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Information and Notices

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Notice No | Contents | Page

I *Information*

Court of Justice

COURT OF JUSTICE

2004/C 228/01 — Judgment of the Court (Second Chamber) of 15 July 2004 in Case C-501/00: Kingdom of Spain v Commission of the European Communities (Articles 4(c) CS and 67 CS — Commission Decision No 2496/96 ECSC — Export aid for steel undertakings — Observance of a reasonable period — Tax deduction — Obligation to state reasons — Selective nature — General measure) 1

2004/C 228/02 — Judgment of the Court (Second Chamber) of 15 July 2004 in Case C-272/01: Commission of the European Communities v Portuguese Republic (Failure of a Member State to fulfil its obligations — Directive 76/160/EEC — Quality of bathing water — Failure to conform to limit values — Failure to identify all inland bathing areas in Portugal — Failure to collect a sufficient number of samples) 1

2004/C 228/03 — Judgment of the Court (Sixth Chamber) of 15 July 2004 in Case C-349/01: Betriebsrat der Firma ADS Anker GmbH v ADS Anker GmbH (Social policy — Articles 4 and 11 of Directive 94/45/CE — European Works Council — Information and consultation of workers in Community-scale undertakings — Obligation for central management to provide certain information to employees' representatives) 2

2004/C 228/04 — Judgment of the Court (Second Chamber) of 15 July 2004 in Case C-381/01: Commission of the European Communities v Kingdom of Sweden (Failure of a Member State to fulfil obligations — Directive 77/388/EEC — VAT — Article 11(A)(1)(a) — Taxable amount — Subsidy directly linked to the price — Regulation (EC) No 603/95 — Aid granted in the dried fodder sector) 2

2004/C 228/05 — Judgment of the Court (Second Chamber) of 15 July 2004 in Case C-495/01: Commission of the European Communities v Republic of Finland (Failure of a Member State to fulfil obligations — Directive 77/388/EEC — VAT — Article 11(A)(1)(a) — Taxable amount — Subsidy directly linked to the price — Regulation (EC) No 603/95 — Aid granted in the dried fodder sector) 3

(Continued overleaf)

Notice No	Contents (continued)	Page

2004/C 228/06	Judgment of the Court (Second Chamber) of 15 July 2004 in Joined Cases C-37/02 and C-38/02 (references for a preliminary ruling by the Tribunale amministrativo regionale per il Veneto): Di Lenardo Adriano Srl and Dilexport Srl v Ministero del Commercio con l'Estero (Bananas — Common organisation of the market — Regulation (EC) No 896/2001 — Common system of trade with third countries — Primary imports — Validity — Protection of legitimate expectations — Retroactivity — Implementing power)	3
2004/C 228/07	Judgment of the Court (Second Chamber) of 15 July 2004 in Case C-144/02: Commission of the European Communities v Federal Republic of Germany (Failure of a Member State to fulfil obligations — Directive 77/388/EC — VAT — Article 11(A)(1)(a) — Taxable amount — Subsidy directly linked to the price — Regulation (EC) No 603/95 — Aid granted in the dried fodder sector)	4
2004/C 228/08	Judgment of the Court (Second Chamber) 15 July 2004 in Case C-239/02 (reference for a preliminary ruling from the Rechtbank van Koophandel, Hasselt): Douwe Egberts NV v Westrom Pharma NV and Others (Approximation of laws — Interpretation of Article 28 EC and of Directives 1999/4/EC and 2000/13/EC — Validity of Directive 1999/4/EC — Labelling and advertising of foodstuffs — Prohibitions of references to health)	4
2004/C 228/09	Judgment of the Court (Grand Chamber) of 13 July 2004 in Case C-262/02: Commission of the European Communities v French Republic (Failure by a Member State to fulfil its obligations — Article 59 of the EC Treaty (now, after amendment, Article 49 EC) — Television broadcasting — Advertising — National measure prohibiting television advertising for alcoholic beverages marketed in that State, in the case of indirect television advertising resulting from the appearance on screen of hoardings visible during the retransmission of certain sporting events — 'Loi Evin')	5
2004/C 228/10	Judgment of the Court (First Chamber) of 15 July 2004 in Case C-315/02 (reference for a preliminary ruling from the Verwaltungsgerichtshof): Anneliese Lenz v Finanzlandesdirektion für Tirol (Free movement of capital — Tax on revenue from capital — Revenue from capital of Austrian origin: tax rate of 25 % in discharge or rate equal to half of the average tax rate on aggregate income — Income from capital originating in another Member State: normal tax rate)	5
2004/C 228/11	Judgment of the Court (First Chamber) of 15 July 2004 in Case C-321/02 (reference for a preliminary ruling from the Bundesfinanzhof (Germany): Finanzamt Rendsburg v Detlev Harbs (Sixth VAT Directive — Article 25 — Common flat-rate scheme for farmers — Leasing of part of a farm)	6
2004/C 228/12	Judgment of the Court (First Chamber) of 15 July 2004 in Case C-345/02 (reference to the Court of Justice under Article 234 EC by the Hoge Raad der Nederlanden (Supreme Court of the Netherlands)): Pearle BV and Others v Hoofdbedrijfschap Ambachten (State aid — Definition of aid — Collective advertising campaigns in favour of one sector of the economy — Financing by means of a special contribution payable by undertakings in that sector — Action taken by a body governed by public law)	6
2004/C 228/13	Judgment of the Court (First Chamber) of 15 July 2004 in Case C-365/02 (reference for a preliminary ruling from the Korkein hallinto-oikeus (Finland)): Marie Lindfors (Directive 83/183/EEC — Transfer of residence from one Member State to another — Tax levied before registration or bringing into use of a vehicle)	7
2004/C 228/14	Judgment of the Court (Second Chamber) of 15 July 2004 in Case C-415/02: Commission of the European Communities v Kingdom of Belgium (Failure of a Member State to fulfil obligations — Indirect taxes — Directive 69/335/EEC — Raising of capital — Tax on stock exchange transactions — Tax on the delivery of bearer securities)	7

EN

2004/C 228/15 Judgment of the Court (First Chamber) of 15 July 2004 in Case C-424/02: Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland (Failure of a Member State to fulfil obligations — Directive 75/439/EEC — Disposal of waste oils — Priority to be given to the processing of waste oils by regeneration) ... 8

2004/C 228/16 Judgment of the Court (Grand Chamber) of 13 July 2004 in Case C-429/02 (reference for a preliminary ruling from the Cour de Cassation (France): Bacardi France SAS v Télévision française 1 SA (TF1) and Others (Article 59 of the EC Treaty (now, after amendment, Article 49 EC) — Directive 89/552/CEE — Television without frontiers — Television broadcasting — Advertising — National measure prohibiting television advertising for alcoholic drinks marketed in that Member State, in the case of indirect television advertising arising from the appearance on screen of hoardings visible during the transmission of sporting events — 'Loi Evin') ... 9

2004/C 228/17 Judgment of the Court (First Chamber) of 15 July 2004 in Case C-443/02 (reference for a preliminary ruling from the Tribunale di Pordenone): Nicolas Schreiber (Article 28 EC — Directive 98/8/EC — Placing of biocidal products on the market — National measure requiring authorisation for the placing on the market of blocks of red cedar wood having natural anti-moth properties) ... 9

2004/C 228/18 Judgment of the Court (Third Chamber) of 15 July 2004 in Case C-459/02 (reference to the Court under Article 234 EC by the Cour de Cassation (Luxembourg)): Willy Gerekens and Association agricole pour la promotion de la commercialisation laitière Procola v State of the Grand Duchy of Luxembourg (Reference for a preliminary ruling — Milk — Additional levy in the milk and milk products sector — National legislation — Levy fixed retroactively — General principles of legal certainty and non-retroactivity) ... 10

2004/C 228/19 Judgment of the Court (Second Chamber) of 15 July 2004 in Case C-463/02: Commission of the European Communities v Kingdom of Sweden (Failure of a Member State to fulfil obligations — Directive 77/388/EEC — VAT — Article 11(A)(1)(a) — Taxable amount — Subsidy directly linked to the price — Regulation (EC) No 603/95 — Aid granted in the dried fodder sector) ... 10

2004/C 228/20 Judgment of the Court (Second Chamber) of 13 July 2004 in Case C-82/03: Commission of the European Communities v Italian Republic (Failure of a Member State to fulfil obligations — Article 10 EC — Cooperation with the Community institutions — Failure to forward information to the Commission) ... 11

2004/C 228/21 Judgment of the Court (First Chamber) of 15 July 2004 in Case C-118/03: Commission of the European Communities against Federal Republic of Germany (Failure of a Member State to fulfil its obligations — Failure to transpose Directive 2000/37/EC) ... 11

2004/C 228/22 Judgment of the Court (Fifth Chamber) of 15 July 2004 in Case C-119/03: Commission of the European Communities v French Republic (Failure of a Member State to fulfil obligations — Failure to transpose Directive 2000/52/EC — Transparency of financial relations between Member States and public undertakings) ... 12

2004/C 228/23 Judgment of the Court (First Chamber) of 15 July 2004 in Case C-139/03: Commission of the European Communities against Federal Republic of Germany (Failure of a Member State to fulfil its obligations — Failure to transpose Directive 2000/38/EC) ... 12

2004/C 228/24 Judgment of the Court (Sixth Chamber) of 15 July 2004 in Case C-141/03: Commission of the European Communities against Kingdom of Sweden (Failure of a Member State to fulfil its obligations — Directive 2002/52/EC — Failure to transpose within the prescribed period) ... 13

(Continued overleaf)

2004/C 228/25 Judgment of the Court (Second Chamber) of 15 July 2004 in Case C-213/03 (reference for a preliminary ruling by the Cour de cassation): Syndicat professionnel coordination des pêcheurs de l'étang de Berre et de la region v Électricité de France (EDF) (Convention for the Protection of the Mediterranean Sea against Pollution (Barcelona Convention — Protocol for the Protection of the Mediterranean Sea against Pollution from Land-based Sources — Article 6(3) — Authorisation to discharge — Direct effect) 13

2004/C 228/26 Judgment of the Court (First Chamber) of 15 July 2004 in Case C-242/03 (reference for a preliminary ruling by the Cour administrative): Ministre des Finances v Jean-Claude Weidert and Élisabeth Paulus (Free movement of capital — Income tax — Special relief for expenditure incurred on the acquisition of shares — Benefit of the advantage restricted to the acquisition of shares in companies established in the Member State concerned) 14

2004/C 228/27 Judgment of the Court (Sixth Chamber) of 13 July 2004 in Case C-277/03: Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland (Failure of a Member State to fulfil its obligations — Environment — Directive 2000/53/EC — Non-transposition within the prescribed period) 14

2004/C 228/28 Judgment of the Court (Fifth Chamber) of 15 July 2004 in Case C-407/03: Commission of the European Communities against Republic of Finland (Failure of a Member State to fulfil its obligations — Conservation of natural habitats — Wild fauna and flora) 15

2004/C 228/29 Judgment of the Court (Fourth Chamber) of 15 July 2004 in Case C-419/03: Commission of the European Communities against French Republic (Failure of a Member State to fulfil its obligations — Partial failure to transpose — Burden of proof — Directive 2001/18/EC) 15

2004/C 228/30 Judgment of the Court (Fourth Chamber) of 15 July 2004 in Case C-420/03: Commission of the European Communities against Federal Republic of Germany (Failure of a Member State to fulfil its obligations — Failure to transpose — Directive 2001/18/EC) 16

2004/C 228/31 Judgment of the Court (Full Court) of 13 July 2004 in Case C-27/04: Commission of the European Communities v Council of the European Union (Action for annulment — Article 104 EC — Regulation (EC) No 1467/97 — Stability and Growth Pact — Excessive government deficits — Council decisions under Article 104(8) and (9) EC — Required majority not achieved — Decisions not adopted — Action challenging 'decisions not to adopt the formal instruments contained in the Commission's recommendations' — Inadmissible — Action challenging 'Council conclusions') 16

2004/C 228/32 Order of the Court (Fifth Chamber) of 8 June 2004 in Joined Cases C-250/02 to C-253/02 and C-256/02 (reference for a preliminary ruling from the Tribunale amministrativo regionale del Lazio): Telecom Italia Mobile SpA v Ministero dell'Economia e delle Finanze (Article 104(3) of the Rules of Procedure — Questions identical with questions on which the Court has already ruled) 17

2004/C 228/33 Order of the Court (Fifth Chamber) of 28 June 2004 in Case C-445/02 P: Glaverbel SA v OHIM (Appeal — Regulation (EC) No 40/94 — Community trade mark — Design applied to the surface of goods — Absolute ground for refusal — Lack of distinctive character) 17

2004/C 228/34 Order of the Court (Second Chamber) of 8 June 2004 in Case C-268/03 (reference for a preliminary ruling from the Rechtbank van eerste aanleg, Antwerp): Jean-Claude De Baeck v Belgische Staat (Article 104(3) of the Rules of Procedure — Fiscal legislation — Taxation on income of natural persons — Assignment of a major holding in the capital of a resident company — Detailed rules governing charge to tax on resultant gain) 18

EN

Notice No	Contents (continued)	Page

2004/C 228/35	Order of the Court (First Chamber) of 27 May 2004 in Case C-517/03: IAMA Consulting Srl v Commission of the European Communities (Arbitration clause — Action before the Court of First Instance — Counterclaim — Jurisdiction of the Court of Justice)	18
2004/C 228/36	Order of the Court (Fourth Chamber) of 10 June 2004 in Case C-555/03 (reference for a preliminary ruling from the Tribunal du travail de Charleroi): Magali Warbecq v Ryanair Ltd (Regulation (EC) No 44/2001 — Jurisdiction in civil and commercial matters — Court or tribunal having the power under Article 68 EC to request the Court to give a preliminary ruling — Court lacking jurisdiction to give a preliminary ruling)	19
2004/C 228/37	Case C-223/04: Reference for a preliminary ruling by the Tribunale di Gorizia by order of that court of 7 April 2004 in the case of Azienda Agricola Bressan Aldo against Agenzia per le erogazioni in Agricoltura (AGEA) and Cospalat Friuli Venezia Giulia	19
2004/C 228/38	Case C-232/04: Reference for a preliminary ruling by the Arbeitsgericht Düsseldorf by order of that court of 5 May 2004 in the case of Ms Nurten Güney-Görres against Securicor Aviation Limited, Securicor Aviation (Germany) Limited, and Kötter Aviation Security GmbH & Co. KG.	19
2004/C 228/39	Case C-239/04: Action brought on 8 June 2004 by the Commission of the European Communities against the Portuguese Republic	20
2004/C 228/40	Case C-244/04: Action brought on 8 June 2004 by the Commission of the European Communities against the Federal Republic of Germany	20
2004/C 228/41	Case C-261/04: Reference for a preliminary ruling by the Arbeitsgericht Regensburg (Germany) by order of that court of 16 June 2004 in the case of Gerhard Schmidt against Sennebogen Maschinenfabrik GmbH	21
2004/C 228/42	Case C-264/04: Reference for a preliminary ruling by the Amtsgericht Breisach (Germany) by decision of that court of 7 June 2004 in the case of Badischer Winzerkeller eG against Land Baden-Württemberg	21
2004/C 228/43	Case C-265/04: Reference for a preliminary ruling by the Kammarrätten i Sundsvall by order of that court of 17 June 2004 in the case of Margaretha Bouanich against the Skatteverket	22
2004/C 228/44	Cases C-266/04, C-267/04, C-268/04, C-269/04, C-270/04: References for preliminary rulings by the Tribunal des affaires de sécurité sociale de Saint-Etienne by judgments of that Tribunal of 5 April 2004 in the following cases: SAS Nazairdis against Caisse Nationale de l'Organisation Autonome d'Assurance Vieillesse des Travailleurs Non-Salariés des Professions Industrielles et Commerciales — Caisse ORGANIC, JACELI SA against Caisse Nationale de l'Organisation Autonome d'Assurance Vieillesse des Travailleurs Non-Salariés des Professions Industrielles et Commerciales — Caisse ORGANIC, KOMOGO SA against Caisse Nationale de l'Organisation Autonome d'Assurance Vieillesse des Travailleurs Non-Salariés des Professions Industrielles et Commerciales — Caisse ORGANIC, Tout pour la maison SARL against Caisse Nationale de l'Organisation Autonome d'Assurance Vieillesse des Travailleurs Non-Salariés des Professions Industrielles et Commerciales — Caisse ORGANIC, SAS Distribution Casino France against Caisse Nationale de l'Organisation Autonome d'Assurance Vieillesse des Travailleurs Non-Salariés des Professions Industrielles et Commerciales — Caisse ORGANIC	22
2004/C 228/45	Case C-271/04: Reference for a preliminary ruling by the Tribunale di Tolmezzo by order of that Court of 16 June 2004 in the case of Azienda Agricola Elena Di Doi against Azienda per le Erogazioni in Agricoltura (AGEA)	23

(Continued overleaf)

Notice No	Contents (continued)	Page
2004/C 228/46	Case C-272/04: Reference for a preliminary ruling by the Tribunale di Tolmezzo by order of that Court of 16 June 2004 in the case of Azienda Agricola Franco Piemonte against Azienda per le Erogazioni in Agricoltura (AGEA)	23
2004/C 228/47	Case C-274/04: Reference for a preliminary ruling by the Finanzgericht Hamburg (Finance Court) (Germany) by order of that court of 16 June 2004 in the case of ED & F Man Sugar Ltd against Hauptzollamt Hamburg-Jonas	24
2004/C 228/48	Case C-277/04: Action brought on 29 June 2004 by the Commission of the European Communities against the Federal Republic of Germany	24
2004/C 228/49	Case C-278/04: Action brought on 29 June 2004 by the Commission of the European Communities against the Federal Republic of Germany	24
2004/C 228/50	Case C-279/04: Reference for a preliminary ruling by the Retten i Hørsholm (Denmark) by order of that court of 4 June 2004 in the case of Anklagemyndigheden against Steffen Ryborg	25
2004/C 228/51	Case C-280/04: Reference for a preliminary ruling by the Vestre Landsret by order of that court of 25 June 2004 in the case of Jyske Finans against Skatteministeriet	25
2004/C 228/52	Case C-281/04 P: Appeal brought on 25 June 2004 by Michael Leighton, Graham French and John Neiger against the order made on 3 May 2004 by the Fifth Chamber of the Court of First Instance of the European Communities in case T-24/04 between Michael Leighton, Graham French and John Neiger and the Council of the European Union and the Commission of the European Communities.	25
2004/C 228/53	Case C-287/04: Action brought on 5 July 2004 by the Commission of the European Communities against the Kingdom of Sweden	26
2004/C 228/54	Case C-290/04: Reference for a preliminary ruling by the Bundesfinanzhof by order of that court of 28 April 2004 in the case of FKP Scorpio Konzertproduktionen GmbH against Finanzamt (Tax Office) Hamburg-Eimsbüttel	26
2004/C 228/55	Case C-292/04: Reference for a preliminary ruling by the Finanzgericht Köln by order of that court of 24 June 2004 in the case of Wienand Meilicke, Heidi Christa Weyde and Marina Stöffler against Finanzamt Bonn-Innenstadt	27
2004/C 228/56	Case C-293/04: Reference for a preliminary ruling by the Gerechtshof te Amsterdam by order of that court of 14 June 2004 in the case of Beemsterboer Coldstore Services BV against Douanedistrict Arnhem	27
2004/C 228/57	Case C-294/04: Reference for a preliminary ruling by order of the Juzgado de lo Social No 30 de Madrid of 5 July 2004 in the case between C. Sarkatzis Herrero and Instituto Madrileño de la Salud	28
2004/C 228/58	Case C-300/04: Reference for a preliminary ruling by the Raad van State by decision of that court of 13 July 2004 in the case of M.G. Eman and O.B. Sevinger against het College van Burgemeester en Wethouders van Den Haag	28
2004/C 228/59	Case C-303/04: Reference for a preliminary ruling by the Tribunale di Voghera, by order of that court of 1 July 2004 in the case of Lidl Italia Srl against Comune di Stradella	29
2004/C 228/60	Case C-304/04: Reference for a preliminary ruling by the Gerechtshof te Amsterdam by decision of that court of 13 July 2004 in the case of Jacob Meijer B.V against Inspecteur van de Belastingdienst – Douanedistrict Arnhem	29

