant claims that the Court should:

— Annul Commission Decision BUDG/C5/ME/jlsD(2003) 358046 of 6 October 2003 on the detailed rules for the recovery of the contribution paid by the European Regional Development Fund (ERDF) for the 'Messina Palermo Motorway major project' partially cancelled by Commission Decision No 109206 (ERDF No 93.05.03.001 — Arinco No 93.IT.16.009) of 5 September 2002 and the Debit Note No 3240406591 of 25 September 2002 and the other acts resulting from it; Order the Commission of the European Communities to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are the same as those put forward in Case T-392/03 Regione Siciliana v Commission (1).

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

Action brought on 18 December 2003 by Cofradía de Pescadores San Pedro de Bermeo, Vizcaya, and Others against the Council of the European Union

(Case T-415/03)

(2004/C 47/64)

(Language of the case: Spanish)

An action was brought before the Court of First Instance of the European Communities on 18 December 2003 against Council of the European Union by Cofradía de Pescadores San Pedro de Bermeo,Vizcaya, and Others established at Guipúzcoa and Vizcaya, Spain, represented by the lawyers Emiliano Garayar Gutiérrez, Gervasio Martínez-Villaseñor, Anna García Casatillo and Miguel Troncoso Ferrer.

The applicants claim that the Court of First Instance should:

— Declare that the Community has incurred non-contractual liability by making a deduction from the percentage of the Total Allowable Catch of anchovies to which Spain and the fleet authorised to fish for anchovies in ICES zone VIII are entitled in the years 1996 to 2001, by transferring Portugal's quota in ICES zone IX for it to be fished by France in ICES zone VIII;

— Compel the Community, represented by the Council, to compensate the applicants for the real and certain harm suffered as a result of the acts of the Council, comprising both consequential damage and loss of profits, in the terms set out in the present application and its annexes;

— Order the Community, represented by the Council, to pay all the costs incurred by the applicants in the context of the present proceedings.

Pleas in law and main arguments

The purpose of the present action is to seek compensation for the damage suffered by the applicants as a result of the removal between 1996 and 2001 of part of the Total Allowable Catch (TAC) of anchovies to which Spain is entitled in ICES (International Council for the Exploration of the Sea) zone VIII, following the authorisation granted by the Council of the European Union for the transfer of Portugal's quota in ICES zone IX for it to be fished by France in zone ICES VIII.

In support of their claims, the applicants submit that the alleged illegality fulfils all the requirements laid down by the case-law to give rise to non-contractual liability on the part of the Community.

As regards the condition concerning a sufficiently serious breach of a superior rule of law, they refer to contravention of the principles of relative stability, legal certainty and protection of legitimate expectations.

They state, in particular, that the principle of relative stability serves to guarantee compliance with the quota allocated to Spain in the Act of Accession, according to which Spain is entitled to 90 percent and France to 10 percent of anchovy catches in ICES zone VIII. Accordingly, the quota swaps provided for in Article 8 (4) (ii) of Regulation No 3760/92 and Article 9 (1) thereof must be carried out without changing the overall balance of percentages laid down in the Act of Accession. Consequently, the contested authorisation of swaps, the result of which is to deprive Spain and the Spanish fleet of the permitted anchovy catches in ICES zone VIII initially assigned to them, contravenes both the principle of relative stability and the Act of Accession (Article 161(1)(f)). Thus, the Council also acted in breach of the principle of legal certainty, infringing upon the legitimate expectations of the economic agents involved.

The applicants also allege that the Council has misused its powers.

Action brought on 22 December 2003 by La Mer Technology, Inc. against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case T-418/03)

(2004/C 47/65)

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

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 22 December 2003 by La Mer Technology, Inc., New York, USA, represented by Dr V. v. Bomhard, Dr A. Renck and Dr A. Pohlmann, lawyers. Laboratoires Goëmar was also a party to the proceedings before the Board of Appeal.