EN

Notice No	Contents (continued)	Page

2004/C 228/61	Case C-305/04: Reference for a preliminary ruling by the Gerechtshof te Amsterdam by decision of that court of 13 July 2004 in the case of Eagle International Freight B.V. against Inspecteur van de Belastingdienst – Douanedistrict Arnhem.	29
2004/C 228/62	Case C-306/04: Reference for a preliminary ruling by the Gerechtshof te Amsterdam by decision of that court of 13 July 2004 in the case of Compaq Computer International Corporation against Inspecteur van de Belastingdienst – Douanedistrict Arnhem.	30
2004/C 228/63	Case C-310/04: Action brought on 22 July 2004 by the Kingdom of Spain against the Council of the European Union	30
2004/C 228/64	Case C-312/04: Action brought on 23 July 2004 by the Commission of the European Communities against the Kingdom of the Netherlands.	31
2004/C 228/65	Case C-314/04: Reference for a preliminary ruling by the Tribunal Superior de Justicia de la Comunidad Valenciana by order of that court of 12 July 2004 in the case of R.M. Torres Aucejo against Fondo de Garantía Salarial	31
2004/C 228/66	Case C-317/04: Action brought on 27 July 2004 by the European Parliament against the Council of the European Union	31
2004/C 228/67	Case C-318/04: Action brought on 27 July 2004 by the European Parliament against the Commission of the European Communities	32
2004/C 228/68	Case C-319/04: Action brought on 23 July 2004 by the Commission of the European Communities against the French Republic	33
2004/C 228/69	Case C-320/04: Action brought on 27 July 2004 by the Commission of the European Communities against the Grand Duchy of Luxembourg	33
2004/C 228/70	Case C-333/04: Action brought on 2 August 2004 by the Commission of the European Communities against the Grand Duchy of Luxembourg	34
2004/C 228/71	Removal from the register of Case C-257/02	34
2004/C 228/72	Removal from the register of Case C-322/02	34
2004/C 228/73	Removal from the register of Case C-349/02	34
2004/C 228/74	Removal from the register of Case C-450/02	34
2004/C 228/75	Removal from the register of Case C-454/02	35
2004/C 228/76	Removal from the register of Case C-76/03	35
2004/C 228/77	Removal from the register of Case C-474/03	35
2004/C 228/78	Removal from the register of Case C-538/03	35

(Continued overleaf)

COURT OF FIRST INSTANCE

Notice No	Contents	Page
2004/C 228/79	Judgment of the Court of First Instance of 10 June 2004 in Joined Cases T-153/01 and T-323/01: Mercedes Alvarez Moreno v Commission of the European Communities (Officials — Member of the auxiliary staff — Conference interpreter — Article 74 of the Conditions of Employment of Other Servants)	36
2004/C 228/80	Judgment of the Court of First Instance of 10 June 2004 in Case T-258/01: Pierre Eveillard v Commission of the European Communities (Officials — Disciplinary measures — Relegation in step — Articles 11 and 14 of the Staff Regulations — Contract for the security of the Commission's buildings)	36
2004/C 228/81	Judgment of the Court of First Instance of 10 June 2004 in Case T-276/01: Mély Garroni v European Parliament (Officials — Auxiliary staff — Conference Interpreter — Article 74 of the conditions of employment of other staff — Termination of employment)	37
2004/C 228/82	Judgment of the Court of First Instance of 10 June 2004 in Case T-307/01: Jean-Paul François v Commission of the European Communities (Officials — Disciplinary regime — Relegation in step — Caretaking contract of the Commission's buildings — Reasonable time-limit — Criminal proceeding — Action for damages)	37
2004/C 228/83	Judgment of the Court of First Instance of 22 June 2004 in Case T-185/02: Claude Ruiz-Picasso and Others v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Community trade mark — Regulation (EC) No 40/94 — Opposition — Likelihood of confusion — Application for Community word trade mark PICARO — Earlier word trade mark PICASSO)	37
2004/C 228/84	Judgment of the Court of First Instance of 24 June 2004 in Case T-190/02: Anita Jannice Österholm v Commission of the European Communities (Officials — Absence treated as a period of annual leave — Time-limits — No legal interest in bringing proceedings — Inadmissibility)	38
2004/C 228/85	Judgment of the Court of First Instance of 22 June 2004 in Case T-66/03: Koffiebranderij en Theehandel 'Drie Mollen sinds 1818' BV v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Community trade mark — Opposition proceedings — Application for a figurative Community trade mark including the word 'Galáxia' — Earlier national and international word marks GALA — Relative ground for refusal — Rejection of opposition — Article 8(1)(b) of Regulation (EC) No 40/94)	38
2004/C 228/86	Judgment of the Court of First Instance of 10 June 2004 in Case T-315/02: Svend Klitgaard v Commission of the European Communities (Arbitration clause — Contract concluded under the PLAN Cluster D programme — Travel expenses — Costs of recovery — Late payment)	38
2004/C 228/87	Judgment of the Court of First Instance of 10 June 2004 in Case T-330/03: Xanthippi Liakoura v Council of the European Union (Officials — Refusal of promotion — Action for annulment and compensation)	39
2004/C 228/88	Order of the Court of First Instance of 26 May 2004 in Case T-165/02: Enrique José Lloris Maeso v Commission of the European Communities (Action for annulment — No steps taken by the applicant — No need to adjudicate)	39
2004/C 228/89	Order of the Court of First Instance of 14 June 2004 in Case T-267/02, Rewe-Zentral AG v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Community trade mark — Partial refusal of registration — Withdrawal of opposition — No need to adjudicate)	39

EN

Notice No	Contents (continued)	Page

2004/C 228/90	Order of the Court of First Instance of 7 June 2004 in Case T-333/02: Gestoras Pro-Amnistía and Others v Council of the European Union (Action for damages — Justice and home affairs — Common position of the Council — Measures concerning persons, groups and entities involved in terrorist acts — Manifest lack of jurisdiction — Action manifestly unfounded)	40
2004/C 228/91	Order of the Court of First Instance of 27 May 2004 in Case T- 358/02: Deutsche Post AG and DHL International Srl v Commission of the European Communities (State aid — Approval by the Commission of aid granted by the Italian authorities to Poste Italiane — Action for annulment brought by competitors — Inadmissibility)	40
2004/C 228/92	Order of the Court of First Instance of 2 July 2004 in Case T-9/03, Federazione Regionale Coltivatori Diretti della Sardegna and CIA v Commission of the European Communities (State aid — Action for annulment and compensation — Decision finding an aid scheme incompatible with the common market — Actions brought by representatives of potential beneficiaries of that scheme — Inadmissibility)	40
2004/C 228/93	Order of the Court of First Instance of 27 May 2004 in Case T-61/03: Irwin Industrial Tool Co. v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Community trade mark — Word mark QUICK-GRIP — Absolute ground for refusal — Descriptiveness — Article 7(1)(c) of Regulation (EC) No 40/94 — Refusal to register — Action manifestly lacking any foundation in law)	41
2004/C 228/94	Order of the Court of First Instance of 9 June 2004 in Case T-96/03: Manuel Camós Grau v Commission of the European Communities (Investigation of the European Anti-fraud Office (OLAF) concerning the management and financing of the Institute for European-Latin American Relations — Possible conflict of interests with regard to an investigator — Decision to remove the investigator from the team — Action for annulment — Preparatory measures — Inadmissible)	41
2004/C 228/95	Order of the Court of First Instance of 2 June 2004 in Case T-123/03 Pfizer Ltd v Commission of the European Communities (Medicinal products for human use — Initiation, under Article 30 of Directive 2001/83/EC, of the procedure under Article 32 of that directive — Application for annulment — Measure against which an action may be brought — Preparatory measure — Inadmissible)	42
2004/C 228/96	Order of the Court of First Instance of 25 May 2004 in Case T-264/03: Jürgen Schmoldt and Others v Commission of the European Communities (Action for annulment — Procedural time-limit — Natural or legal persons — Acts of individual concern to them — Decision — Thermal insulation standards — Inadmissibility)	42
2004/C 228/97	Case T-196/04: Action brought on 25 May 2004 by Ryanair Limited against the Commission of the European Communities	42
2004/C 228/98	Case T-255/04: Action brought on 21 June 2004 by Monique Negenman against Commission of the European Communities	43
2004/C 228/99	Removal from the Register of Case T-306/99	43
2004/C 228/100	Removal from the Register of Case T-307/99	43
2004/C 228/101	Removal from the Register of Case T-308/99	44
2004/C 228/102	Removal from the Register of Case T-310/99	44
2004/C 228/103	Removal from the Register of Case T-311/99	44
2004/C 228/104	Removal from the Register of Case T-312/99	44

(Continued overleaf)

Notice No	Contents (continued)	Page

2004/C 228/105 Removal from the Register of Case T: 220/02 44

2004/C 228/106 Removal from the Register of Case T-242/03 44

2004/C 228/107 Removal from the Register of Case T-380/03 44

2004/C 228/108 Removal from the Register of Case T-423/03 45

2004/C 228/109 Removal from the Register of Case T-89/04 45

II *Preparatory Acts*

. . . . . .

III *Notices*

2004/C 228/110 Last publication of the Court of Justice in the *Official Journal of the European Union* OJ C 201, 7.8.2004 46

EN

I

(Information)

COURT OF JUSTICE

COURT OF JUSTICE

JUDGMENT OF THE COURT

(Second Chamber)

of 15 July 2004

in Case C-501/00: Kingdom of Spain v Commission of the European Communities [1]

(Articles 4(c) CS and 67 CS — Commission Decision No 2496/96 ECSC — Export aid for steel undertakings — Observance of a reasonable period — Tax deduction — Obligation to state reasons — Selective nature — General measure)

(2004/C 228/01)

(Language of the case: Spanish)

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

In Case C-501/00: Kingdom of Spain (Agent: S. Ortiz Vaamonde) supported by Diputación Foral de Alava, Diputación Foral de Vizcaya, Diputación Foral de Guipúzcoa, Juntas Generales de Guipúzcoa, Gobierno del País Vasco (Lawyer: R. Falcón y Tella) and by Unión de Empresas Siderúrgicas (Unesid) (Lawyers: L. Suárez de Lezo Mantilla and I. Alonso de Noriega Satrústegui) v Commission of the European Communities (Agents: G. Rozet and G. Valero Jordana) — application for annulment of Commission Decision of 31 October 2000 on Spain's corporation tax laws (OJ 2001 L 60, p. 57) — the Court (Second Chamber), composed of: C.W.A. Timmermans, President of Chamber, J.-P. Puissochet, N. Cunha Rodrigues, R. Schintgen (Rapporteur) and N. Colneric, Judges; A. Tizzano, Advocate General; R. Grass, Registrar, gave a judgment on 15 July 2004, in which it:

1) *Dismisses the action.*

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

3) *Orders Diputación Foral de Álava, Diputación Foral de Vizcaya, Diputación Foral de Guipúzcoa, Juntas Generales de Guipúzcoa, Gobierno del Pais Vasco and Unión de Empresas Siderurgicas to bear their own costs.*

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[1] OJ C 79 of 10.3.2001.

JUDGMENT OF THE COURT

(Second Chamber)

of 15 July 2004

in Case C-272/01: Commission of the European Communities v Portuguese Republic [1]

(Failure of a Member State to fulfil its obligations — Directive 76/160/EEC — Quality of bathing water — Failure to conform to limit values — Failure to identify all inland bathing areas in Portugal — Failure to collect a sufficient number of samples)

(2004/C 228/02)

(Language of the case: Portuguese)

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

In Case C-272/01: Commission of the European Communities (Agents: M.T. Figueira and G. Valero Jordana) against Portuguese Republic (Agents: L. Fernandes, M. Telles Romão and M. João Lois) — application for a declaration by the Court that:

— by failing to adopt all the measures necessary to ensure that the quality of bathing water conforms to the values laid down in Article 3 of Council Directive 76/160/EEC of 8 December 1975 concerning the quality of bathing water (OJ 1976 L 31, p. 1),

— by failing to take samples at the minimum frequencies laid down in the annex to that directive, and

— by failing to identify all the inland bathing areas in Portugal,

the Portuguese Republic has failed to fulfil its obligations under Article 4(1), in conjunction with Articles 1(2) and 3 and the annex to the directive, and under Article 6(1) and (2) of the directive

the Court (Second Chamber), composed of: C.W.A. Timmermans, President of the Chamber, C. Gulmann, J. P. Puissochet, J.N. Cunha Rodrigues and N. Colneric (Rapporteur), Judges; P. Léger, Advocate General; R. Grass, Registrar, has given a judgment on 15 July 2004 in which it:

1. *Declares that, by failing to take all the measures necessary to ensure that the quality of bathing water complies with the mandatory limit values laid down under Article 3 of Council Directive 76/160/EEC of 8 December 1975 concerning the quality of bathing water, the Portuguese Republic has failed to fulfil its obligations under Article 4(1) of the Directive, in conjunction with Article 3 and the Annex to that Directive;*

2. *Dismisses the remainder of the application;*

3. *Orders each party to bear its own costs.*

(1) OJ C 245 of 1.9.2001.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 15 July 2004

in Case C-349/01: Betriebsrat der Firma ADS Anker GmbH v ADS Anker GmbH (1)

(Social policy — Articles 4 and 11 of Directive 94/45/CE — European Works Council — Information and consultation of workers in Community-scale undertakings — Obligation for central management to provide certain information to employees' representatives)

(2004/C 228/03)

(Language of the case: German)

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

In Case C-349/01: reference to the Court under Article 234 EC by the Arbeitsgericht (Labour Court) Bielefeld (Germany) for a preliminary ruling in the proceedings pending before that court between Betriebsrat der Firma ADS Anker GmbH and ADS Anker GmbH 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 (Sixth Chamber), composed of: V. Skouris, acting as President of the Sixth Chamber, C. Gulmann, J.-P. Puissochet, F. Macken (Rapporteur) and N. Colneric, Judges; A. Tizzano, Advocate General; H.A. Rühl, Registrar, gave a judgment on 15 July 2004, the operative part of which is as follows:

Article 4(1) and Article 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 must be interpreted as meaning that Member States are required to impose on undertakings established within their territory and constituting the central management of a Community-scale group of undertakings for the purposes of Article 2(1)(e) and Article 3(1) of the Directive, or the deemed central management under the second subparagraph of Article 4(2), the obligation to supply to another undertaking in the same group established in another Member State the information requested from it by its employees' representatives, where that information is not in the possession of that other undertaking and it is essential for opening negotiations for the setting up of a European Works Council.

(1) OJ C 369 of 22.12.2001.

JUDGMENT OF THE COURT

(Second Chamber)

of 15 July 2004

in Case C-381/01: Commission of the European Communities v Kingdom of Sweden (1)

(Failure of a Member State to fulfil obligations — Directive 77/388/EEC — VAT — Article 11(A)(1)(a) — Taxable amount — Subsidy directly linked to the price — Regulation (EC) No 603/95 — Aid granted in the dried fodder sector)

(2004/C 228/04)

(Language of the case: Italian)

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

In Case C-381/01: Commission of the European Communities (Agent: E. Traversa) v Italian Republic (Agent: I. Braguglia, assisted by G. de Bellis) supported by Republic of Finland (Agent: T. Pynnä) and by Kingdom of Sweden (Agent: A. Kruse) — application for a declaration that, by failing to levy value added tax on aid paid under Council Regulation (EC) No 603/95 of 21 February 1995 on the common organisation of

the market in dried fodder (OJ 1995 L 63, p. 1), the Italian Republic has failed to fulfil its obligations under Article 11 of the Sixth Council Directive (77/388/EEC) of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) — the Court (Second Chamber), composed of: C.W.A. Timmermans, President of the Chamber, C. Gulmann (Rapporteur), J.-P. Puissochet, J.N. Cunha Rodrigues and N. Colneric, Judges; L.A. Geelhoed, Advocate General; L. Hewlett, Principal Administrator, for the Registrar, has given a judgment on 15 July 2004 in which it:

1. *Dismisses the action;*

2. *Orders the Italian Republic to bear its own costs;*

3. *Orders the Republic of Finland and the Kingdom of Sweden to bear their own costs.*

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(1) OJ C 348 of 8.12.2001.

JUDGMENT OF THE COURT

(Second Chamber)

of 15 July 2004

in Case C-495/01: Commission of the European Communities v Republic of Finland (1)

(Failure of a Member State to fulfil obligations — Directive 77/388/EEC — VAT — Article 11(A)(1)(a) — Taxable amount — Subsidy directly linked to the price — Regulation (EC) No 603/95 — Aid granted in the dried fodder sector)

(2004/C 228/05)

(Language of the case: Finnish)

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

In Case C-495/01: Commission of the European Communities (Agents: E. Traversa and I. Koskinen) v Republic of Finland (Agent: T. Pynnä) supported by Federal Republic of Germany (Agents: W.-D. Plessing and M. Lumma) and by Kingdom of Sweden (Agents: A. Kruse and A. Falk) — application for a declaration that, by failing to levy value added tax on aid paid under Council Regulation (EC) No 603/95 of 21 February 1995 on the common organisation of the market in dried fodder (OJ 1995 L 63, p. 1), the Republic of Finland has failed to fulfil its obligations under Article 11 of the Sixth Council Directive (77/388/EEC) of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) — the Court (Second Chamber), composed of: C.W.A. Timmermans, President of the Chamber, C. Gulmann (Rapporteur), J.-P. Puissochet, J.N. Cunha Rodrigues and N. Colneric, Judges; L.A. Geelhoed, Advocate General; L. Hewlett, Principal Administrator, for the Registrar, has given a judgment on 15 July 2004 in which it:

1. *Dismisses the action;*

2. *Orders the Commission of the European Communities to pay the costs;*

3. *Orders the Federal Republic of Germany and the Kingdom of Sweden to bear their own costs.*

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(1) OJ C 58 of 2.3.2002.

JUDGMENT OF THE COURT

(Second Chamber)

of 15 July 2004

in Joined Cases C-37/02 and C-38/02 (references for a preliminary ruling by the Tribunale amministrativo regionale per il Veneto): Di Lenardo Adriano Srl and Dilexport Srl v Ministero del Commercio con l'Estero (1)

(Bananas — Common organisation of the market — Regulation (EC) No 896/2001 — Common system of trade with third countries — Primary imports — Validity — Protection of legitimate expectations — Retroactivity — Implementing power)

(2004/C 228/06)

(Language of the case: Italian)

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

In Joined Cases C-37/02 and C-38/02: references to the Court under Article 234 EC for a preliminary ruling by the Tribunale amministrativo regionale per il Veneto (Italy) in the proceedings pending before that court between Di Lenardo Adriano Srl (C-37/02), Dilexport Srl (C-38/02) and Ministero del Commercio con l'Estero on the validity of Articles 1, 3, 4, 5, 6 and 31 of Commission Regulation (EC) No 896/2001of 7 May 2001 laying down detailed rules for applying Council Regulation (EEC) No 404/93 as regards the arrangements for importing bananas into the Community (OJ 2001 L 126, p. 6) — the Court (Second Chamber), composed of: C.W.A. Timmermans, President of the Chamber, J.-P. Puissochet and R. Schintgen (Rapporteur), F. Macken and N. Colneric, Judges; C. Stix-Hackl, Advocate General; L. Hewlett, Principal Admininistrator, for the Registrar, has given a judgment on 15 July 2004, in which it has ruled:

Consideration of the questions referred for a preliminary ruling have disclosed nothing to affect the validity of Articles 1, 3, 4, 5, 6(c) and 31 of Commission Regulation (EC) No 896/2001 of 7 May 2001 laying down detailed rules for applying Council Regulation (EEC) No 404/93 as regards the arrangements for importing bananas into the Community.

(1) OJ C 97 of 20.4.2002.

JUDGMENT OF THE COURT

(Second Chamber)

of 15 July 2004

in Case C-144/02: Commission of the European Communities v Federal Republic of Germany (1)

(Failure of a Member State to fulfil obligations — Directive 77/388/EC — VAT — Article 11(A)(1)(a) — Taxable amount — Subsidy directly linked to the price — Regulation (EC) No 603/95 — Aid granted in the dried fodder sector)

(2004/C 228/07)

(Language of the case: German)

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

In Case C-144/02: Commission of the European Communities (Agent: E. Traversa and K. Gross) v Federal Republic of Germany (Agent: M. Lumma), supported by Republic of Finland (Agents: T. Pynnä and E. Bygglin) and by Kingdom of Sweden (Agents: Kruse and A. Falk) — application for a declaration that, by failing to levy value added tax on aid paid under Council Regulation (EC) No 603/95 of 21 February 1995 on the common organisation of the market in dried fodder (OJ 1995 L 63, p. 1), the Federal Republic of Germany has failed to fulfil its obligations under Article 11 of the Sixth Council Directive (77/388/EEC) of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) — the Court (Second Chamber), composed of C.W.A. Timmermans, President of the Chamber, C. Gulmann (Rapporteur), J.-P. Puissochet, J.N. Cunha Rodrigues and N. Colneric, Judges; L.A. Geelhoed, Advocate General; L. Hewlett, Principal Administrator, for the Registrar, has given a judgment on 15 July 2004 in which it:

1. *Dismisses the action;*

2. *Orders the Commission of the European Communities to pay the costs;*

3. *Orders the Republic of Finland and the Kingdom of Sweden to bear their own costs.*

(1) OJ C 156 of 29.6.2002.

JUDGMENT OF THE COURT

(Second Chamber)

15 July 2004

in Case C-239/02 (reference for a preliminary ruling from the Rechtbank van Koophandel, Hasselt): Douwe Egberts NV v Westrom Pharma NV and Others (1)

(Approximation of laws — Interpretation of Article 28 EC and of Directives 1999/4/EC and 2000/13/EC — Validity of Directive 1999/4/EC — Labelling and advertising of foodstuffs — Prohibitions of references to health)

(2004/C 228/08)

(Language of the case: Dutch)

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

In Case C-239/02: reference to the Court under Article 234 EC from the Rechtbank van Koophandel, Hasselt (Belgium) for a preliminary ruling in the proceedings pending before that court between Douwe Egberts NV and Westrom Pharma NV, Christophe Souranis, carrying on business under the commerical name of 'Etablissements FICS', and between Douwe Egberts NV and FICS-World BVBA — on the interpretation of Article 28 EC, on the interpretation and validity of Article 2 of Directive 1999/4/EC of the European Parliament and of the Council of 22 February 1999 relating to coffee extracts and chicory extracts (OJ 1999 L 66, p. 26), and on the interpretation of Article 18 of Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs (OJ 2000 L 109, p. 29) — the Court (Second Chamber), composed of: C.W.A. Timmermans, President of the Second Chamber, J-.P. Puissochet, J.N. Cunha Rodrigues (Rapporteur), R. Schintgen and N. Colneric, Judges; L.A. Geelhoed, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 15 July 2004, in which it has ruled:

1) *Article 2 of Directive 1999/4/EC of the European Parliament and of the Council of 22 February 1999 relating to coffee extracts and chicory extracts must be interpreted as meaning that, when products mentioned in the annex to that directive are marketed, other names, such as invented or trade names, are not precluded from being used alongside the product names.*

2) *Article 18(1) and (2) of Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs must be interpreted as precluding national legislation, such as that at issue, which prohibits references to 'slimming' and to 'medical recommendations, attestations, declarations or statements of approval' in the labelling and presentation of foodstuffs.*

3) *Articles 28 EC and 30 EC must be interpreted as precluding national legislation which prohibits references in the advertising of foodstuffs imported from other Member States to 'slimming' and to 'medical recommendations, attestations, declarations or statements of approval'.*

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[1] OJ C 202 of 24.8.2002.

JUDGMENT OF THE COURT

(Grand Chamber)

of 13 July 2004

in Case C-262/02: Commission of the European Communities v French Republic [1]

(Failure by a Member State to fulfil its obligations — Article 59 of the EC Treaty (now, after amendment, Article 49 EC) — Television broadcasting — Advertising — National measure prohibiting television advertising for alcoholic beverages marketed in that State, in the case of indirect television advertising resulting from the appearance on screen of hoardings visible during the retransmission of certain sporting events — 'Loi Evin')

(2004/C 228/09)

(Language of the case: French)

In Case C-262/02: Commission of the European Communities (Agent: H. van Lier) supported by United Kingdom of Great Britain and Northern Ireland (Agent: K. Manji and K. Beal) v French Republic (Agents: G. de Bergues and R. Loosli-Surrans) — application for a declaration that, by making television broadcasting in France by French television channels of sporting events taking place in other Member States conditional on the prior removal of advertising for alcoholic beverages, the French Republic has failed to fulfil its obligations under Article 59 of the EC Treaty (now, after amendment, Article 49 EC) — the Court (Grand Chamber), composed of: V. Skouris, President, P. Jann (Rapporteur), A. Rosas, C. Gulmann, J.-P. Puissochet and J.N. Cunha-Rodrigues (Presidents of Chambers), R. Schintgen, S. von Bahr and R. Silva de Lapuerta, Judges; A. Tizzano, Advocate General; M. Múgica Arzamendi, Principal Administrator, for the Registrar, has given a judgment on 13 July 2004, in which it:

1. *Dismisses the action.*

2. *Orders the Commission of the European Communities to pay the costs.*

3. *Orders the United Kingdom of Great Britain and Northern Ireland to bear its own costs.*

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[1] OJ C 202 of 24.8.2002.

JUDGMENT OF THE COURT

(First Chamber)

of 15 July 2004

in Case C-315/02 (reference for a preliminary ruling from the Verwaltungsgerichtshof): Anneliese Lenz v Finanzlandesdirektion für Tirol [1]

(Free movement of capital — Tax on revenue from capital — Revenue from capital of Austrian origin: tax rate of 25 % in discharge or rate equal to half of the average tax rate on aggregate income — Income from capital originating in another Member State: normal tax rate)

(2004/C 228/10)

(Language of the case: German)

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

In Case C-315/02: reference to the Court under Article 234 EC by the Verwaltungsgerichtshof (Austria) for a preliminary ruling in the proceedings pending before that court between Anneliese Lenz and Finanzlandesdirektion für Tirol — on the interpretation of Articles 73b et 73d of the EC Treaty (now Articles 56 EC and 58 EC) — the Court (First Chamber), composed: of P. Jann, President of the Chamber, A. Rosas, S. von Bahr, R. Silva de Lapuerta and K. Lenaerts (Rapporteur), Judges; A. Tizzano, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 15 July 2004, the operative part of which is as follows:

1. *Articles 73b and 73d(1) and (3) of the EC Treaty (now, respectively, Articles 56 EC and 58(1) and (3) EC) preclude legislation which allows only the recipients of revenue from capital of Austrian origin to choose between a tax with discharging effect and ordinary income tax with the application of a rate reduced by half, while providing that revenue from capital originating in another Member State must be subject to ordinary income tax without any reduction in the rate.*

2. *Refusal to grant the recipients of revenue from capital originating in another Member State the tax advantages granted to recipients of revenue from capital of Austrian origin cannot be justified by the fact that revenue from companies established in another Member State is subject to low taxation in that State.*

[1] OJ C 261 of 26.10.2002.

JUDGMENT OF THE COURT

(First Chamber)

of 15 July 2004

in Case C-321/02 (reference for a preliminary ruling from the Bundesfinanzhof (Germany): Finanzamt Rendsburg v Detlev Harbs [1]

(Sixth VAT Directive — Article 25 — Common flat-rate scheme for farmers — Leasing of part of a farm)

(2004/C 228/11)

(Language of the case: German)

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

In Case C-321/02: reference to the Court under Article 234 EC from the Bundesfinanzhof (Federal Finance Court) (Germany) for a preliminary ruling in the proceedings pending before that court between Finanzamt Rendsburg and Detlev Harbs on the interpretation of Article 25 of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) — the Court (First Chamber), composed of: P. Jann, President of the Chamber, A. Rosas, S. von Bahr (Rapporteur), R. Silva de Lapuerta and K. Lenaerts, Judges; P. Léger, Advocate General; R. Grass, Registrar, gave a judgment on 15 July 2004, in which it ruled:

Article 25 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 is to be interpreted as meaning that a farmer who has leased and/or let on a long-term basis some of the material assets of his farming business but continues to farm with the rest of his assets and who, in respect of the continued farming activity, is subject to the common flat-rate scheme provided for in Article 25 may not treat the income from such a lease and/or letting as being taxable under that scheme. The turnover from that arrangement must be taxed under the normal scheme or, where appropriate, the simplified scheme of value added tax.

[1] OJ C 289 of 23.11.2002.

JUDGMENT OF THE COURT

(First Chamber)

of 15 July 2004

in Case C-345/02 (reference to the Court of Justice under Article 234 EC by the Hoge Raad der Nederlanden (Supreme Court of the Netherlands)): Pearle BV and Others v Hoofdbedrijfschap Ambachten [1]

(State aid — Definition of aid — Collective advertising campaigns in favour of one sector of the economy — Financing by means of a special contribution payable by undertakings in that sector — Action taken by a body governed by public law)

(2004/C 228/12)

(Language of the case: Dutch)

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

In Case C-345/02: reference to the Court of Justice under Article 234 EC by the Hoge Raad der Nederlanden (Netherlands) for a preliminary ruling in the proceedings before that court between Pearle BV and Others v Hoofdbedrijfschap Ambachten on the interpretation of Articles 92(1) of the EC Treaty (now, after amendment, Article 87(1) EC) and 93(3) of the EC Treaty (now Article 88(3) EC) — the Court (First Chamber), composed of: P. Jann, President of the Chamber, A. Rosas, S. von Bahr, R. Silva de Lapuerta and K. Lenaerts (Rapporteur), Judges; D. Ruiz-Jarabo Colomer, Advocate General; R. Grass, Registrar, gave a judgment on 15 July 2004, the operative part of which is as follows:

On a proper construction of Articles 92(1) of the EC Treaty (now, after amendment, Article 87(1) EC) and 93(3) of the EC Treaty (now Article 88(3) EC), bye-laws adopted by a trade association governed by public law for the purpose of funding an advertising campaign organised for the benefit of its members and decided on by them, through resources levied from those members and compulsorily earmarked for the funding of that campaign, do not constitute an integral part of an aid measure within the meaning of those provisions and it was not necessary for prior notification of them to be given to the Commission since it has been established that that funding was carried out by means of resources which that trade association, governed by public law, never had the power to dispose of freely.

([1]) OJ C 289 of 23.11.2002.

JUDGMENT OF THE COURT

(First Chamber)

of 15 July 2004

in Case C-365/02 (reference for a preliminary ruling from the Korkein hallinto-oikeus (Finland)): Marie Lindfors ([1])

(Directive 83/183/EEC — Transfer of residence from one Member State to another — Tax levied before registration or bringing into use of a vehicle)

(2004/C 228/13)

(Language of the case: Finnish)

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

In Case C-365/02: reference to the Court under Article 234 EC by the Korkein hallinto-oikeus (Supreme Administrative Court) (Finland) for a preliminary ruling in the proceedings pending before that court brought by Marie Lindfors — on the interpretation of Article 1 of Council Directive 83/183/EEC of 28 March 1983 on tax exemptions applicable to permanent imports from a Member State of the personal property of individuals (OJ 1983 L 105, p. 64), — the Court (First Chamber), composed of: P. Jann, President of the Chamber, A. Rosas, S. von Bahr, R. Silva de Lapuerta and K. Lenaerts (Rapporteur), Judges; C. Stix-Hackl, Advocate General; H. von Holstein, Deputy Registrar, gave a judgment on 15 July 2004, the operative part of which is as follows:

Article 1 of Council Directive 83/183/EEC of 28 March 1983 on tax exemptions applicable to permanent imports from a Member State of the personal property of individuals must be interpreted as not precluding, in connection with a transfer of residence of the owner of a vehicle from one Member State to another, a tax such as that laid down by the Autoverolaki (1482/1994) (Law on Car Tax) from being charged before the registration or bringing into use of the vehicle in the Member State to which residence is transferred. However, having regard to the requirements deriving from Article 18 EC, it is for the national court to ascertain whether the application of national law is capable of ensuring that, as regards that tax, that owner is not placed in a less favourable situation than that of citizens who have been permanently resident in the Member State in question and, if necessary, whether such a difference of treatment is justified by objective considerations independent of the residence of the persons concerned and proportionate to the legitimate aim pursued by national law.

([1]) OJ C 323 of 21.12.2002.

JUDGMENT OF THE COURT

(Second Chamber)

of 15 July 2004

in Case C-415/02: Commission of the European Communities v Kingdom of Belgium ([1])

(Failure of a Member State to fulfil obligations — Indirect taxes — Directive 69/335/EEC — Raising of capital — Tax on stock exchange transactions — Tax on the delivery of bearer securities)

(2004/C 228/14)

(Language of the case: French)

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

In Case C-415/02: Commission of the European Communities (Agents: R. Lyal and C. Giolito) v Kingdom of Belgium (Agent: A. Snoecx assisted by B. van de Walle de Ghelcke, avocat) — application for a declaration that:

— by imposing the tax on stock exchange transactions on applications made in Belgium for new securities issued when a company or investment fund is being set up or following the completion of an increase in capital or as part of a loan issue, and

— by imposing the tax on the delivery of bearer securities on the physical delivery of bearer securities relating to Belgian or foreign Government stocks, in the case of new securities issued when a company or investment fund is being set up or following the completion of an increase in capital or as part of a loan issue,

the Kingdom of Belgium has failed to fulfil its obligations under Article 11 of Council Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital (OJ, English Special Edition 1969 (II), p. 412), as amended by Council Directive 85/303/EEC of 10 June 1985 (OJ 1985 L 156, p. 23) — the Court (Second Chamber), composed of: C.W.A. Timmermans, President of the Chamber, C. Gulmann, R. Schintgen (Rapporteur), F. Macken and N. Colneric, Judges; Advocate General: A. Tizzano; for the Registrar: M.-F. Contet, Principal Administrator, gave a judgment on 15 July 2004, in which it:

1. *Declares that,*

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

by imposing the tax on the delivery of bearer securities on the physical delivery of bearer securities relating to Belgian or foreign Government stocks, in the case of new securities issued when a company or investment fund is being set up or following the completion of an increase in capital or as part of a loan issue,

the Kingdom of Belgium has failed to fulfil its obligations under Article 11 of Council Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital, as amended by Council Directive 85/303/EEC of 10 June 1985;

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

([1]) OJ C 19 of 25.1.2003.

JUDGMENT OF THE COURT

(First Chamber)

of 15 July 2004

in Case C-424/02: Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland ([1])

(Failure of a Member State to fulfil obligations — Directive 75/439/EEC — Disposal of waste oils — Priority to be given to the processing of waste oils by regeneration)

(2004/C 228/15)

(Language of the case: English)

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

In Case C-424/02: Commission of the European Communities (Agents: X. Lewis and M. Konstantinidis) v United Kingdom of Great Britain and Northern Ireland (Agent: M. Bethell, assisted by M. Demetriou) — application for a declaration that, by failing to adopt the laws, regulations or administrative provisions necessary to comply with Article 3(1) of Council Directive 75/439/EEC of 16 June 1975 on the disposal of waste oils (OJ 1975 L 194, p. 23), as amended by Directive 87/101/EEC of 22 December 1986 (OJ 1987 L 42, p. 43), requiring Member States to take the measures necessary to give priority to the processing of waste oils by regeneration or, in any event, by failing to notify such provisions to the Commission, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under that directive — the Court (First Chamber), composed of: P. Jann (President of the Chamber), A. Rosas, S. von Bahr, R. Silva de Lapuerta (Rapporteur) and K. Lenaerts, Judges; C. Stix-Hackl, Advocate General; L. Hewlett, Registrar, gave a judgment on 15 July 2004, in which it:

1. *Declares that, by failing to take the measures necessary under Article 3(1) of Council Directive 75/439/EEC of 16 June 1975 on the disposal of waste oils, as amended by Council Directive 87/101/EEC of 22 December 1986, to give priority to the processing of waste oils by regeneration, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under that directive;*

2. *Orders the United Kingdom of Great Britain and Northern Ireland to pay the costs.*

([1]) OJ C 19 of 25.1.2003.

JUDGMENT OF THE COURT

(Grand Chamber)

of 13 July 2004

in Case C-429/02 (reference for a preliminary ruling from the Cour de Cassation (France): Bacardi France SAS v Télévision française 1 SA (TF1) and Others (1)

(Article 59 of the EC Treaty (now, after amendment, Article 49 EC) — Directive 89/552/CEE — Television without frontiers — Television broadcasting — Advertising — National measure prohibiting television advertising for alcoholic drinks marketed in that Member State, in the case of indirect television advertising arising from the appearance on screen of hoardings visible during the transmission of sporting events — 'Loi Evin')

(2004/C 228/16)

(Language of the case: French)

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

In Case C-429/02: reference to the Court under Article 234 EC by the Cour de Cassation (France) for a preliminary ruling in the proceedings pending before that court between Bacardi France SAS, formerly Bacardi-Martini SAS, and Télévision française 1 SA (TF1), Groupe Jean-Claude Darmon SA, Girosport SARL, on the interpretation of Council Directive 89/552/CEE of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (OJ 1989 L 298, p. 23) and Article 59 of the EC Treaty (now, after amendment, Article 49 EC) – the Court (Grand Chamber), composed of: V. Skouris, President, P. Jann (Rapporteur), A. Rosas, C. Gulmann, J.-P. Puissochet and J.N. Cunha Rodrigues (Presidents of Chambers), R. Schintgen, S. von Bahr and R. Silva de Lapuerta, Judges; A. Tizzano, Advocate General; M. Múgica Arzamendi, Principal Administrator, for the Registrar, gave a judgment on 13 July 2004, the operative part of which is as follows:

1. *The first sentence of Article 2(2) of Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities does not preclude a Member State from prohibiting television advertising for alcoholic beverages marketed in that State, in the case of indirect television advertising resulting from the appearance on screen of hoardings visible during the retransmission of bi-national sporting events taking place in the territory of other Member States.*

   That kind of indirect television advertising is not to be classed as 'television advertising' within the meaning of Articles 1(b), 10 and 11 of the directive.

2. *Article 59 of the EC Treaty (now, after amendment, Article 49 EC) does not preclude a Member State from prohibiting television advertising for alcoholic beverages marketed in that State, in the case of indirect television advertising resulting from the appearance on screen of hoardings visible during the retransmission of bi-national sporting events taking place in other Member States.*

(1) OJ C 19 of 25.1.2003.