The applicant claims that the Court should:

1. annul the Decision of the second Board of Appeal of the office for Harmonisation in the Internal market (Trade Marks and Designs) of 23 October 2003 in case R 814/2000-2;

2. order that the costs of the proceedings be borne by the defendant.

Pleas in law and main arguments

Applicant for the Community trade mark:	La Mer Technology, Inc.
The Community trade mark sought:	The word mark 'La Mer' for goods in class 3 (in addition to other things, soaps for the care of human skin and the human body; perfumery, essential oils, cosmetics, hair lotions)

Proprietor of mark or sign cited in the opposition proceedings:	Laboratoires Goëmar
Mark or sign cited in opposition:	The national and international word marks 'Laboratoires de la mer' for goods in classes 3, 5, 29 and 31 (in addition to other things, cosmetics of a marine products base)
Decision of the Opposition Division:	The opposition was upheld and the application for registration rejected in its entirety
Decision of the Board of Appeal:	Dismissal of the appeal brought by La Mer Technology
Pleas in law:	Violation of Article 43(2) and (3) of Council regulation 40/94 [1] and violation of Article 8(1) (b) of Council Regulation 40/94.

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

Action brought on 17 December 2003 by El Corte Inglés against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case T-420/03)

(2004/C 47/66)

(Language of the case: Spanish)

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 17 December 2003 by El Corte Inglés S.A., established in Madrid, represented by Juan Luis Rivas Zurdo and Emilio López Leiva, lawyers.

The applicant claims that the Court should:

— annul the OHIM (Second Board of Appeal)'s decision of 1 October 2003 given in Case R088/2003-2, inasmuch as, by dismissing the appeal brought by the present applicant, it gives grounds for a future grant of Community trade mark No 1.160.050 BOOMERANG TV in Class 41;

— refuse to allow registration of the Community trade mark No 1.160.050 'BOOMERANG TV' in Class 41, and

— order the other party or parties opposing this action to pay the costs.

Pleas in law and main arguments

Applicant for Community trade mark:	José Matías Abril Sánchez and Pedro Ricote Saugar
Community trade mark sought:	Figurative mark 'BOOMERANG TV', with a semi-ellipse superimposed — Application No 1.160.050 in respect of services included in Classes 38 and 41, although during the opposition proceedings the party applying for registration reduced the ambit of protection for the mark, excluding Class 38.
Proprietor of mark or sign cited in the opposition proceedings:	Applicant.
Mark or sign cited in opposition.	Spanish figurative marks Nos 2035514, 2163613, 2163616, 2035507, 2035508, 2035505, 2035509, 2035510, 2035511, 2035512 and 2035513 (the word 'BOOMERANG' framed in a diamond), 1236024, 1236025 and 1282250, Irish mark No 153228, Greek mark No 109387 and Community trade mark No 448514 (the word 'BOOMERANG' under a square containing the letter B next to a boomerang), Spanish word mark 'BOOMERANG' No 456466, Spanish figurative marks 'BOOMERANG La base del deporte' (No 2227731, 2227732 and 2227734) and English figurative mark No 1494568 (small square enclosing the letter B next to a boomerang), in respect of products in Classes 18, 25, 38 and 41.
Decision of the Opposition Division:	Opposition rejected.

Decision of the Board of Appeal:	Action dismissed.
Pleas in law:	Infringement of Article 8(1)(b), (2)(c) and (5) of Regulation (EC) No 40/94.

Action brought on 23 December 2003 by Enviro Tech Europe, Ltd., and Enviro Tech International Inc. against the Commission of the European Communities

(Case T-422/03)

(2004/C 47/67)

(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 23 December 2003 by Enviro Tech Europe Ltd., Kingston-upon-Thames, United Kingdom and Enviro tech International, Inc., Chicago, USA, represented by Mr C. Mereu and Mr K. Van Maldegem, lawyers.