JUDGMENT OF THE COURT

(First Chamber)

of 15 July 2004

in Case C-443/02 (reference for a preliminary ruling from the Tribunale di Pordenone): Nicolas Schreiber (1)

(Article 28 EC — Directive 98/8/EC — Placing of biocidal products on the market — National measure requiring authorisation for the placing on the market of blocks of red cedar wood having natural anti-moth properties)

(2004/C 228/17)

(Language of the case: Italian)

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

In Case C-443/02: reference to the Court under Article 234 EC from the Tribunale di Pordenone (Italy) for a preliminary ruling in the criminal proceedings before that court against Nicolas Schreiber — on the interpretation of Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market (OJ 1998 L 123, p. 1), and Article 28 EC — the Court (First Chamber), composed of: P. Jann (Rapporteur), President of the Chamber, A. Rosas, S. von Bahr, R. Silva de Lapuerta and K. Lenaerts, Judges; D. Ruiz-Jarabo Colomer, Advocate General; L. Hewlett, Principal Administrator, for the Registrar, gave a judgment on 15 July 2004, the operative part of which is as follows:

1. *Article 3(2)(ii) of Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market does not preclude a Member State from requiring prior authorisation for the marketing of blocks of red cedar wood having natural anti-moth properties.*

   Such blocks cannot be classed as a product containing only a 'basic substance' such that they may be placed on the market in Italy without prior authorisation or registration, but must be classed as a 'biocidal product' within the meaning of Directive 98/8.

2. *Article 4(1) of Directive 98/8 does not preclude a Member State from requiring prior authorisation for the marketing of blocks of red cedar wood having natural anti-moth properties, which have been lawfully placed on the market in another Member State in which there is no requirement of authorisation or registration.*

3. *The fact that a Member State requires prior authorisation for the marketing of blocks of red cedar wood having natural anti-moth properties, which have been lawfully placed on the market in another Member State in which there is no requirement of authorisation or registration, constitutes a measure having equivalent effect contrary to Article 28 EC, which may nevertheless be regarded as justified on grounds of the protection of public health under Article 30 EC.*

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(1) OJ C 31 of 8.2.2003.

JUDGMENT OF THE COURT

(Third Chamber)

of 15 July 2004

in Case C-459/02 (reference to the Court under Article 234 EC by the Cour de Cassation (Luxembourg)): Willy Gerekens and Association agricole pour la promotion de la commercialisation laitière Procola v State of the Grand Duchy of Luxembourg (1)

(Reference for a preliminary ruling — Milk — Additional levy in the milk and milk products sector — National legislation — Levy fixed retroactively — General principles of legal certainty and non-retroactivity)

(2004/C 228/18)

(Language of the case: French)

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

In Case C-459/02: reference to the Court under Article 234 EC by the Cour de Cassation (Luxembourg) for a preliminary ruling in the proceedings pending before that court between Willy Gerekens and Association agricole pour la promotion de la commercialisation laitière Procola against the State of the Grand Duchy of Luxembourg on the interpretation of the general principles of Community law of legal certainty and non-retroactivity in respect of national rules in the sphere of milk production quotas which were adopted in place of initial rules held by the Court of Justice to be discriminatory and which make it possible to penalise retroactively production in excess of those quotas after the entry into force of Council Regulation (EEC) No 856/84 of 31 March 1984 amending Regulation (EEC) No 804/68 on the common organisation of the market in milk and milk products (OJ 1984 L 90, p. 10) and Council Regulation (EEC) No 857/84 of 31 March 1984 adopting general rules for the application of the levy referred to in Article 5c of Regulation (EEC) No 804/68 in the milk and milk products sector (OJ 1984 L 90, p. 13), but in accordance with the national rules which have been replaced,— the Court (Third Chamber), composed of: A. Rosas, acting for the President of the Third Chamber, R. Schintgen and N. Colneric (Rapporteur), Judges; D. Ruiz-Jarabo Colomer, Advocate General; R. Grass, Registrar, gave a judgment on 15 July 2004, the operative part of which is as follows:

The general principles of Community law of legal certainty and non-retroactivity do not mean that, for the application of Community rules establishing production quotas of the type introduced by Council Regulation (EEC) No 856/84 of 31 March 1984 amending Regulation (EEC) No 804/68 on the common organisation of the market in milk and milk products and Council Regulation (EEC) No 857/84 of 31 March 1984 adopting general rules for the application of the levy referred to in Article 5c of Regulation (EEC) No 804/68 in the milk and milk products sector, a Member State is precluded from adopting, in place of initial rules held by the Court of Justice to be discriminatory, new rules applying retroactively to production in excess of the production quotas introduced following the entry into force of those regulations, but in accordance with the national rules which have been replaced.

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(1) OJ C 44 of 22.2.2003.

JUDGMENT OF THE COURT

(Second Chamber)

of 15 July 2004

in Case C-463/02: Commission of the European Communities v Kingdom of Sweden (1)

(Failure of a Member State to fulfil obligations — Directive 77/388/EEC — VAT — Article 11(A)(1)(a) — Taxable amount — Subsidy directly linked to the price — Regulation (EC) No 603/95 — Aid granted in the dried fodder sector)

(2004/C 228/19)

(Language of the case: Swedish)

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

In Case C-463/02: Commission of the European Communities (Agents: E. Traversa and K. Simonsson) v Kingdom of Sweden (Agent: A. Falk) supported by Republic of Finland (Agent:

T. Pynnä) — application for a declaration that, by failing to levy value added tax on aid paid under Council Regulation (EC) No 603/95 of 21 February 1995 on the common organisation of the market in dried fodder (OJ 1995 L 63, p. 1), the Kingdom of Sweden has failed to fulfil its obligations under Article 11 of Sixth Council Directive (77/388/1977) of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) — the Court (Second Chamber), composed of: C.W.A. Timmermans, President of the Chamber, C. Gulmann (Rapporteur), J.-P. Puissochet, J.N. Cunha Rodrigues and N. Colneric, Judges; L.A. Geelhoed, Advocate General; L. Hewlett, Principal Administrator, for the Registrar, has given a judgment on 15 July 2004, in which it:

1. *Dismisses the action;*

2. *Orders the Commission of the European Communities to pay the costs;*

3. *Orders the Republic of Finland to bear its own costs.*

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[1] OJ C 55 of 8.3.2003.

JUDGMENT OF THE COURT

(Second Chamber)

of 13 July 2004

in Case C-82/03: Commission of the European Communities v Italian Republic [1]

(Failure of a Member State to fulfil obligations — Article 10 EC — Cooperation with the Community institutions — Failure to forward information to the Commission)

(2004/C 228/20)

(Language of the case: Italian)

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

In Case C-82/03: Commission of the European Communities (Agent: A. Aresu) v Italian Republic (Agent: I.M. Braguglia, assisted by A. Cingolo and P. Gentili) — application for a declaration that, by failing genuinely to cooperate with the Commission in a case concerning the health and safety of workers, the Italian Republic has failed to fulfil its obligations under Article 10 EC — the Court (Second Chamber), composed of: C.W.A. Timmermans, President of the Chamber, C. Gulmann, J.N. Cunha Rodrigues, F. Macken and N. Colneric (Rapporteur), Judges; M. Poiares Maduro, Advocate General; R. Grass, Registrar, has given a judgment on 13 July 2004, in which it:

1. *Declares that, by failing genuinely to cooperate with the Commission of the European Communities in a case concerning the health and safety of workers in a waste water treatment plant situated in the commune of Mandello del Lario in Lombardy (Italy), the Italian Republic has failed to fulfil its obligations under Article 10 EC;*

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

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[1] OJ C 101, 26.4.2003

JUDGMENT OF THE COURT

(First Chamber)

of 15 July 2004

in Case C-118/03: Commission of the European Communities against Federal Republic of Germany [1]

(Failure of a Member State to fulfil its obligations — Failure to transpose Directive 2000/37/EC)

(2004/C 228/21)

(Language of the case: German)

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

In Case C-118/03: Commission of the European Communities (Agents: U. Wölker and H. Støvlbæk) against Federal Republic of Germany (Agent: A. Tiemann) — application for a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Commission Directive 2000/37/EC of 5 June 2000 amending Chapter VIa 'Pharmacovigilance' of Council Directive 81/851/EEC on the approximation of the laws of the Member States relating to veterinary medicinal products (OJ 2000 L 139, p. 25), or by failing to inform the Commission thereof, the Federal Republic of Germany has failed to fulfil its obligations under that directive — the Court (First Chamber), composed of: P. Jann (Rapporteur), President of the Chamber, J.N. Cunha Rodrigues, K. Lenaerts, E. Juhász and M. Ilešič, Judges; A. Tizzano, Advocate General; R. Grass, Registrar, has given a judgment on 15 July 2004, the operative part of which is as follows:

1. *By failing to adopt the laws, regulations and administrative provisions necessary to comply with Commission Directive 2000/37/EC of 5 June 2000 amending Chapter VIa 'Pharmacovigilance' of Council Directive 81/851/EEC on the approximation of the laws of the Member States relating to veterinary medicinal products, the Federal Republic of Germany has failed to fulfil its obligations under that directive.*

2. *The Federal Republic of Germany is ordered to pay the costs.*

(1) OJ C 112 of 10.5.2003.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 15 July 2004

in Case C-119/03: Commission of the European Communities v French Republic (1)

(Failure of a Member State to fulfil obligations — Failure to transpose Directive 2000/52/EC — Transparency of financial relations between Member States and public undertakings)

(2004/C 228/22)

(Language of the case: French)

In Case C-119/03: Commission of the European Communities (Agent: G. Rozet) v French Republic (Agents: G. de Bergues and C. Lemaire) — application for a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Commission Directive 2000/52/EC of 26 July 2000 amending Directive 80/723/EEC on the transparency of financial relations between Member States and public undertakings or, in any event by failing to notify them to the Commission, the French Republic has failed to fulfil its obligations under that directive — the Court (Fifth Chamber), composed of: C. Gulmann, President of the Chamber, S. von Bahr (Rapporteur) and R. Silva de Lapuerta, Judges; A. Tizzano, Advocate General; R. Grass, Registrar, has given a judgment on 15 July 2004 in which it:

1) *declares that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Commission Directive 2000/52/EC of 26 July 2000 amending Directive 80/723/EEC on the transparency of financial relations between Member States and public undertakings, the French Republic has failed to fulfil its obligations under that directive;*

2) *orders the French Republic to pay the costs.*

(1) OJ C 112 of 10.5.2003.

JUDGMENT OF THE COURT

(First Chamber)

of 15 July 2004

in Case C-139/03: Commission of the European Communities against Federal Republic of Germany (1)

(Failure of a Member State to fulfil its obligations — Failure to transpose Directive 2000/38/EC)

(2004/C 228/23)

(Language of the case: German)

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

In Case C-139/03: Commission of the European Communities (Agents: J.C. Schieferer and H. Støvlbæk) against Federal Republic of Germany (Agent: A. Tiemann) — application for a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Commission Directive 2000/38/EC of 5 June 2000 amending Chapter Va (Pharmacovigilance) of Council Directive 75/319/EEC on the approximation of provisions laid down by law, regulation or administrative action relating to medicinal products (OJ 2000 L 139, p. 28), or by failing to inform the Commission thereof, the Federal Republic of Germany has failed to fulfil its obligations under that directive — the Court (First Chamber), composed of: P. Jann (Rapporteur), President of the Chamber, J.N. Cunha Rodrigues, K. Lenaerts, E. Juhász and M. Ilešič, Judges; L.A. Geelhoed, Advocate General; R. Grass, Registrar, has given a judgment on 15 July 2004, the operative part of which is as follows:

1. *By failing to adopt the laws, regulations and administrative provisions necessary to comply with the provisions of Commission Directive 2000/38/EC of 5 June 2000 amending Chapter Va (Pharmacovigilance) of Council Directive 75/319/EEC on the approximation of provisions laid down by law, regulation or administrative action relating to medicinal products, the Federal Republic of Germany has failed to fulfil its obligations under that directive.*

2. *The Federal Republic of Germany is ordered to pay the costs.*

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(1) OJ C 146 of 21.6.2003.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 15 July 2004

in Case C-141/03: Commission of the European Communities against Kingdom of Sweden (1)

(Failure of a Member State to fulfil its obligations — Directive 2002/52/EC — Failure to transpose within the prescribed period)

(2004/C 228/24)

(Language of the case: Swedish)

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

In Case C-141/03 — application under Article 226 EC for a declaration of failure to act, lodged on 28 March 2003, Commission of the European Communities (Agents: J. Flett and P. Hellström) against Kingdom of Sweden (Agent: A. Kruse) — the Court (Sixth Chamber), composed of: J.-P. Puissochet, President of the Chamber, F. Macken (Rapporteur) and S. von Bahr, Judges; L.A. Geelhoed, Advocate General; R. Grass, Registrar, has given a judgment on 15 July 2004, the operative part of which is as follows:

By failing to adopt the laws, regulations and administrative provisions necessary to comply with Commission Directive 2000/52/EC of 26 July 2000 amending Directive 80/723/EEC on the transparency of financial relations between Member States and public undertakings, the Kingdom of Sweden has failed to fulfil its obligations under that directive.

The Kingdom of Sweden is ordered to pay the costs.

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(1) OJ C 146 of 21.6.2003

JUDGMENT OF THE COURT

(Second Chamber)

of 15 July 2004

in Case C-213/03 (reference for a preliminary ruling by the Cour de cassation): Syndicat professionnel coordination des pêcheurs de l'étang de Berre et de la region v Électricité de France (EDF) (1)

(Convention for the Protection of the Mediterranean Sea against Pollution (Barcelona Convention — Protocol for the Protection of the Mediterranean Sea against Pollution from Land-based Sources — Article 6(3) — Authorisation to discharge — Direct effect)

(2004/C 228/25)

(Language of the case: French)

In Case C-213/03: reference to the Court under Article 234 EC by the Cour de cassation (France) for a preliminary ruling in the proceedings pending before that court between Syndicat professionnel coordination des pêcheurs de l'étang de Berre et de la region and Électricité de France (EDF) — on the interpretation of Article 6(3) of the Protocol for the Protection of the Mediterranean Sea against Pollution from Land-based Sources, signed in Athens on 17 May 1980, approved by Council Decision 83/101/EEC of 28 February 1983 (OJ 1983 L 67, p. 1), and of Article 6(1) of the Protocol as amended at the Conference of Plenipotentiaries held in Syracuse on 7 and 8 March 1996, which amendments were approved by Council Decision 1999/801/EC of 22 October 1999 (OJ 1999 L 322, p. 18) — the Court (Second Chamber), composed of: C.W.A. Timmermans, President of the Chamber, C. Gulmann, J.-P. Puissochet, J.N. Cunha Rodrigues and R. Schintgen (Rapporteur), Judges; D. Ruiz-Jarabo Colomer, Advocate General; M. Múgica Arzamendi, Principal Administrator, has given a judgment on 15 July 2004, the operative part of which is as follows:

1. *Article 6(3) of the Protocol for the Protection of the Mediterranean Sea against Pollution from Land-based Sources, signed in Athens on 17 May 1980, approved by Council Decision 83/101/EEC of 28 February 1983 and, following its entry into force, Article 6(1) of the Protocol as amended at the Conference of Plenipotentiaries held in Syracuse on 7 and 8 March 1996, which amendments were approved by Council Decision 1999/801/EC of 22 October 1999, have direct effect, so that any interested party is entitled to rely on those provisions before the national courts.*

2. *Those same provisions must be interpreted as prohibiting, without an authorisation issued by the national competent authorities, the discharge into a saltwater marsh communicating with the Mediterranean Sea of substances which, although not toxic, have an adverse effect on the oxygen content of the marine environment.*

([1]) OJ C 158 of 5.7.2003.

JUDGMENT OF THE COURT

(First Chamber)

of 15 July 2004

in Case C-242/03 (reference for a preliminary ruling by the Cour administrative): Ministre des Finances v Jean-Claude Weidert and Élisabeth Paulus ([1])

(Free movement of capital — Income tax — Special relief for expenditure incurred on the acquisition of shares — Benefit of the advantage restricted to the acquisition of shares in companies established in the Member State concerned)

(2004/C 228/26)

(Language of the case: French)

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

In Case C-242/03: reference to the Court under Article 234 EC by the Cour administrative (Luxembourg) for a preliminary ruling in the proceedings pending before that court between Ministre des Finances and Jean-Claude Weidert and Élisabeth Paulus — the Court (First Chamber), composed of: P. Jann (Rapporteur), President of the Chamber, A. Rosas and R. Silva de Lapuerta, Judges; J. Kokott, Advocate General; R. Grass, Registrar, gave a judgment on 15 July 2004, the operative part of which is as follows:

Article 56(1) EC and Article 58(1)(a) EC preclude a legal provision of a Member State which denies the availability of income tax relief to natural persons for the acquisition of shares representing cash contributions in capital companies established in other Member States.

([1]) OJ C 184 of 2.8.2003.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 13 July 2004

in Case C-277/03: Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland ([1])

(Failure of a Member State to fulfil its obligations — Environment — Directive 2000/53/EC — Non-transposition within the prescribed period)

(2004/C 228/27)

(Language of the case: English)

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

In Case C-277/03: Commission of the European Communities (Agents: X. Lewis and M. Konstantinidis,) v United Kingdom of Great Britain and Northern Ireland (Agent: C. Jackson — application for a declaration that, by not adopting the laws, regulations and administrative provisions necessary to comply with Directive 2000/53/EC of the European Parliament and of the Council of 18 September 2000 on end-of life vehicles (OJ 2000 L 269, p. 34) or, in any event, by not communicating those provisions to the Commission, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under that directive, particularly Article 10(1) thereof, and the EC Treaty — the Court (Sixth Chamber), composed of: J.-P. Puissochet, President of the Chamber, F. Macken (Rapporteur), and S. von Bahr, Judges; M. Poiares Maduro, Advocate General; R. Grass, Registrar, has given a judgment on 13 July 2004, in which it:

1. *Declares that, by not adopting within the prescribed period the laws, regulations and administrative provisions necessary to comply with Directive 2000/53/EC of the European Parliament and of the Council of 18 September 2000 on end-of life vehicles, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under that directive.*

2. *Orders the United Kingdom of Great Britain and Northern Ireland to pay the costs.*

([1]) OJ C 200 of 23.8.2003.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 15 July 2004

in Case C-407/03: Commission of the European Communities against Republic of Finland ([1])

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

(2004/C 228/28)

(Language of the case: Finnish)

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

In Case C-407/03: Commission of the European Communities (Agents: M. van Beek and M. Huttunen) against Republic of Finland (Agent: A. Guimares-Purokoski) — application for a declaration that, by failing to provide a sufficient degree of legal certainty in its national law relating to the obligation to carry out for every project, including those subject to an environmental impact assessment, the appropriate assessment under Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7), the Republic of Finland has failed to fulfil its obligations under that directive — the Court (Fifth Chamber), composed of: C. Gulmann, President of the Chamber, S. von Bahr and R. Silva de Lapuerta (Rapporteur), Judges; J. Kokott, Advocate General; R. Grass, Registrar, has given a judgment on 15 July 2004, the operative part of which is as follows:

1. *By failing to provide a sufficient degree of legal certainty in its national law relating to the obligation to carry out an appropriate assessment for every project, including those subject to an environmental impact assessment, the Republic of Finland has failed to fulfil its obligations under Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora;*

2. *The Republic of Finland is ordered to pay the costs.*

([1]) OJ C 275 of 15.11. 2003.

JUDGMENT OF THE COURT

(Fourth Chamber)

of 15 July 2004

in Case C-419/03: Commission of the European Communities against French Republic ([1])

(Failure of a Member State to fulfil its obligations — Partial failure to transpose — Burden of proof — Directive 2001/18/EC)

(2004/C 228/29)

(Language of the case: French)

In Case C-419/03: Commission of the European Communities (Agents: U. Wölker and F. Simonetti) against French Republic (Agents: G. de Bergues and D. Petrausch) — application for a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC (OJ 2001 L 106, p. 1) or, in any event, by failing to inform the Commission thereof, the French Republic has failed to fulfil its obligations under that directive — the Court (Fourth Chamber), composed of: J.N. Cunha Rodrigues, President of the Chamber, N. Colneric and K. Schiemann (Rapporteur), Judges; C. Stix-Hackl, Advocate General; R. Grass, Registrar, has given a judgment on 15 July 2004, the operative part of which is as follows:

1. *By failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary to transpose into national law the provisions of Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC which differ from or go beyond those of Council Directive 90/220/EEC of 23 April 1990 on the deliberate release into the environment of genetically modified organisms, the French Republic has failed to fulfil its obligations under Directive 2001/18.*

2. *The remainder of the action is dismissed.*

3. *Each party is to bear its own costs.*

([1]) OJ C 275 of 15.11.2003.

JUDGMENT OF THE COURT

(Fourth Chamber)

of 15 July 2004

in Case C-420/03: Commission of the European Communities against Federal Republic of Germany [1]

(Failure of a Member State to fulfil its obligations — Failure to transpose — Directive 2001/18/EC)

(2004/C 228/30)

(Language of the case: German)

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

In Case C-420/03 — Commission of the European Communities (Agent: U. Wölker) against Federal Republic of Germany (Agents: W.-D. Plessing and M. Lumma) — application for a declaration that by failing to bring into force the laws, regulations and administrative provisions necessary to implement Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC (OJ 2001 L 106, p. 1) or, in any event, by failing to inform the Commission thereof, the Federal Republic of Germany has failed to fulfil its obligations under that directive — the Court (Fourth Chamber), composed of: J.N. Cunha Rodrigues, President of the Chamber, K. Lenaerts and K. Schiemann (Rapporteur), Judges; C. Stix-Hackl, Advocate General; R. Grass, Registrar, has given a judgment on 15 July 2004, the operative part of which is as follows:

1. *By failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary to comply with Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC, the Federal Republic of Germany has failed to fulfil its obligations under that directive.*

2. *The Federal Republic of Germany is ordered to pay the costs.*

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[1] OJ C 275 of 15.11.2003.

JUDGMENT OF THE COURT

(Full Court)

of 13 July 2004

in Case C-27/04: Commission of the European Communities v Council of the European Union [1]

(Action for annulment — Article 104 EC — Regulation (EC) No 1467/97 — Stability and Growth Pact — Excessive government deficits — Council decisions under Article 104(8) and (9) EC — Required majority not achieved — Decisions not adopted — Action challenging 'decisions not to adopt the formal instruments contained in the Commission's recommendations' — Inadmissible — Action challenging 'Council conclusions')

(2004/C 228/31)

(Language of the case: French)

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

In Case C-27/04: Commission of the European Communities (Agents: M. Petite, A. van Solinge and P. Aalto) v Council of the European Union (Agents: J.-C. Piris, T. Middleton and J. Monteiro) — application for annulment of Council measures of 25 November 2003, namely:

— decisions not to adopt, in respect of the French Republic and the Federal Republic of Germany, the formal instruments contained in Commission recommendations pursuant to Article 104(8) and (9) EC;

— conclusions adopted in respect of each of those two Member States, entitled 'Council conclusions on assessing the actions taken by [the French Republic and the Federal Republic of Germany respectively] in response to recommendations of the Council according to Article 104(7) of the Treaty establishing the European Community and considering further measures for deficit reduction in order to remedy the situation of excessive deficit', in so far as those conclusions involve holding the excessive deficit procedure in abeyance, recourse to an instrument not envisaged by the Treaty and modification of the recommendations decided on by the Council under Article 104(7) EC,

the Court (Full Court), composed of: V. Skouris, President, P. Jann, C.W.A. Timmermans, A. Rosas, C. Gulmann (Rapporteur), J.-P. Puissochet and J.N. Cunha Rodrigues, Presidents of Chambers, R. Schintgen, F. Macken, N. Colneric, S. von Bahr, R. Silva de Lapuerta and K. Lenaerts, Judges; A. Tizzano, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 13 July 2004, in which it:

1. *Declares the action of the Commission of the European Communities inadmissible in so far as it seeks annulment of the failure of the Council of the European Union to adopt the formal instruments contained in the Commission's recommendations pursuant to Article 104(8) and (9) EC;*

2. *Annuls the Council's conclusions of 25 November 2003 adopted in respect of the French Republic and the Federal Republic of Germany respectively, in so far as they contain a decision to hold the excessive deficit procedure in abeyance and a decision modifying the recommendations previously adopted by the Council under Article 104(7) EC;*

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

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(1) OJ C 35 of 7.2.2004.

ORDER OF THE COURT

(Fifth Chamber)

of 8 June 2004

in Joined Cases C-250/02 to C-253/02 and C-256/02 (reference for a preliminary ruling from the Tribunale amministrativo regionale del Lazio): Telecom Italia Mobile SpA v Ministero dell'Economia e delle Finanze (1)

(Article 104(3) of the Rules of Procedure — Questions identical with questions on which the Court has already ruled)

(2004/C 228/32)

(Language of the case: Italian)

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

In Joined Cases C-250/02 to C-253/02 and C-256/02: reference to the Court under Article 234 EC from the Tribunale amministrativo regionale del Lazio (Regional Administrative Court, Lazio) (Italy) for a preliminary ruling in the proceedings pending before that court between Telecom Italia Mobile SpA (C-250/02), Blu SpA (C-251/02), Telecom Italia SpA (C-252/02), Vodafone Omnitel SpA, formerly Omnitel Pronto Italia SpA (C-253/02), WIND Telecomunicazioni SpA (C-256/02) and Ministero dell'Economia e delle Finanze, Ministero delle Comunicazioni, other parties to the procedure being Albacom SpA (C-251/02) and Telemar SpA (C-252/02), on the interpretation of Directive 97/13/EC of the European Parliament and of the Council of 10 April 1997 on a common framework for general authorisations and individual licences in the field of telecommunications services (OJ 1997 L 117, p. 15), the Court of Justice (Fifth Chamber), composed of C. Gulmann, President of the Chamber, S. von Bahr (Rapporteur) and R. Silva de Lapuerta, Judges; Advocate General: D. Ruiz-Jarabo Colomer; Registrar: R. Grass, made an order on 8 June 2004, the operative part of which is as follows:

The provisions of Directive 97/13/EC of the European Parliament and of the Council of 10 April 1997 on a common framework for general authorisations and individual licences in the field of telecommunications services, and in particular Article 11 thereof, prohibit Member States from requiring undertakings which hold individual licences in the area of telecommunications services, solely on the ground that they hold such licences, to pay charges such as those at issue in the main proceedings which are different from, and additional to, those authorised by that directive.

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(1) OJ C 219 of 14.9.2002.

ORDER OF THE COURT

(Fifth Chamber)

of 28 June 2004

in Case C-445/02 P: Glaverbel SA v OHIM (1)

(Appeal — Regulation (EC) No 40/94 — Community trade mark — Design applied to the surface of goods — Absolute ground for refusal — Lack of distinctive character)

(2004/C 228/33)

(Language of the case: English)

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

In Case C-445/02 P: Glaverbel SA, established in Brussels (Belgium), (Lawyer: S. Möbus) — appeal against the judgment of the Court of First Instance of the European Communities (Second Chamber) of 9 October 2002 in Case T-36/01 Glaverbel v OHIM (glass-sheet surface) [2002] ECR II-3887, seeking to have that judgment set aside in so far as the Court of First Instance held that the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) did not infringe Article 7(1)(b) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1) by adopting its decision of 30 November 2000 refusing to register a design applied to the surface of glass products as a Community trade mark (Case R 137/2000-1), the other party to the proceedings being: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Agents: G. Schneider and R. Thewlis), defendant at first instance — the Court (Fifth Chamber), composed of C. Gulmann (Rapporteur), President of the Chamber, R. Silva de Lapuerta and J. Makarczyk, Judges; F.G. Jacobs, Advocate General; R. Grass, Registrar, made an order on 28 June 2004, the operative part of which is as follows:

1. *The appeal is dismissed.*

2. *Glaverbel SA shall pay the costs.*

([1]) OJ C 31 of 8.2.2003.

ORDER OF THE COURT

(Second Chamber)

of 8 June 2004

in Case C-268/03 (reference for a preliminary ruling from the Rechtbank van eerste aanleg, Antwerp): Jean-Claude De Baeck v Belgische Staat ([1])

(Article 104(3) of the Rules of Procedure — Fiscal legislation — Taxation on income of natural persons — Assignment of a major holding in the capital of a resident company — Detailed rules governing charge to tax on resultant gain)

(2004/C 228/34)

(Language of the case: Dutch)

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

In Case C-268/03: reference to the Court under Article 234 EC by the Rechtbank van eerste aanleg, Antwerp (Belgium) for a preliminary ruling in the proceedings pending before that court between Jean-Claude De Baeck and Belgische Staat — on the interpretation of Articles 43 EC, 46 EC, 48 EC, 56 EC and 58 CE — the Court (Second Chamber), composed of: C.W.A. Timmermans (Rapporteur), President of the Chamber, C. Gulmann, J.-P. Puissochet, J.N. Cunha Rodrigues and N. Colneric, Judges; F.G. Jacobs, Advocate General; R. Grass, Registrar, has made an order on 8 June 2004, the operative part of which is as follows:

1. *Articles 43 EC and 48 EC preclude national legislation, such as Articles 67(8) and 67 ter of the Belgian income tax code, in the version in force at the material time for the purposes of the main proceedings, pursuant to which gains secured on the assignment for valuable consideration, otherwise than in the exercise of a business activity, of shares or stock in companies, associations, establishments or bodies, attract a charge to tax where the transfer is made to companies, associations, establishments or bodies established in another Member State, whereas, in the same circumstances, those gains are not chargeable to tax where that transfer is made to Belgian companies, associations, establishments or bodies, provided that the shareholding transferred gives its holder definite influence over the company's decisions and allows him to determine its activities.*

2. *Article 56 EC precludes national legislation, such as that mentioned above, where the shareholding transferred does not give its holder definite influence over the company's decisions or allow him to determine its activities.*

([1]) OJ C 289 of 29.11.2003.

ORDER OF THE COURT

(First Chamber)

of 27 May 2004

in Case C-517/03: IAMA Consulting Srl v Commission of the European Communities ([1])

(Arbitration clause — Action before the Court of First Instance — Counterclaim — Jurisdiction of the Court of Justice)

(2004/C 228/35)

(Language of the case: Italian)

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

In Case C-517/03: IAMA Consulting Srl, established in Milan (Italy) (lawyer: V. Salvatore) v Commission of the European Communities (Agent: E. de March, assisted by A. Dal Ferro) — Counterclaim submitted by the Commission of the European Communities to the Court of First Instance of the European Communities seeking repayment of financial assistance paid in the context of the REGIS 22337 and Refiag 23200 projects, the Court (First Chamber), composed of P. Jann, President of the Chamber, J. N. Cunha Rodrigues, K. Schiemann (Rapporteur), M. Ilešic et E. Levits, Judges; M. Poiares Maduro, Advocate General; R. Grass, Registrar, made an Order on 27 May 2004, the operative part of which is as follows:

(1) *The case is referred back to the Court of First Instance of the European Communities.*

(2) *The costs are reserved.*

([1]) OJ C 47 of 21.2.2004.

ORDER OF THE COURT

(Fourth Chamber)

of 10 June 2004

in Case C-555/03 (reference for a preliminary ruling from the Tribunal du travail de Charleroi): Magali Warbecq v Ryanair Ltd [1]

(Regulation (EC) No 44/2001 — Jurisdiction in civil and commercial matters — Court or tribunal having the power under Article 68 EC to request the Court to give a preliminary ruling — Court lacking jurisdiction to give a preliminary ruling)

(2004/C 228/36)

(Language of the case: French)

In Case C-555/03: reference to the Court under Article 68 EC by the Tribunal du travail de Chareleroi (Belgium) for a preliminary ruling in the proceedings pending before that court between Magali Warbecq and Ryanair Ltd — on the interpretation of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1) — the Court (Fourth Chamber), composed of: J.N. Cunha Rodrigues (Rapporteur), President of the Chamber, K. Schiemann and E. Juhász, Judges; A. Tizzano, Advocate General; R. Grass, Registrar, has made an order on 10 June 2004, the operative part of which is as follows:

The Court of Justice of the European Communities clearly has no jurisdiction to answer the questions referred by the Tribunal du travail de Charleroi (Belgium) by judgment of 15 December 2003.

[1] OJ C 47 of 21.2.2004.

Reference for a preliminary ruling by the Tribunale di Gorizia by order of that court of 7 April 2004 in the case of Azienda Agricola Bressan Aldo against Agenzia per le erogazioni in Agricoltura (AGEA) and Cospalat Friuli Venezia Giulia

(Case C-223/04)

(2004/C 228/37)

Reference has been made to the Court of Justice of the European Communities by order of the Tribunale di Gorizia (District Court, Gorizia, Italy) of 7 April 2004, received at the Court Registry on 28 May 2004, for a preliminary ruling in the case of Azienda Agricola Bressan Aldo against Agenzia per le erogazioni in Agricoltura (AGEA) and Cospalat Friuli Venezia Giulia on the following question:

— Since the legal nature of the additional levy on milk and milk products must therefore be determined in the light of the provisions of Community law under which that levy was introduced and the basic rules governing its application were established (in particular Regulation No 856/84 [1] of 31 March 1984 and Regulation No 3950/92 2 of 28 December 1992), must Article 1 of Regulation (EEC) No 856/84 of 31 March 1984 and Articles 1 to 4 of Regulation No 3950/92 [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?

[1] OJ L 90 of 1. 4. 1984, p. 10.
[2] OJ L 405 of 31. 12. 1992, p. 1.

Reference for a preliminary ruling by the Arbeitsgericht Düsseldorf by order of that court of 5 May 2004 in the case of Ms Nurten Güney-Görres against Securicor Aviation Limited, Securicor Aviation (Germany) Limited, and Kötter Aviation Security GmbH & Co. KG.

(Case C-232/04)

(2004/C 228/38)

Reference has been made to the Court of Justice of the European Communities by order of the Arbeitsgericht Düsseldorf (Labour Court Düsseldorf) (Germany) of 5 May 2004 received at the Court Registry on 3 June 2004, for a preliminary ruling in the case of Ms Nurten Güney-Görres against Securicor Aviation Limited, Securicor Aviation (Germany) Limited and Kötter Aviation Security GmbH & Co. KG on the following question:

1. In examining whether there is — irrespective of the question of ownership — a transfer of a business within the meaning of Article 1 of Directive 2001/23/EC [1] in the context of a fresh award of a contract, does the transfer of the assets from the original contractor to the new contractor — having regard to all the facts — presuppose their transfer for independent commercial use by the transferee? By extension, is conferment on the contractor of a right to determine the manner in which the assets are to be used in its own commercial interest the essential criterion for a transfer of assets? On that basis, is it necessary to determine the operational significance of the contracting authority's assets for the service provided by the contractor?

2. If the Court answers Question 1 in the affirmative:

(a) Is it precluded to classify assets as being for independent commercial use if they are made available to the contractor by the contracting authority solely for their use and responsibility for maintaining those assets, including the associated costs, is borne by the contracting authority?

(b) Is there independent commercial use by the contractor when, for the purpose of conducting airport security checks, it uses the walk-through metal detectors, hand-held metal detectors and X-ray equipment supplied by the contracting authority?

(1) OJ L 82 of 22.3.2001, p. 16.

Action brought on 8 June 2004 by the Commission of the European Communities against the Portuguese Republic

(Case C-239/04)

(2004/C 228/39)

An action against the Portuguese Republic was brought before the Court of Justice of the European Communities on 8 June 2004 by the Commission of the European Communities, represented by Michel Van Beek and António Caeiros, acting as Agents, with an address for service in Luxembourg.

The applicant claims that the Court should:

— declare that, by implementing a project for a motorway, whose route crosses the special protection area (SPA) of Castro Verde, notwithstanding the negative environmental impact assessment and notwithstanding the existence of alternative solutions for the route concerned, the Portuguese Republic failed to fulfil its obligations under Article 6(4) of Council Directive 92/43/EEC [1] of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, as amended by Directive 97/62/EC of 27 October 1997 [2];

— order the Portuguese Republic to pay the costs.

Pleas in law and main arguments:

The Portuguese authorities implemented a project for a motorway, whose route (the stretch between Aljustrel and Castro Verde) crosses the special protection area (SPA) of Castro Verde even though:

— the environmental impact assessment of the project in relation to implementation of the plan for the abovementioned stretch of motorway clearly shows that the route concerned does in fact have a very significant negative impact on 17 species of wild birds referred to in Annex I to Directive 79/409/EEC; and

— there were in fact alternative routes for that stretch of motorway, which were situated both outside the Castro Verde SPA and outside the residential areas in the places mentioned by the Portuguese authorities. Since those alternatives are to be found in a corridor to the west of the Castro Verde SPA between the edge of that area and the 'IC 1' road, they are located in flat country with a very low population density, with the result that the Portuguese authorities could have selected one of those alternatives without there being either significant technical difficulties or unreasonable additional costs.

Consequently, the Portuguese Republic did not comply with Article 6(4) of Directive 92/43/EC. That provision allows a Member State to carry out a plan or a project in respect of which there has been a negative environmental impact assessment only where there are no alternative solutions.

(1) OJ L 206 of 22.7.1992, p. 7.
(2) OJ L 305 of 8.11.1997, p. 42.

Action brought on 8 June 2004 by the Commission of the European Communities against the Federal Republic of Germany

(Case C-244/04)

(2004/C 228/40)

An action against the Federal Republic of Germany was brought before the Court of Justice of the European Communities on 8 June 2004 by the Commission of the European Communities, represented by Gerald Braun and Enrico Traversa of its Legal Service, with an address for service in Luxembourg.

The applicant claims that the Court should:

1) declare the Federal Republic of Germany in breach of its obligations under Article 49 EC in that by its practice based on administrative circulars, it has consistently and disproportionately restricted the posting of non-member-country workers to Germany for the provision of services;

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

Pleas in law and main arguments:

Workers who are nationals of a non-Member State and are to be posted to Germany in order to provide a service require a 'work visa', which is only issued if the worker was employed by the undertaking making the posting for a minimum of one year prior to the posting.

In the view of the Commission, both (1) the practice based on an internal administrative instruction, of requiring a work permit in advance and (2) the issuing of such a permit only 'Stammarbeitnehmer' (regular/core workers) constitute an unjustified and disproportionate restriction on the freedom to provide services.

Reference for a preliminary ruling by the Arbeitsgericht Regensburg (Germany) by order of that court of 16 June 2004 in the case of Gerhard Schmidt against Sennebogen Maschinenfabrik GmbH

(Case C-261/04)

(2004/C 228/41)

Reference has been made to the Court of Justice of the European Communities by order of the Arbeitsgericht Regensburg (Germany) of 16 June 2004, which was received at the Court Registry on 21 June 2004, for a preliminary ruling in the case of Gerhard Schmidt against Sennebogen Maschinenfabrik GmbH.

The Arbeitsgericht Regensburg asks the Court of Justice to give a preliminary ruling on the following questions:

(a) Is Clause 8(3) of the Framework Agreement (Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP) [1] to be interpreted as prohibiting, in the course of the implementation of that agreement in national law, any reduced protection as a result of a reduction in the age limit from 60 to 58?

(b) Is Clause 5(1) of the Framework Agreement (Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP) to be interpreted as precluding a provision of national law which — like the provision at issue in this case — does not contain any of the three restrictions set out in paragraph 1 of that clause?

(c) Is Article 6 of Council Directive 2000/78/EC of 27 November 2000 [2] establishing a general framework for equal treatment in employment and occupation to be interpreted as precluding a provision of national law under which — as under the provision at issue in this case — fixed-term employment contracts may be concluded, without any objective reason, with workers aged 52 and over and which thus runs counter to the principle of justification on objective grounds?