The applicant claims that the Court should:

— annul Commission Decisions D(2003) 430307 and D(2003) 430309 of 4 November 2003;

— declare the Commission liable for damages suffered by applicants to date and pending these proceedings as a result of the Commission's unlawful conduct, including but not limited to its denial of applicant's request and related adoption of the contested decision, and to compensate applicants for such damage in the provisional amount of EUR 350 000;

— declare the Commission liable for imminent losses and damages foreseeable with sufficient certainty, even if such losses and damages cannot be precisely assessed;

— order the Commission to pay all costs and expenses in these proceedings.

Pleas in law and main arguments

The applicants seek the annulment of the Commission's decisions rejecting the applicants' request not to classify n-propyl bromide as a highly flammable substance (risk phrase R11) and reproductive toxicant category 2 (risk phrase R60) , but instead to classify it as a category 3/R62 substance for reproductive toxicity and R18 substance for flammability. In the alternative, the applicants requested the Commission to exclude n-propyl bromide from the 29th Adaptation to Technical Progress of Directive 67/548/EEC [1] until a proper and complete assessment of all the scientific data had been made by the Commission.

In support of their application, the applicants claim that the Commission has violated the provision of Directive 67/548/EEC concerning the applicable testing methods and classification criteria for chemical substances. According to the applicant, the Commission has made a manifest error of assessment and an incorrect application of the testing methods for physico-chemical properties set forth in annex V, point A.9 of Directive 67/548/EEC, the classification criteria for toxicological properties set forth in annex VI, point 4.2.3 of Directive 67/548/EEC and the criterion of normal handling or use set forth in annex VI, point 1.1 of Directive 67/548/EEC.

The applicants also claim that the Commission has violated the applicants' legitimate expectations that the Commission would assess the data submitted by the applicants in accordance with their obligations under Directive 67/548/EEC, diligently, impartially and by relevance to the relevant criteria of Directive 67/548/EEC.

The applicants invoke furthermore a violation of Article 95(3) EC Treaty. According to the applicants, the Commission failed to consider and assess all the scientific data available as well as new developments based on scientific facts.

The applicants state that the contested decisions are based on the precautionary principle. According to the applicants, this principle only applies to risk assessment and cannot be used in hazard assessments. Also, even if the principle should apply in this case, this would only be possible in the case of scientific uncertainty.

The applicants finally claim that the Commission has violated fundamental principles of Community law, such as the principle of legal certainty and legitimate expectations, the principle of independence and excellence of scientific advice, the principle of proportionality, the principle of equal treatment and the principle of sound administration. The applicants also claim that there was a lack of competence on the part of the Commission and that the Commission misused its powers.

(1) Council Directive 67/548/EEC of 27 June 1967 on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances (OJ English special edition: Series I Chapter 1967, p. 234).

Action brought on 23 December 2003 by Elisabeth Saskia Smit against Europol

(Case T-423/03)

(2004/C 47/68)

(Language of the case: Dutch)

An action against Europol was brought before the Court of First Instance of the European Communities on 23 December 2003 by Elisabeth Saskia Smit, represented by P. de Casparis and M.F. Baltussen.

The applicant claims that the Court should:

1. annul the implicit rejection by Europol of her objection to the decision of 19 May 2003 and, at the same time, annul the decision of 19 May 2003;

2. order Europol to pay the applicant compensation including, in any event, the costs of the present proceedings.

Pleas in law and main arguments

The applicant's application for the post of 'Asset Administrator' with Europol was rejected by the contested decision.

The applicant submits that the reasoning for the contested decision is unsound and that that decision infringes the general principle of sound administration that reasons must be stated for decisions. The applicant also alleges infringement of Article 5 of Appendix 2 to the Staff Regulations of Europol [1] and infringement of the principle of due care.

(1) Council Act of 3 December 1998 laying down the staff regulations applicable to Europol employees (OJ 1999 C 26, p. 7).

Action brought on 20 December 2003 by Gerhard Keinhorst against the Commission of the European Communities

(Case T-428/03)

(2004/C 47/69)

(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 20 December 2003 by Gerhard Keinhorst, residing in Overijse (Belgium), represented by Nicolas Lhoëst, lawyer, with an address for service in Luxembourg.

The applicant claims that the Court should:

— Annul the decision of the appointing authority dated 23 December 2002, in so far as it did not award the applicant additional seniority and therefore reclassified him in Grade A6, Step 1, instead of Grade A6, Step 3;

— Annul the decision of the appointing authority dated 14 April 2003, in so far as it:

  — did not fix the applicant's classification in Grade A6, Step 3 upon recruitment,

  — did not reconstruct the applicant's career in grade by bringing forward the date of his promotion to A5 and, if appropriate, promoting him to A4,

  — limited the date on which the reclassification decision took effect as regards its pecuniary effects to 5 October 1995;

— Annul the decision of the appointing authority dated 4 September 2003, notified to the applicant on 11 September 2003, rejecting his complaint R/173/03;

— Annul the decision of the appointing authority dated 24 November 2003, notified to the applicant on 10 December 2003, rejecting his complaint R/438/03;

— Order the defendant to pay compensation set provisionally at a sum of EUR 125 000 in case, against all possibility, it should not be able to reconstruct the applicant's career in grade;

— Order the defendant to pay all the costs of the proceedings.

Pleas in law and main arguments

Following the judgments of the Court of Justice in Cases C-389/98 P and C-459/98 P, the Commission reconsidered under Article 31(2) of the Staff Regulations the classification of officials who used remedies within the meaning of Article 91 of the Staff Regulations. Following that exercise, the Commission adopted the contested decision in respect of the appt.

In support of his action, the applicant claims, as regards additional seniority, that there has been a breach of the Commission decisions of 6 June 1973 and 1 September 1983 on the criteria applicable to appointment in grade and to classification in step on recruitment, a breach of Article 5(3) of the Staff Regulations, a breach of the principle of equal treatment and, last, a breach of Article 25(2) of the Staff Regulations and of the obligation to state reasons.

The applicant further claims that the contested decision breaches the principle that an official should have reasonable career prospects and Article 5(3) and Article 45 of the Staff Regulations in that the decision does not reconstruct his career in grade.

Last, the applicant claims that there has been a breach of Article 62 of the Staff Regulations in that the Commission limited the pecuniary effects of the contested decision to 5 October 1995.

Action brought on 21 December 2003 by Iosif Dascalu against the Commission of the European Communities

(Case T-430/03)

(2004/C 47/70)

(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 December 2003 by Iosif Dascalu, residing in Kraainem (Belgium), represented by Nicolas Lhoëst, lawyer, with an address for service in Luxembourg.

The applicant claims that the Court should:

— Annul the decision of the appointing authority dated 23 December 2002, in so far as it did not award the applicant additional seniority and therefore reclassified him in Grade A6, Step 1, instead of Grade A6, Step 3;

— Annul the decision of the appointing authority dated 14 April 2003, in so far as it:

  — did not fix the applicant's classification in Grade A6, Step 3 upon recruitment;

  — did not reconstruct the applicant's career in grade by bringing forward the date of his promotions to A5 and A4;

  — limited the date on which the reclassification decision took effect as regards its pecuniary effects to 5 October 1995.

— Order the defendant to pay compensation set provisionally at a sum of EUR 125 000 in case, against all possibility, it should not be able to reconstruct the applicant's career in grade;

— Order the defendant to pay all the costs of the proceedings.

Pleas in law and main arguments

The applicant, who was classified in Grade A7, Step 3, upon entering the service of the Commission in September 1986, challenges the decision of the appointing authority, adopted following a reconsideration of that classification following the judgment of the Court of Justice in Case C-389/98 P Gevaert v Commission, to reclassify him in Step 1 of Grade A6, instead of Step 3 of that grade, and revising and setting at new dates his subsequent classification in Grade A5, Step 2, and A4, Step 2, and limiting the pecuniary effects of that reclassification to 5 October 1995.