(d) If one of those three questions is answered in the affirmative:

Must the national court refuse to apply the provision of national law which conflicts with Community law and, in that case, does the general principle laid down in national law apply, under which fixed terms of employment are permissible only if they are justified on an objective ground?

[1] OJ 1999 L 175, p. 43.
[2] OJ 2000 L 303, p. 16.

Reference for a preliminary ruling by the Amtsgericht Breisach (Germany) by decision of that court of 7 June 2004 in the case of Badischer Winzerkeller eG against Land Baden-Württemberg

(Case C-264/04)

(2004/C 228/42)

Reference has been made to the Court of Justice of the European Communities by decision of the Amtsgericht Breisach (Germany), of 7 June 2004, which was received at the Court Registry on 22 June 2004, for a preliminary ruling in the case of Badischer Winzerkeller eG against Land Baden-Württemberg.

The Amtsgericht Breisach (Germany) asks the Court of Justice to give a preliminary ruling on the following question:

1. Must Council Directive 69/335/EEC [1] of 17 July 1969 concerning indirect taxes on the raising of capital, in the version resulting from Council Directive 73/79/EEC [2] of 9 April 1973 varying the field of application of the reduced rate of capital duty provided for in respect of certain company reconstruction operations by Article 7(1)(b) of the Directive concerning indirect taxes on the raising of capital, Council Directive 73/80/EEC [3] of 9 April 1973 fixing common rates of capital duty, Council Directive 74/553/EEC [4] of 7 November 1974 amending Article 5(2) of Directive No 69/335/EEC concerning direct taxes on the raising of capital, and Council Directive 85/303/EEC [5] of 10 June 1985 amending Directive 69/335/EEC concerning indirect taxes on the raising of capital (hereinafter referred to as 'the directive') be interpreted as meaning that all operations referred to in Article 10(c) of the directive fall within the prohibition thereby enacted, irrespective of the conditions in Article 4?

2. When applying the directive, should no distinction be made between fees for the provision of services by the State and taxes, with the result that ‘fees’ under the Kostenordnung can be assimilated to taxes on the transfer of ownership?

3. Should the Court answer the second question in the affirmative, should the last sentence of Article 12(2) of the directive be interpreted as meaning that an exception arises from the fact that Article 60 of the Kostenordnung (Gesetz über die Kosten in Angelegenheiten der freiwilligen Gerichtsbarkeit, in the version of 26 July 1957, Bundesgesetzblatt I, p. 960), for example, makes no provision for a charge for rectifying the land register in succession cases where the application for registration is made within two years following the death?

(1) OJ L 249, p. 25.
(2) OJ L 103, p. 13.
(3) OJ L 103, p. 15.
(4) OJ L 303, p. 9.
(5) OJ L 156, p. 23.

Reference for a preliminary ruling by the Kammarrätten i Sundsvall by order of that court of 17 June 2004 in the case of Margaretha Bouanich against the Skatteverket

(Case C-265/04)

(2004/C 228/43)

Reference has been made to the Court of Justice of the European Communities by order of the Kammarrätten i Sundsvall (Sundsvall Administrative Court of Appeal) (Sweden) of 17 June 2004, received at the Court Registry on 24 June 2004, for a preliminary ruling in the case of Margaretha Bouanich against the Skatteverket (Local Tax Board), Gävle office on the following questions:

1. Do Articles 56 EC and 58 EC permit a Member State to tax a payment in respect of a share repurchase, paid out by a limited company in the Member State, in the same way as a dividend, without there being a right to deduct the cost of acquisition of the repurchased share, if the payment is made to a shareholder who is not domiciled or permanently resident in the Member State, whereas a share repurchase payment made by such a limited company to a shareholder domiciled or permanently resident in the Member State is instead taxed as if it were a capital gain, with a right to deduct the cost of acquisition of the repurchased share?

2. If the answer to Question 1 is no: When the double taxation agreement between the Member State in which the limited company has its registered office and the Member State in which the shareholder is resident provides, with reference to the commentaries on the OECD Model Tax Convention, that there is to be a lower rate of taxation than that applied to a share repurchase payment made to a shareholder in the first Member State and a shareholder in the second Member State and also permits a deduction corresponding to the nominal value of the repurchased shares, do the articles mentioned in the previous question permit, in those circumstances, a Member State to apply a rule such as that set out above?

3. Do Articles 43 EC and 48 EC permit a Member State to apply a rule such as that set out above?

References for preliminary rulings by the Tribunal des affaires de sécurité sociale de Saint-Etienne by judgments of that Tribunal of 5 April 2004 in the following cases: SAS Nazairdis against Caisse Nationale de l'Organisation Autonome d'Assurance Vieillesse des Travailleurs Non-Salariés des Professions Industrielles et Commerciales — Caisse ORGANIC, JACELI SA against Caisse Nationale de l'Organisation Autonome d'Assurance Vieillesse des Travailleurs Non-Salariés des Professions Industrielles et Commerciales — Caisse ORGANIC, KOMOGO SA against Caisse Nationale de l'Organisation Autonome d'Assurance Vieillesse des Travailleurs Non-Salariés des Professions Industrielles et Commerciales — Caisse ORGANIC, Tout pour la maison SARL against Caisse Nationale de l'Organisation Autonome d'Assurance Vieillesse des Travailleurs Non-Salariés des Professions Industrielles et Commerciales — Caisse ORGANIC, SAS Distribution Casino France against Caisse Nationale de l'Organisation Autonome d'Assurance Vieillesse des Travailleurs Non-Salariés des Professions Industrielles et Commerciales — Caisse ORGANIC

(Cases C-266/04, C-267/04, C-268/04, C-269/04, C-270/04)

(2004/C 228/44)

Reference has been made to the Court of Justice of the European Communities by judgments of the Tribunal des affaires de sécurité sociale de Saint-Etienne (Saint-Etienne Social Security Tribunal) (France) of 5 April 2004, received at the Court Registry on 24 June 2004 and 25 June 2004 (Case C-270/04), for a preliminary ruling in the following cases:

— SAS Nazairdis against Caisse Nationale de l'Organisation Autonome d'Assurance Vieillesse des Travailleurs Non-Salariés des Professions Industrielles et Commerciales — Caisse ORGANIC (Case C-266/04)

— Jaceli SA against Caisse Nationale de l'Organisation Autonome d'Assurance Vieillesse des Travailleurs Non-Salariés des Professions Industrielles et Commerciales — Caisse ORGANIC (Case C-267/04)

— Komogo SA against Caisse Nationale de l'Organisation Autonome d'Assurance Vieillesse des Travailleurs Non-Salariés des Professions Industrielles et Commerciales — Caisse ORGANIC (Case C-268/04)

— Tout pour la maison SARL against Caisse Nationale de l'Organisation Autonome d'Assurance Vieillesse des Travailleurs Non-Salariés des Professions Industrielles et Commerciales — Caisse ORGANIC (Case C-269/04)

— SAS Distribution Casino France against Caisse Nationale de l'Organisation Autonome d'Assurance Vieillesse des Travailleurs Non-Salariés des Professions Industrielles et Commerciales — Caisse ORGANIC (Case C-270/04).

The Tribunal des affaires de sécurité sociale de Saint-Etienne asks the Court of Justice of the European Communities to give a preliminary ruling on the following question:

Should Article 87 EC be interpreted as meaning that State funding by France through the Comité Professionnel de la Distribution des Carburants (Fuel Distributors' Trade Committee) ('the CPDC') and through the Fonds d'Intervention pour la Sauvegarde de l'Artisanat et du Commerce (Intervention Fund for the Support of Crafts and Trade) ('the FISAC') by way of assistance when self-employed craftsmen and traders retire and grants made to the old-age insurance scheme for self-employed persons in manufacturing and trading occupations, and to the scheme for self-employed persons in the craft sector constitute State aid?

Reference for a preliminary ruling by the Tribunale di Tolmezzo by order of that Court of 16 June 2004 in the case of Azienda Agricola Elena Di Doi against Azienda per le Erogazioni in Agricoltura (AGEA)

(Case C-271/04)

(2004/C 228/45)

Reference has been made to the Court of Justice of the European Communities by order of the Tribunale di Tolmezzo (District Court, Tolmezzo, Italy) of 16 June 2004, received at the Court Registry on 25 June 2004, for a preliminary ruling in the case of Azienda Agricola Elena Di Doi against Azienda per le Erogazioni in Agricoltura (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 3950/92 [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?

[1] OJ 1984 L 90, p. 10.
[2] OJ 1992 L 405, p. 1.

Reference for a preliminary ruling by the Tribunale di Tolmezzo by order of that Court of 16 June 2004 in the case of Azienda Agricola Franco Piemonte against Azienda per le Erogazioni in Agricoltura (AGEA)

(Case C-272/04)

(2004/C 228/46)

Reference has been made to the Court of Justice of the European Communities by order of the Tribunale di Tolmezzo (District Court, Tolmezzo, Italy) of 16 June 2004, received at the Court Registry on 25 June 2004, for a preliminary ruling in the case of Azienda Agricola Franco Piemonte against Azienda per le Erogazioni in Agricoltura (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 3950/92 [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?

[1] OJ 1984 L 90, p. 10.
[2] OJ 1992 L 405, p. 1.

Reference for a preliminary ruling by the Finanzgericht Hamburg (Finance Court) (Germany) by order of that court of 16 June 2004 in the case of ED & F Man Sugar Ltd against Hauptzollamt Hamburg-Jonas

(Case C-274/04)

(2004/C 228/47)

Reference has been made to the Court of Justice of the European Communities by order of the Finanzgericht Hamburg (Germany), of 16 June 2004, which was received at the Court Registry on 28 June 2004, for a preliminary ruling in the case of ED & F Man Sugar Ltd against Hauptzollamt Hamburg-Jonas.

The Finanzgericht Hamburg asks the Court of Justice to give a preliminary ruling on the following questions:

1. In an appeal against a penalty imposed on the basis of the first subparagraph of Article 11(1) of Regulation No 3665/87 [1]are national authorities and courts permitted to examine whether an exporter requested a refund in excess of that applicable if the repayment decision under the first subparagraph of Article 11(3) of Regulation No 3665/87 became final before the penalty decision was issued?

2. If the first question is answered in the negative: in an action to challenge a decision imposing a penalty pursuant to the first subparagraph of Article 11(1) of Regulation No 3665/87 in the circumstances set out in this order may it be examined whether an exporter requested an export refund in excess of that applicable in order to give effect to an interpretation of Community law adopted in the meanwhile?

(1) OJ L 351, p. 1.

Action brought on 29 June 2004 by the Commission of the European Communities against the Federal Republic of Germany

(Case C-277/04)

(2004/C 228/48)

An action against the Federal Republic of Germany was brought before the Court of Justice of the European Communities on 29 June 2004 by the Commission of the European Communities, represented by Gerald Braun and Arnaud Bordes of its Legal Service, with an address for service in Luxembourg.

The applicant claims that the Court should:

1) declare that, by failing to adopt the laws, regulations and administrative provisions necessary to transpose Directive 2001/46/EC of the European Parliament and of the Council of 23 July 2001 amending Council Directive 95/53/EC fixing the principles governing the organisation of official inspections in the field of animal nutrition and Directives 70/524/EEC, 96/25/EC and 1999/29/EC on animal nutrition [1] into national law within the prescribed period, the Federal Republic of Germany has failed to fulfil its obligations under the EC Treaty and under that directive;

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

Pleas in law and main arguments:

The period for transposition of the directive expired on 1 September 2002.

(1) OJ 2001 L 234, p. 55.

Action brought on 29 June 2004 by the Commission of the European Communities against the Federal Republic of Germany

(Case C-278/04)

(2004/C 228/49)

An action against the Federal Republic of Germany was brought before the Court of Justice of the European Communities on 29 June 2004 by the Commission of the European Communities, represented by Gerald Braun and Arnaud Bordes of its Legal Service, with an address for service in Luxembourg.

The applicant claims that the Court should:

1. declare that, by failing to adopt the laws, regulations and administrative provisions necessary to transpose Council Directive 2001/88/EC of 23 October 2001 and Commission Directive 2001/93/EC of 9 November 2001, both amending Directive 91/630/EEC laying down minimum standards for the protection of pigs [1] into national law within the prescribed period, the Federal Republic of Germany has failed to fulfil its obligations under the EC Treaty and under that directive;

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

Pleas in law and main arguments:

The period for transposition of Directives 2001/88/EC and 2001/93/EC expired on 1 January 2003.

(1) OJ 2001 L 316, pp. 1 and 36

Reference for a preliminary ruling by the Retten i Hørsholm (Denmark) by order of that court of 4 June 2004 in the case of Anklagemyndigheden against Steffen Ryborg

(Case C-279/04)

(2004/C 228/50)

Reference has been made to the Court of Justice of the European Communities by the Retten i Hørsholm (Denmark), by order of 4 June 2004, which was received at the Court Registry on 28 June 2004, for a preliminary ruling in the case of Anklagemyndigheden against Steffen Ryborg.

The Retten i Hørsholm asks the Court of Justice to give a preliminary ruling on the following questions:

1.a. Are Article 39 EC, Article 49 EC and Article 10 EC to be interpreted as precluding a Member State from requiring registration of a motor vehicle when the vehicle belongs to an employer established in a neighbouring Member State and is used by an employee who is resident in the first-mentioned Member State for work purposes and during his free time in both Member States?

1.b If in the assessment for question 1.a weight is to be accorded to whether any private use of the vehicle is ancillary to business use, which criteria should be used by the national court in determining whether the non-business use of the vehicle is ancillary to the business use, when it can be assumed that the vehicle is used for business purposes, see Case C-127/86 Yves Ledoux [1988] ECR 3741, paragraph 18?

Reference for a preliminary ruling by the Vestre Landsret by order of that court of 25 June 2004 in the case of Jyske Finans against Skatteministeriet

(Case C-280/04)

(2004/C 228/51)

Reference has been made to the Court of Justice of the European Communities by order of the Vestre Landsret (Western Regional Court) (Denmark) of 25 June 2004, which was received at the Court Registry on 29 June 2004, for a preliminary ruling in the case of Jyske Finans against Skatteministeriet (Finance Ministry) on the following questions:

1. Must Article 13.B(c), in conjunction with Articles 2(1) and 11.A(1)(a), of the Sixth VAT Directive 77/388/EEC [1] be construed as precluding a Member State from maintaining a legal situation under its law on value added tax pursuant to which a taxable person who has introduced capital items to a significant extent into his business assets is, in contrast to second-hand car dealers and other traders who sell second-hand cars, liable to VAT on the sale of those capital items, even in the case where the items were purchased from taxable persons who did not declare tax on the price of the items, with the result that there was no possibility of deducting VAT at the time of acquisition?

2. Must Article 26a.A(e) of the Sixth VAT Directive be construed as meaning that the term 'taxable dealer' covers only persons whose principal activity consists in the purchase and sale of second-hand goods in cases where the second-hand goods in question are acquired with the sole or principal purpose of obtaining a financial profit on their resale, or does that term also cover persons who normally dispose of those goods by sale at the end of a leasing period as a subsidiary link in the overall economic leasing activity under the circumstances outlined above?

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[1] Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1, corrigendum at OJ 1977 L 149, p. 26).

Appeal brought on 25 June 2004 by Michael Leighton, Graham French and John Neiger against the order made on 3 May 2004 by the Fifth Chamber of the Court of First Instance of the European Communities in case T-24/04 between Michael Leighton, Graham French and John Neiger and the Council of the European Union and the Commission of the European Communities.

(Case C-281/04 P)

(2004/C 228/52)

An appeal against the order made on 3 May 2004 by the Fifth Chamber of the Court of First Instance of the European Communities in case T-24/04 between Michael Leighton, Graham French and John Neiger and the Council of the European Union and the Commission of the European Communities, was brought before the Court of Justice of the European Communities on 25 June 2004 by Michael Leighton, Graham French and John Neiger, represented by J.S. Barnett, Solicitor-Advocate.

The Appellants claims that the Court should:

— set aside the order

— grant the relief sought by the Appellants in the form of the draft order annexed to the Application; alternatively

— remit the case to the Court of First Instance; and in any event

— order the Defendants to pay the Appellants' costs.

Pleas in law and main arguments:

The applicants contend that the order of the Court of First Instance should be set aside on the grounds that the Court of First Instance has committed a breach of procedure by treating their application as an application made under Article 226 EC when, in fact, it was an application under Article 232 EC.

Action brought on 5 July 2004 by the Commission of the European Communities against the Kingdom of Sweden

(Case C-287/04)

(2004/C 228/53)

An action against the Kingdom of Sweden was brought before the Court of Justice of the European Communities on 5 July 2004 by the Commission of the European Communities, represented by L. Ström and N. Yerrell, acting as Agents, with an address for service in Luxembourg.

The Commission claims that the Court should:

— declare that, by failing to implement Articles 3, 6 and 8 of Council Directive 93/104/EC [1] of 23 November 1993 concerning certain aspects of the organisation of working time, the Kingdom of Sweden has failed to fulfil its obligations under that directive;

— order the Kingdom of Sweden to pay the costs of the proceedings.

Pleas in law and main arguments

The Swedish legislation does not guarantee, as required under Article 3 of the directive, a minimum daily rest period of 11 consecutive hours per 24-hour period. The fact that the majority of workers are covered by collective agreements which governed those questions does not affect the obligation to implement that provision in respect of all workers.

As regards Article 6 of the directive, the normal reference period of four months laid down in Article 16(2) for the application of Article 6 may not, under Article 17(4), be extended to more than six months. The scope of the possible derogation as regards the reference period is less than that provided for by the Swedish legislation.

Article 8 of the directive has not been expressly incorporated in the Swedish legislation.

(1) OJ L 307, 13.12.1993, p. 18.

Reference for a preliminary ruling by the Bundesfinanzhof by order of that court of 28 April 2004 in the case of FKP Scorpio Konzertproduktionen GmbH against Finanzamt (Tax Office) Hamburg-Eimsbüttel

(Case C-290/04)

(2004/C 228/54)

Reference has been made to the Court of Justice of the European Communities by order of the Bundesfinanzhof (Federal Finance Court) (Germany) of 28 April 2004, received at the Court Registry on 7 July 2004, for a preliminary ruling in the case of FKP Scorpio Konzertproduktionen GmbH against Finanzamt Hamburg-Eimsbüttel on the following questions:

1. Must Articles 59 and 60 of the EC Treaty be interpreted as meaning that they are infringed if a payment debtor established in Germany of a payment creditor established abroad within the Community (in this case: in the Netherlands), who holds the nationality of a Member State, can be held liable under the fifth sentence of Paragraph 50a(5) of the Einkommensteuergesetz 1990 in the version in force in 1993 (Law on Income Tax, hereinafter: 'the EStG') because he has failed to deduct tax at source pursuant to Paragraph 50a(4) of the EStG, whereas payments to a payment creditor liable without limitation to income tax in Germany (that is, a German resident) are not subject to any deduction of tax at source pursuant to Paragraph 50a(4) of the EStG and therefore no liability of the payment debtor for non-deduction or insufficient deduction of tax at source can arise?

2. Is the answer to Question 1 different if, at the time of providing his service, the payment creditor established abroad within the Community is not a national of a Member State?

3. If the answer to Question 1 is in the negative:

   (a) Are Articles 59 and 60 of the EC Treaty to be interpreted as meaning that business expenses incurred by a payment creditor established abroad within the Community and economically connected with his activities in Germany giving rise to the payments must be taken into account in reduction of tax by the debtor at the time of deducting tax at source pursuant to Paragraph 50a(4) of the EStG because, as is also the case with German residents, only the net income remaining after deduction of business expenses is subject to income tax?