In support of his claims, action, the applicant claims that the Commission has breached:

— the decisions of 6 June 1973 and 1 September 1983 in so far as it omitted to grant the applicant the slightest seniority in step, and also Article 5(3) of the Staff Regulations in so far as the Commission applied to the applicant a different outcome from that of officials in the same category;

— Articles 5(3) and 45 of the Staff Regulations by refusing to reconstruct his career in grade following his reclassification in Grade A6, and breach of the duty to have regard to the welfare of officials;

— Article 62 of the Staff Regulations by limiting in time the pecuniary effects of his reclassification.

Action brought on 22 December 2003 by Liam O'Bradaigh against the Commission of the European Communities

(Case T-431/03)

(2004/C 47/71)

(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 22 December 2003 by Liam O'Bradaigh, residing in Mechelen (Belgium), represented by Sébastien Orlandi, Albert Coolen, Jean-Noël Louis and Étienne Marchal, lawyers, with an address for service in Luxembourg.

The applicant claims that the Court should:

— Annul the decision of the selection board in competition COM/TB/99 to award the applicant an insufficient mark in the oral test to allow him to be entered on the reserve list;

— Order the defendant to pay the costs.

Pleas in law and main arguments

Following the judgment of the Court of First Instance on 13 March 2002 in Case T-364/00 Van Weyenbergh, the applicant in the present case, as in Case T-161/01, objects to the decision of the selection board in competition COM/TB/99 constituting a reserve list of administrative assistants, senior administrative assistants and principal administrative assistants, in Grades B5/B4, B3/B2 and B1 respectively, not to enter him on the reserve list in that competition on the ground that he was awarded an insufficient mark in the oral test.

In support of his claims, he alleges that there has been a breach of the principles of non-discrimination and proper administration and also a manifest error of assessment.

The applicant criticises the method used by the selection board to assess his knowledge of languages and claims, in particular, that he was unable to ascertain whether the questions put during the oral test correspond to the level of the competition B5/B4, B3/B2 or B1.

Action brought on 22 December 2003 by Jean Dehon against the European Parliament

(Case T-432/03)

(2004/C 47/72)

(Language of the case: French)

An action against the European Parliament was brought before the Court of First Instance of the European Communities on 22 December 2003 by Jean Dehon, residing in Hagen (Luxembourg), represented by Sébastien Orlandi, Albert Coolen, Jean-Noël Louis and Étienne Marchal, lawyers, with an address for service in Luxembourg.

The applicant claims that the Court should:

— Annul the decision of the European Parliament to move on to the recruiting phase provided for in Article 29(1)(b) of the Staff Regulations, namely the organisation of an internal competition, in order to fill the post of Deputy Head of Division of the French Translation Division (Vacancy Notice No 9192);

— Order the defendant to pay the costs.

Pleas in law and main arguments

In support of his application, the applicant alleges, first, infringement of Article 233 of the EC Treaty inasmuch as the Parliament failed to comply properly with the judgment of the Court of First Instance of 15 November 2000 in Case T-261/99 Dehon v Parliament. The applicant further alleges infringement of Article 29(1)(a) of the Staff Regulations and breach of the principle that officials must have reasonable career prospects.

Action brought on 24 December 2003 by the Regione Siciliana against the Commission of the European Communities

(Case T-435/03)

(2004/C 47/73)

(Language of the case: Italian)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 24 December 2003 by the Regione Siciliana, represented by A. Cingolo, avvocato dello Stato.

The applicant claims that the Court should:

— Annul Commission Decision BUDG/C3/EB/WH D(2003) 10.5 — 191 No 331997 of 24 October 2003 on 'setting off the Commission's claims against its debts', included in the table annexed which sets out the 'set off prescribed on 7 November 2003', with reference to amounts relating to the European Regional Development Fund (ERDF) applicable to the 'Porto Empedocle major project', 'Diga Gibbesi', 'Messina-Palermo motorway major project', 'Aragona Favara' and 'Piana di Catania', and all other acts resulting from it; Order the Commission of the European Communities to pay the costs.