(b) Is it sufficient for the purpose of avoiding an infringement of Articles 59 and 60 of the EC Treaty if, in deducting tax at source pursuant to Paragraph 50a(4) of the EStG, only the business expenses economically connected with the activity in Germany giving rise to the claim for payment and which the payment creditor established abroad within the Community has reported to the payment debtor are taken into account in reduction of tax, and any further business expenses can be taken into account in a subsequent refund procedure?

(c) Are Articles 59 and 60 of the EC Treaty to be interpreted as meaning that they are infringed if the tax exemption to which a payment creditor established in the Netherlands is entitled in Germany under the double taxation convention between the Federal Republic of Germany and the Kingdom of the Netherlands is initially disregarded in the deduction of tax at source pursuant to Paragraph 50a(4) in conjunction with Paragraph 50d(1) of the EStG and only allowed in a subsequent procedure for exemption or refund and the payment debtor is likewise not entitled to rely on the tax exemption in proceedings concerning liability, whereas German residents' tax-free income is not subject to any deduction of tax and therefore no liability for non-deduction or insufficient deduction of tax at source can arise either?

(d) Are the answers to Questions 3(a) to (c) different if the payment creditor established abroad within the Community is not a national of a Member State at the time of providing his service?

Reference for a preliminary ruling by the Finanzgericht Köln by order of that court of 24 June 2004 in the case of Wienand Meilicke, Heidi Christa Weyde and Marina Stöffler against Finanzamt Bonn-Innenstadt

(Case C-292/04)

(2004/C 228/55)

Reference has been made to the Court of Justice of the European Communities by order of the Finanzgericht Köln (Germany) of 24 June 2004, received at the Court Registry on 9 July 2004, for a preliminary ruling in the case of Wienand Meilicke, Heidi Christa Weyde and Marina Stöffler against Finanzamt Bonn-Innenstadt on the following question:

Is Paragraph 36(2)(3) of the Einkommensteuergesetz (in the version in force during the relevant years), whereby only corporation tax payable by a fully-taxable corporation or association amounting to three sevenths of the income within the meaning of Paragraph 20(1)(1) or (2) of the Einkommensteuergesetz is set off against income tax, compatible with Articles 56(1) EC and 58(1)(a) and (3) EC?

Reference for a preliminary ruling by the Gerechtshof te Amsterdam by order of that court of 14 June 2004 in the case of Beemsterboer Coldstore Services BV against Douanedistrict Arnhem

(Case C-293/04)

(2004/C 228/56)

Reference has been made to the Court of Justice of the European Communities by order of the Gerechtshof te Amsterdam (Netherlands) of 14 June 2004 received at the Court Registry on 9 July 2004, for a preliminary ruling in the case of Beemsterboer Coldstore Services BV against Douanedistrict Arnhem on the following questions:

1. Is the new text of Article 220(2)(b) of the Community Customs Code (CCC) [1] applicable to a case in which the customs debt was incurred and post-clearance recovery undertaken before the provision entered into force?

2. If question 1 is answered in the affirmative: Is a EUR.1 certificate which cannot be shown actually to be incorrect because the origin of the goods for which the certificate was issued could not be ascertained upon subsequent verification, the goods being denied preferential treatment solely for that reason, an 'incorrect certificate' within the meaning of the new text of Article 220(2)(b) of the CCC and, if such is not the case, can an interested party still usefully appeal against this provision?

3. If question 2 is answered in the affirmative: Who bears the burden of proving that the certificate is based on an incorrect account of the facts provided by the exporter or alternatively who must prove that evidently the issuing authorities were aware or should have been aware that the goods did not satisfy the conditions laid down for entitlement to the preferential treatment?

4. If question 1 is answered in the negative: Can an interested party usefully appeal against Article 220(2) of the CCC, introduction and indent (b), as this provision read prior to 19 December 2000, in a situation in which it cannot subsequently be ascertained whether, at the time of issue, the customs authorities had good grounds for issuing a EUR.1 certificate and were right to issue one?

(1) OJ L 311 of 12.12.2000, p. 17.

Reference for a preliminary ruling by order of the Juzgado de lo Social No 30 de Madrid of 5 July 2004 in the case between C. Sarkatzis Herrero and Instituto Madrileño de la Salud

(Case C-294/04)

(2004/C 228/57)

A reference has been made to the Court of Justice of the European Communities by order of the Juzgado de lo Social No 30 de Madrid of 5 July 2004 for a preliminary ruling in the proceedings between C. Sarkatzis Herrero and the Instituto Madrileño de la Salud and received at the Court Registry on 12 July 2004.

The Juzgado de lo Social No 30 de Madrid has requested the Court of Justice to rule on the following questions:

1. Must the Community provisions on maternity leave and equal treatment for men and women in access to work be interpreted as meaning that a woman on maternity leave who while in that situation obtains a post in the public service must enjoy the same rights as the other applicants who have been successful in the competition for access to the public service?

2. Irrespective of what might have occurred in the case of an employee taking up a post for the first time, if the employment relationship was in force, albeit suspended, while she was on maternity leave, does access to the status of permanent employee constitute one of the rights associated with career advancement whose effectiveness cannot be affected by the fact that the person concerned is on maternity leave?

3. In application of the abovementioned provisions, and in particular those on equal treatment for men and women in access to employment or when employment has been obtained, is a temporary servant who is on maternity leave when she obtains a permanent post entitled to take up her administrative post and assume the status of official, with the rights inherent in such status, such as the initiation of her professional career and the calculation of her seniority, from that moment, and on the same conditions as all the other applicants who have obtained posts, notwithstanding that, according to the provisions of domestic law applicable in her case, the exercise of the rights associated with the actual performance of work may be suspended until such time as she actually commences work?

Reference for a preliminary ruling by the Raad van State by decision of that court of 13 July 2004 in the case of M.G. Eman and O.B. Sevinger against het College van Burgemeester en Wethouders van Den Haag

(Case C-300/04)

(2004/C 228/58)

Reference has been made to the Court of Justice of the European Communities by decision of the Raad van State (Council of State) (Netherlands) of 13 July 2004, received at the Court Registry on 15 July 2004, for a preliminary ruling in the case of M.G. Eman and O.B. Sevinger against het College van Burgemeester en Wethouders van Den Haag (Municipal Executive of The Hague) on the following questions:

1. Does Part Two of the Treaty apply to persons who possess the nationality of a Member State and who are resident or living in a territory belonging to the OCTs referred to in Article 299(3) EC and having special relations with that Member State?

2. If the answer is no: are the Member States free, in the light of the second sentence of Article 17(1) EC, to confer their nationality on persons who are resident or living in the OCTs referred to in Article 299(3) EC?

3. Must Article 19(2) EC, read in conjunction with Articles 189 EC and 190(1) EC, be construed as meaning that – apart from the not unusual exceptions in national legal systems relating to, inter alia, deprivation of voting rights in connection with criminal convictions and legal incapacity – even in the case where the persons concerned are resident or living in the OCTs, the status of citizen of the Union automatically confers the right to vote and to stand as a candidate in elections to the European Parliament?

4. Do Articles 17 EC and 19(2) EC, read together and considered in the light of Article 3 of the Protocol, as interpreted by the European Court of Human Rights, preclude persons who are not citizens of the Union from having the right to vote and to stand as candidates in elections to the European Parliament?

5. Does Community law impose requirements as to the nature of the legal redress to be provided in the case where the national courts – on the basis of, inter alia, the answers given by the Court of Justice of the European Communities to the above questions – conclude that persons resident or living in the Netherlands Antilles and Aruba and having Netherlands nationality were improperly refused registration for the elections of 10 June 2004?

Reference for a preliminary ruling by the Tribunale di Voghera, by order of that court of 1 July 2004 in the case of Lidl Italia Srl against Comune di Stradella

(Case C-303/04)

(2004/C 228/59)

Reference has been made to the Court of Justice of the European Communities by order of the Tribunale di Voghera, of 1 July 2004, received at the Court Registry on 16 July 2004, for a preliminary ruling in the case of Lidl Italia Srl against Comune di Stradella on the following question:

— Are the provisions in Article 1 of Directive 83/189/EEC (now Directive 98/34/EC [1]) on technical standards and regulations to be interpreted as meaning that a national legislative provision such as Article 19 of Law No 93 of 23.3.2001, which prohibits the marketing in Italy of non-biodegradable cotton buds for cleaning ears, comes within the meaning of 'technical regulation' in Article 1 of that directive?

— If the answer to the first question is in the affirmative, should the provision in Article 19 of Law No 93 of 23.3.2001 have been notified beforehand to the European Commission on the initiative of the Italian Government in accordance with Article 8 of Directive 83/189/EEC (now Directive 98/34/EC) in order to authorise its application in Italy under Articles 8 and 9 of that directive?

— If the answer to the second question is in the affirmative and if Article 19 of Law No 93 cited above was not notified to the European Commission, do the principles and rules on the free movement of goods laid down in Article 28 of the EC Treaty, in conjunction with the provisions of Directive 83/189/EEC (now Directive 98/34/EC), allow the Italian court not to apply that national provision as being unlawful, in so far as it applies to products coming from another Member State of the European Union?

(1) OJ L 204 of 21.7.1998, p.37.

Reference for a preliminary ruling by the Gerechtshof te Amsterdam by decision of that court of 13 July 2004 in the case of Jacob Meijer B.V against Inspecteur van de Belastingdienst – Douanedistrict Arnhem

(Case C-304/04)

(2004/C 228/60)

Reference has been made to the Court of Justice of the European Communities by decision of the Gerechtshof te Amsterdam (Amsterdam Regional Court of Appeal) of 13 July 2004, received at the Court Registry on 19 July 2004, for a preliminary ruling in the case of Jacob Meijer B.V. against Inspecteur van de Belastingdienst – Douanedistrict Arnhem on the following question:

Is Commission Regulation (EC) No 2086/97 [1] of 4 November 1997 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff valid in so far as it provides that heading 8543 89 79 of the Combined Nomenclature includes the sound cards described at paragraph 2.3 above?

(1) OJ L 312 of 14.11.1997, p. 1.

Reference for a preliminary ruling by the Gerechtshof te Amsterdam by decision of that court of 13 July 2004 in the case of Eagle International Freight B.V. against Inspecteur van de Belastingdienst – Douanedistrict Arnhem.

(Case C-305/04)

(2004/C 228/61)

Reference has been made to the Court of Justice of the European Communities by decision of the Gerechtshof te Amsterdam (Amsterdam Regional Court of Appeal) of 13 July 2004, received at the Court Registry on 19 July 2004, for a preliminary ruling in the case of Eagle International Freight B.V. against Inspecteur van de Belastingdienst – Douanedistrict Arnhem on the following question:

Are Commission Regulation (EC) No 2086/97 ([1]) of 4 November 1997 and Commission Regulation (EC) No 2261/98 ([2]) of 26 October 1998, both of which amend Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff, valid in so far as they provide that heading 8543 89 79 of the Combined Nomenclature includes the sound cards described at paragraph 2.3 above?

([1]) OJ L 312 of 14.11.1997, p. 1.
([2]) OJ L 292 of 30.10.1998, p. 1.

Reference for a preliminary ruling by the Gerechtshof te Amsterdam by decision of that court of 13 July 2004 in the case of Compaq Computer International Corporation against Inspecteur van de Belastingdienst – Douanedistrict Arnhem.

(Case C-306/04)

(2004/C 228/62)

Reference has been made to the Court of Justice of the European Communities by decision of the Gerechtshof te Amsteredam (Amsterdam Regional Court of Appeal) of 13 July 2004, received at the Court Registry on 19 July 2004, for a preliminary ruling in the case of Compaq Computer International Corporation against Inspecteur van de Belastingdienst – Douanedistrict Arnhem on the following question:

Where computers on which operating systems installed by the seller are imported, must the value of the software made available to the seller by the buyer free of charge be added to the transaction price of those computers pursuant to Article 32(1)(b) of the Community Customs Code ([1]) where the value thereof is not included in the transaction price?

([1]) OJ L 302 of 19 October 1992, p. 1.

Action brought on 22 July 2004 by the Kingdom of Spain against the Council of the European Union

(Case C-310/04)

(2004/C 228/63)

An action against the Council of the European Union was brought before the Court of Justice of the European Communities on 22 July 2004 by the Kingdom of Spain, represented by M. Muñoz Pérez, Abogado del Estado, acting as Agent, with an address for service in Luxembourg.

The applicant claims that the Court should:

— annul Chapter 10a of Title IV of Council Regulation (EC) No 1782/2003, inserted by Article 1(20) of Council Regulation (EC) No 864/2004 amending Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers, and adapting it by reason of the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia to the European Union ([1]);

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

Pleas in law and main arguments:

— Infringement of the Treaty or of rules relating to its implementation in that the Council has contravened Article 3 of Protocol No 4 to the Act of Accession of the Hellenic Republic to the European Communities, since the new Article 110b of Council Regulation (EC) No 1782/2003 of 29 September 2003, inserted by Regulation No 864/2004, does not provide for production aid for cotton.

— Breach of an essential procedural requirement in that the Council failed to provide reasons for its selection, in new Article 110b of Council Regulation No 1782/2003, of the stage of boll opening as the decisive time for the grant of aid.

— Misuse of powers in that the Council has used the power conferred on it by paragraph 6 of Protocol 4, cited above, that is to say the procedure for adapting the system of aid for cotton laid down in the Protocol, for an end which is different from that provided for therein.

— Infringement of the Treaty or of rules relating to its implementation in that the Council has, in adopting the contested provisions, acted in breach of general principles of Community law: (i) proportionality, since the measures reforming the system of aid for cotton are manifestly contrary to the objectives which the Council itself has set and since, furthermore, there were other less onerous measures for attaining those objectives, and (ii) legitimate expectations.

([1]) OJ L 161 of 30.04.2004, p. 48. Corrigendum to the regulation in OJ L 204 of 09.06.2004, p. 20.

Action brought on 23 July 2004 by the Commission of the European Communities against the Kingdom of the Netherlands.

(Case C-312/04)

(2004/C 228/64)

An action against the Kingdom of the Netherlands was brought before the Court of Justice of the European Communities on 23 July 2004 by the Commission of the European Communities, represented by Günter Wilms and Alexander Weimar, acting as Agents.

The applicant claims that the Court should:

1. Declare that, by

   (a) not consistently deploying the necessary activity in order to effect the timely determination of the rights of the Communities to their own resources during the period up to and including 1 January 1992 in a number of cases of suspected irregularities in relation to transports covered by TIR carnets,

   (b) determining too late the rights of the Communities to their own resources and thus making those resources available to the Commission too late, during the period from 1 January 1992 to the end of 1994 in a number of cases of suspected irregularities in relation to transports covered by TIR carnets, and

   (c) refusing to pay the attendant interest on arrears,

   the Kingdom of the Netherlands has failed to fulfil its obligations under Council Regulation (EEC, Euratom) No 1552/89 [1] of 29 May 1989 implementing Decision 88/376/EEC, Euratom, on the system of the Communities' own resourses,

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

Pleas and main arguments

As a result of an inspection in 1997 in the Netherlands, the Commission found there to have been a delay in establishing own resources from customs duties. That delay related to uncleared TIR carnets registered in the period from 1991 to 1993 and in respect of which the requests for payment were sent out too late by the Netherlands authorities.

Notwithstanding the fact that prior to 1992 there was no specific provision indicating the period of time after normal completion of the transaction within which the office of departure was required to act, it cannot be concluded that the Member States are not bound to act prior to establishment of the infringement and, in an appropriate case, prior to determination of the place where the infringement took place. The Netherlands authorities did not act with the care required in order to secure the financial interests of the Community. In the cases here referred to the requests for payment were issued after periods of time varying between 2 years and 4 1/2 months and 2 years and 10 months after registration of the carnets. In the Commission's view, such lengthy periods of time cannot be regarded as consistent with targeted activity.

From 1 January 1992 the applicable Community provisions in the matter, in conjunction with Article 11 of the TIR agreement, provided for specific deadlines within which the Member States had to adopt the necessary measures. The Commission disagrees with the observations of the Netherlands authorities to the effect that the deadlines referred to are merely laid down in administrative provisions and not in legislative enactments and that it is in law not correct to embark on collection before the supplementary claim procedure has been completed.

As the inspection carried out by the Commission has shown, the Netherlands embarked on collection on average one year after expiry of the (final) deadline of 15 months and, in doing so, was therefore too late in making own resources available to the Commission; on that account, the Netherlands are liable to interest on the arrears.

[1] OJ L 155 of 7.6.1989, p. 1.

Reference for a preliminary ruling by the Tribunal Superior de Justicia de la Comunidad Valenciana by order of that court of 12 July 2004 in the case of R.M. Torres Aucejo against Fondo de Garantía Salarial

(Case C-314/04)

(2004/C 228/65)

Reference has been made to the Court of Justice of the European Communities by order of the Tribunal Superior de Justicia de la Comunidad Valenciana (Spain) (Chamber for Social and Labour Matters of the High Court of Justice of the Community of Valencia) of 12 July 2004 received at the Court Registry on 26 July 2004, for a preliminary ruling in the case of R.M. Torres Aucejo against the Fondo de Garantía Salarial.

The Tribunal Superior de Justicia de la Comunidad Valenciana asks the Court of Justice to rule on questions identical to those in Case C-520/03 [1].

[1] OJ C 59 of 6.3.2004.

Action brought on 27 July 2004 by the European Parliament against the Council of the European Union

(Case C-317/04)

(2004/C 228/66)

An action against the Council of the European Union was brought before the Court of Justice of the European Communities on 27 July 2004 by the European Parliament, represented by R. Passos and N. Lorenz, acting as Agents, with an address for service in Luxembourg.

The European Parliament claims that the Court should:

— annul Council Decision 2004/496/EC of 17 May 2004 [1];

— order the defendant to pay all of the costs.

Pleas in law and main arguments

The European Parliament puts forward five pleas in support of its action.

The first two pleas challenge the legal basis of the contested decision. First, the Parliament submits that recourse to Article 95 EC is not justified, having regard in particular to the Court's recent case-law on the interpretation of that provision; indeed, Article 95 cannot be the basis for Community power to conclude the agreement, since it relates to the processing of data excluded from the scope of Directive 95/46 on the protection of personal data. Secondly, the agreement entails amendment of that directive adopted under the procedure referred to in Article 251 EC, and could therefore be concluded only after the assent of the Parliament had been obtained.

In its third plea, the Parliament takes the view that the agreement infringes fundamental rights, in particular the right to protection of personal data with regard to essential aspects of that right, and that it also constitutes an unjustifiable interference with private life, which is incompatible with Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

The fourth plea concerns infringement of the principle of proportionality, in particular on account of the fact that the agreement provides for the transfer of an excessive amount of passenger data and those data are stored by the American authorities for too long.

Finally, the Parliament also pleads the lack of a sufficient statement of reasons for a measure having such specific characteristics, and infringement of the principle of cooperation in good faith provided for in Article 10 EC, having regard to the very unusual circumstances surrounding the adoption of the contested decision, which took place during the procedure before the Court of Justice for request for opinion 1/04 on the aspects which clearly posed questions of a legal nature.

[1] Council Decision 2004/496/EC of 17 May 2004 on the conclusion of an Agreement between the European Community and the United States of America on the processing and transfer of PNR data by Air Carriers to the United States Department of Homeland Security, Bureau of Customs and Border Protection (OJ L 183 of 20.5.2004, p. 83)

Action brought on 27 July 2004 by the European Parliament against the Commission of the European Communities

(Case C-318/04)

(2004/C 228/67)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 27 July 2004 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 under Article 230 EC Commission Decision 2004/535/EC of 14 May 2004 [1];

— order the Commission of the European Communities to pay all of the costs.