Pleas in law and main arguments

The Regione Siciliana has brought an action before the Court of First Instance of the European Communities for the annulment of Commission Decision BUDG/C3/EB/WH D(2003) 10.5 — 191 No 331997 of 24 October 2003 on 'setting off the Commission's claims against its debts', included in the table annexed which sets out the 'set off prescribed on 7 November 2003', with reference to amounts relating to the European Regional Development Fund (ERDF) applicable to the 'Porto Empedocle major project', 'Diga Gibbesi', 'Messina-Palermo motorway major project', 'Aragona Favara' and 'Piana di Catania', and all other acts resulting from it.

In support of its action the Regione Siciliana alleges:

1. Infringement and/or erroneous application of Articles 71 and 73 of Council Regulation No 1605 of 25 June 2002 [1] and Articles 83 and 86 of Commission implementing Regulation No 2342 of 23 December 2002 [2] in so far as the contested decision has set off against the credits of the Regione Siciliana certain debts in the form of interest for late payment alleged to have accrued to the Regione during periods in which, had the Commission applied the Community rules according to the law and timeously, no such interest would have become due;

2. Infringement and erroneous application of Articles 73 and 187 of Council Regulation No 1605 of 25 June 2002 and Article 83 of Commission implementing Regulation No 2342 of 23 December 2002 as regards the starting date for the application of the compulsory set off of credits and debits to the Commission;

3. Misuse of powers on grounds of contradiction between subsequent acts and infringement of the principle of legitimate expectations in so far as the Commission contradicted its own earlier decisions even against the Regione Siciliana as regards the lawfulness of using a set off to extinguish financial obligations similar to those in the present case;

4. Infringement (in various respects) of Article 73 of Regulation No 1605 of 2002 and Article 32 of Council Regulation (EC) No 1260 of 21 June 1999 [3], in that the Commission unlawfully retained the credit owed to the Regione Siciliana substantially after the time when a lawful and unexceptionable application for payment had been made.

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(1) Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 248 of 16.09.02, p. 1).
(2) Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 357 of 31.12.02, p. 1).
(3) Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds (OJ 1999 L 161 of 26.06.1999, p. 1).

Action brought on 26 December 2003 by Kelvin William Stephens against Commission of the European Communities

(Case T-438/03)

(2004/C 47/74)

(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 26 December 2003 by Kelvin William Stephens, residing in Brussels, represented by Nicolas Lhoëst, lawyer, with an address for service in Luxembourg.

The applicant claims that the Court should:

— Annul the decision of the appointing authority dated 23 December 2002, in so far as it did not award the applicant additional seniority and therefore reclassified him in Grade A6, Step 2, instead of Grade A6, Step 3;

— Annul, so far as necessary, the decision of the appointing authority of 4 September 2003, notified to the applicant on 17 September 2003, rejecting complaint R/155/03;

— Order the defendant to pay all the costs of the proceedings.

Pleas in law and main arguments

Following the judgments of the Court of Justice in Cases C-389/98 P and C-459/98 P, the Commission reconsidered under Article 31(2) of the Staff Regulations the classification of officials who used remedies within the meaning of Article 91 of the Staff Regulations. Following that exercise, the Commission adopted the contested decision in respect of the applicant.

In support of his action, the applicant claims, as regards additional seniority, that there has been a breach of the Commission decisions of 6 June 1973 and 1 September 1983 on the criteria applicable to appointment in grade and to classification in step on recruitment, a breach of Article 5(3) of the Staff Regulations, and of the principle of equal treatment and, last, a breach of Article 25(2) of the Staff Regulations and of the obligation to state reasons.

III

(Notices)

(2004/C 47/75)

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

OJ C 35, 7.2.2004

Past publications

OJ C 21, 24.1.2004

OJ C 7, 10.1.2004

OJ C 304, 13.12.2003

OJ C 289, 29.11.2003

OJ C 275, 15.11.2003

OJ C 264, 1.11.2003

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