Pleas in law and main arguments

The European Parliament puts forward four pleas in support of its action, namely, misuse of powers by the Commission, breach of the fundamental principles of Directive 95/46/EC, breach of fundamental rights and breach of the principle of proportionality.

In respect of misuse of powers, the Parliament argues that the Commission's decision was adopted ultra vires, without complying with the provisions laid down in the basic directive 95/46/EC on the protection of personal data and in breach of, inter alia, the first indent of Article 3(2) of Directive 95/46 on the exclusion of activities which fall outside the scope of Community law.

The European Parliament stresses in addition the following aspects: the CBP (United States Bureau of Customs and Border Protection) is not a third country within the meaning of Article 25 of Directive 95/46, the decision on adequacy authorises transfers to other US governmental authorities as well as to third countries, the decision entails infringement of Article 13 of Directive 95/46 on exemptions from and restrictions on the principles on the processing of personal data (exemptions and restrictions reserved to the Member States), and on the basis of the decision, the CBP has direct access to PNR (Passenger Name Record) data, not provided for by the directive. In the light of the interdependence between the decision on adequacy and the agreement between the European Community and the United States, the decision must be considered a measure which is not appropriate for the objective pursued, namely to provide for transfers of PNR data.

In its second plea, the European Parliament takes the view that the Commission's decision on adequacy also infringes the fundamental principles of Directive 95/46. In particular, the purpose of the processing referred to in the decision is incompatible with the purpose of the initial processing; there is no legal processing obligation; the principles of the basic directive are infringed as regards the processing of sensitive data, the right of access and related rights; the right to judicial protection is not guaranteed and the authorisation to transfer to other US authorities and other countries is incompatible with Directive 95/46.

Thirdly, the European Parliament maintains that the Commission's decision on adequacy infringes fundamental rights, in particular the right to private life and the right to protection of personal data laid down in Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as applied by the Court of Justice and the European Court of Human Rights.

The Parliament's fourth plea alleges that the decision on adequacy also infringes the principle of proportionality, in particular on account of the fact that an excessive amount of PNR data can be transferred and those data can be kept by the US authorities for too long.

(1) Commission Decision 2004/535/EC of 14 May 2004 on the adequate protection of personal data contained in the Passenger Name Record of air passengers transferred to the United States Bureau of Customs and Border Protection (OJ 2004 L 235, p. 11).

Action brought on 23 July 2004 by the Commission of the European Communities against the French Republic

(Case C-319/04)

(2004/C 228/68)

An action against the French Republic was brought before the Court of Justice of the European Communities on 23 July 2004 by the Commission of the European Communities, represented by G. Rozet, acting as Agent, with an address for service in Luxembourg.

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

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 1999/63/EC 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 [1], or, in any event, by failing to notify the Commission of those provisions, the French Republic has failed to fulfil its obligations under Article 3(1) of that directive;

— order the French Republic to pay the costs.

Pleas in law and main arguments

The time-limit for transposition of the directive expired on 30 June 2002.

(1) OJ L 167, 2.7.1999, p. 33.

Action brought on 27 July 2004 by the Commission of the European Communities against the Grand Duchy of Luxembourg

(Case C-320/04)

(2004/C 228/69)

An action against the Grand Duchy of Luxembourg was brought before the Court of Justice of the European Communities on 27 July 2004 by the Commission of the European Communities, represented by D. Martin, acting as Agent, with an address for service in Luxembourg.

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

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin [1], the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive;

— order the Grand Duchy of Luxembourg to pay the costs.

Pleas in law and main arguments

The time-limit for transposition of the directive expired on 19 July 2003.

(1) OJ L 180, 19.7.2000, p. 22.

Action brought on 2 August 2004 by the Commission of the European Communities against the Grand Duchy of Luxembourg

(Case C-333/04)

(2004/C 228/70)

An action against the Grand Duchy of Luxembourg was brought before the Court of Justice of the European Communities on 2 August 2004 by the Commission of the European Communities, represented by Denis Martin and Horstpeter Kreppel, acting as Agents, with an address for service in Luxembourg.

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

— declare that, by failing to adopt the laws, measures and administrative provisions necessary to comply with Directive 1999/92/EC of the European Parliament and of the Council of 16 December 1999 on minimum requirements for improving the safety and health protection of workers potentially at risk from explosive atmospheres (15th individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC), [1] the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive;

— order the Grand Duchy of Luxembourg to pay the costs.

Pleas in law and main arguments:

The period for transposing the directive expired on 30 June 2003.

[1] OJ L 23 of 28.1.2000, p. 57.

Removal from the register of Case C-257/02 [1]

(2004/C 228/71)

By order of 6 May 2004 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-257/02 (reference for a preliminary ruling by the Oberster Gerichtshof): Stuij en de Man B.V. v Republic of Austria.

[1] OJ C 247 of 12.10.2002.

Removal from the register of Case C-322/02 [1]

(2004/C 228/72)

By order of 17 May 2004 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-322/02 (reference for a preliminary ruling from the Sozialgericht Augsburg): Eva-Maria Weller v Deutsche Angestellten-Krankenkasse.

[1] OJ C 289 of 23.11.2002.

Removal from the register of Case C-349/02 [1]

(2004/C 228/73)

By order of 3 May 2004 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-349/02: Commission of the European Communities v Republic of Italy.

[1] OJ C 289 of 23.11.2002.

Removal from the register of Case C-450/02 [1]

(2004/C 228/74)

By order of 5 May 2004 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-450/02 (reference for a preliminary ruling from the Bundesfinanzhof): Finanzamt Kassel-Goethestraße v Qualitair Engineering Services Ltd.

[1] OJ C 70 of 22.3.2003.

Removal from the register of Case C-454/02 [1]

(2004/C 228/75)

By order of 8 June 2004 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-454/02 (reference for a preliminary ruling from the Bundessozialgericht): Karin Bautz v AOK Baden-Württemberg.

[1] OJ C 70 of 22.3.2003.

Removal from the register of Case C-76/03 [1]

(2004/C 228/76)

By order of 10 May 2004 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-76/03: Commission of the European Communities v Republic of Austria.

[1] OJ C 83 of 5.4.2003.

Removal from the register of Case C-474/03 [1]

(2004/C 228/77)

By order of 17 May 2004 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-474/03: Commission of the European Communities v Republic of Greece.

[1] OJ C 7 of 10.1.2004.

Removal from the register of Case C-538/03 [1]

(2004/C 228/78)

By order of 24 June 2004 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-538/03: Commission of the European Communities v Federal Republic of Germany.

[1] OJ C 71 of 20.3.2004.

COURT OF FIRST INSTANCE

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 10 June 2004

in Joined Cases T-153/01 and T-323/01: Mercedes Alvarez Moreno v Commission of the European Communities (1)

(Officials — Member of the auxiliary staff — Conference interpreter — Article 74 of the Conditions of Employment of Other Servants)

(2004/C 228/79)

(Language of the case: French)

In Joined Cases T-153/01 and T-323/01: Mercedes Alvarez Moreno, residing in Berlin (Germany), represented, in Case T-153/01, initially by G. Vandersanden and D. Dugois, then by G. Vandersanden, and, in Case T-323/01, by G. Vandersanden and L. Levi, lawyers, against Commission of the European Communities (Agents: initially, F. Cloutche-Duvieusart and M. Langer, then F. Cloutche-Duvieusart and D. Martin) — application for, first, annulment of the Commission' letters of 13 and 23 February 2001 informing the applicant that it was no longer possible to engage conference interpreters of more than 65 years of age and, second, damages, the Court of First Instance (Fifth Chamber), composed of R. García-Valdecasas, President, P. Lindh and J.D. Cooke, Judges; J. Palacio González, Principal Administrator, Registrar, gave a judgment on 10 June 2003, in which it:

1. *Dismisses the application in Case T-153/01 as inadmissible;*

2. *In Case T-323/01, annuls the decision of 23 February 2001;*

3. *Dismisses the remainder of the application in Case T-323/01;*

4. *Orders the parties to bear their own costs in Case T-153/01;*

5. *Orders the Commission to pay all the costs in Case T-323/01.*

(1) OJ C 275 of 29.9.2001.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 10 June 2004

in Case T-258/01: Pierre Eveillard v Commission of the European Communities (1)

(Officials — Disciplinary measures — Relegation in step — Articles 11 and 14 of the Staff Regulations — Contract for the security of the Commission's buildings)

(2004/C 228/80)

(Language of the case: French)

In Case T-258/01: Pierre Eveillard, an official of the Commission of the European Communities, residing in Brussels (Belgium), represented by L. Vogel, lawyer, with an address for service in Luxembourg, against Commission of the European Communities (Agent: J. Curral, assisted by B. Wägenbaur, lawyer, with an address for service in Luxembourg) — application for annulment of the Commission's decision of 25 June 2001 rejecting the applicant's complaint of 13 March 2001 whereby he contested the decision adopted by the appointing authority on 19 December 2000 imposing on the applicant the disciplinary measure of relegation by two steps — the Court of First Instance (Fifth Chamber), composed of P. Lindh, President, and R. Garcia-Valdecasas and J.S. Cooke, Judges; I. Natsinas, Administrator, for the Registrar, gave a judgment on 10 June 2004, in which it:

1. *Annuls the decision of 19 December 2000 imposing on the applicant the disciplinary penalty of reduction by two steps;*

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

(1) OJ C 369 of 22.12.2001.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 10 June 2004

in Case T-276/01: Mély Garroni v European Parliament [1]

(Officials — Auxiliary staff — Conference Interpreter — Article 74 of the conditions of employment of other staff — Termination of employment)

(2004/C 228/81)

(Language of the case: French)

In Case T-276/01: Mély Garroni, residing at Rome (Italy), represented by G. Vandersanden, lawyer, against the European Parliament (Agents: H. von Hertzen and J. de Wachter, with an address for service in Luxembourg) - application for, first, annulment of the decision to no longer employ Conference Interpreters aged 65 or more and, secondly, damages - the Court of First Instance (Fifth Chamber), composed of R. García-Valdecasas, President, P. Lindh and J.D. Cooke, Judges; for the Registrar: J. Palacio Gonzalez, Principal Administrator, has given a judgment on 10 June 2004, in which it:

1. *Annuls the Parliament's decision of 24 January 2001 and the Parliament's decision of 20 July 2001 rejecting the applicant's complaint;*

2. *Dismisses the rest of the application;*

3. *Orders the Parliament to bear all the costs.*

(1) OJ C 3 of 5.1.2002.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 10 June 2004

in Case T-307/01: Jean-Paul François v Commission of the European Communities [1]

(Officials — Disciplinary regime — Relegation in step — Caretaking contract of the Commission's buildings — Reasonable time-limit — Criminal proceeding — Action for damages)

(2004/C 228/82)

(Language of the case: French)

In Case T-307/01: Jean-Paul François, an official of the Commission of the European Communities, residing at Wavre (Belgium), represented by A. Colson, lawyer, with an address for service in Luxembourg, against Commission of the European Communities (Agent: J. Currall assisted by B. Wägenbaur, lawyer, with an address for service in Luxembourg) – application for, first, annulment of the Commission's decision of 5 April 2001 imposing on the applicant the disciplinary sanction of relegation in step and, secondly, damages to compensate for the material and non-material damage which the applicant claims to have suffered – the Court of First Instance (Fifth Chamber), composed of P. Lindh, President, R. García-Valdecasas and J.D. Cooke, Judges; for the Registrar: I. Natsinas, Administrator, has given a judgment on 10 June 2004, in which it:

1. *Annuls the Commission's decision of 5 April 2001 imposing on the applicant the disciplinary sanction of relegation in step;*

2. *Orders the Commission to pay the applicant damages of EUR 8 000 in respect of the non-material damage suffered by him;*

3. *Orders the Commission to pay all the costs.*

(1) OJ C 56, 2.3.2002.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 22 June 2004

in Case T-185/02: Claude Ruiz-Picasso and Others v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) [1]

(Community trade mark — Regulation (EC) No 40/94 — Opposition — Likelihood of confusion — Application for Community word trade mark PICARO — Earlier word trade mark PICASSO)

(2004/C 228/83)

(Language of the case: German)

In Case T-185/02: Claude Ruiz-Picasso, residing in Paris (France), Paloma Ruiz-Picasso, residing in London (United Kingdom), Maya Widmaier-Picasso, residing in Paris, Marina Ruiz-Picasso, residing in Geneva (Switzerland), Bernard Ruiz-Picasso, residing in Paris, represented by C. Gielen, lawyer, against Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Agents: G. Schneider and U. Pfleghar), the other party to the proceedings before the Board of Appeal of OHIM, intervener before the Court, being DaimlerChrysler AG, established in Stuttgart (Germany), represented by S. Völker, lawyer, with an address for service in Luxembourg — Appeal against the decision of the Third Board of Appeal of OHIM of 18 March 2002 (Case R 0247/2001-3) relating to opposition proceedings between the Picasso estate and DaimlerChrysler AG — the Court of First Instance (Second Chamber), composed of N.J. Forwood, President, J. Pirrung and A.W.H. Meij, Judges; D. Christensen, Administrator, for the Registrar, has given a judgment on 22 June 2004, in which it:

1) *Dismisses the action;*

2) *Orders the applicants to pay the costs.*

(1) OJ C 202 of 24.8.2002.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 24 June 2004

in Case T-190/02: Anita Jannice Österholm v Commission of the European Communities [1]

(Officials — Absence treated as a period of annual leave — Time-limits — No legal interest in bringing proceedings — Inadmissibility)

(2004/C 228/84)

(Language of the case: French)

In Case T-190/02: Anita Jannice Österholm, residing at Stockholm (Sweden), represented by J.R. Iturriagagoitia Bassas, lawyer, against Commission of the European Communities (Agents: J. Currall and V. Joris assisted by A. Dal Ferro, with an address for service in Luxembourg) — application for annulment of the Commission's decision to treat the applicant's absence between 8 and 31 July 2000 as a period of annual leave — the Court of First Instance (Third Chamber), composed of J. Azizi, President, M. Jaeger and F. Dehousse, Judges; for the Registrar: I. Natsinas, Administrator, has given a judgment on 24 June 2004, in which it:

1. *Dismisses the action as inadmissible;*

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

[1] OJ C 202, 24.8.2002.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 22 June 2004

in Case T-66/03: Koffiebranderij en Theehandel 'Drie Mollen sinds 1818' BV v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) [1]

(Community trade mark — Opposition proceedings — Application for a figurative Community trade mark including the word 'Galáxia' — Earlier national and international word marks GALA — Relative ground for refusal — Rejection of opposition — Article 8(1)(b) of Regulation (EC) No 40/94)

(2004/C 228/85)

(Language of the case: English)

In Case T-66/03: Koffiebranderij en Theehandel 'Drie Mollen sinds 1818' BV, established in 's-Hertogenbosch (Netherlands), represented by P. Steinhauser, lawyer, with an address for service in Luxembourg, against Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Agents: J. Novais Gonçalves and S. Laitinen), the other party to the proceedings before the Board of Appeal of OHIM having been Manuel Nabeiro Silveria, L[da], established in Campo Maior (Portugal) — action brought against the decision of the Second Board of Appeal of OHIM of 17 December 2002 (Case R 270/2001-2) concerning an opposition procedure between Koffiebranderij en Theehandel 'Drie Mollen sinds 1818' BV and Manuel Nabeiro Silveria, L[da] — the Court of First Instance (Second Chamber), composed of J. Pirrung, President, A.W.H. Meij and N.J. Forwood, Judges; J. Plingers, Administrator, for the Registrar, has given a judgment on 22 June 2004, in which it:

1. *Dismisses the application.*

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

[1] OJ C 124 of 24.05.2003.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 10 June 2004

in Case T-315/02: Svend Klitgaard v Commission of the European Communities [1]

(Arbitration clause — Contract concluded under the PLAN Cluster D programme — Travel expenses — Costs of recovery — Late payment)

(2004/C 228/86)

(Language of the case: Danish)

In Case T-315/02: Svend Klitgaard, residing in Skørping (Denmark), represented by S. Koll Espensen, lawyer, against Commission of the European Communities (Agents: H. Støvlbæk and C. Giolito, assisted by P. Heidmann, with an address for service in Luxembourg) — application under Article 238 EC for reimbursement of EUR 19 867.40 allegedly incurred by the applicant in connection with performance of contract No 32.0166 concluded within the framework of Cluster D of the Plant Life Assessment Network (PLAN) project, together with default interest, and for the payment of recovery costs, also with default interest — the Court of First Instance (Fifth Chamber), composed of P. Lindh, President, R. García-Valdecasas and J.D. Cooke, Judges; D. Christensen, Administrator, for the Registrar, has given a judgment on 10 June 2004 in which it:

1. *Dismisses the action;*

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

[1] OJ C 323 of 21.12.2002.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 10 June 2004

in Case T-330/03: Xanthippi Liakoura v Council of the European Union [1]

(Officials — Refusal of promotion — Action for annulment and compensation)

(2004/C 228/87)

(Language of the case: French)

In Case T-330/03: Xanthippi Liakoura, an official of the Council of the European Union, residing in Brussels (Belgium), represented by J.A. Martin, lawyer, against Council of the European Union (Agents: M. Sims and F. Anton) — application for annulment of the decision of the Council not to promote the applicant to Grade C 1 in the 2002 round of promotions and for damages — the Court of First Instance (Single Judge: P. Lindh), I. Natsinas, Administrator, for the Registrar, gave a judgment on 10 June 2004, in which it:

1. *Dismisses the application;*

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

[1] OJ No C 289 of 29.11.2003.

ORDER OF THE COURT OF FIRST INSTANCE

of 26 May 2004

in Case T-165/02: Enrique José Lloris Maeso v Commission of the European Communities [1]

(Action for annulment — No steps taken by the applicant — No need to adjudicate)

(2004/C 228/88)

(Language of the case: Spanish)

In Case T-165/02: Enrique José Lloris Maeso, residing in Valencia (Spain), represented by Julian Bosch Abaraca, against the Commission of the European Communities (Agents: Julian Currall, assisted by José Rivas Andrés and Juan José Gutiérrez Gisber, with an address for service in Luxembourg) — application for annulment of the decision of the selection board in competition COM/A/10/01 awarding him in the preselection stage a number of points insufficient for him to be admitted to the tests in that competition —, the Court of First Instance (Second Chamber), composed of: J. Pirrung, President, A.W.H. Meij and N.J. Forwood, Judges; H. Jung, Registrar, has made an order on 26 May 2004 the operative part of which is as follows:

1. *There is no need to proceed to judgment;*

2. *The applicant shall bear his own costs and those incurred by the Commission.*

[1] OJ C 261, 26.10.2002.

ORDER OF THE COURT OF FIRST INSTANCE

of 14 June 2004

in Case T-267/02, Rewe-Zentral AG v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) [1]

(Community trade mark — Partial refusal of registration — Withdrawal of opposition — No need to adjudicate)

(2004/C 228/89)

(Language of the case: German)

In Case T-267/02, REWE-ZENTRAL AG, established in Cologne (Germany), represented by H. Eichmann, G. Barth, U. Blumenröder, C. Niklas-Falter, M. Kinkeldey, K. Brandt, A. Franke, U. Stephani, B. Allekotte, E. Pfrang, K. Lochner and B. Ertle, lawyers, against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Agents: J. Weberndorfer and G. Schneider), the intervener before the Court of First Instance being Fritidsresor AB, established in Stockholm, represented by U. Sander, lawyer, an action brought against the decision of 1 July 2002 by OHIM's First Board of Appeal (case R 888/2000-1) as regards the registration of the sign Atlasreisen as a Community mark, the Court (Second Chamber), composed of J. Pirrung, President, A.W.H. Meij and I. Pelikánová, Judges; Registrar: H. Jung, made an order on 14 June 2004, the operative part of which is as follows:

1. *There is no further need to adjudicate on the matter.*

2. *Each party is to pay its own costs.*

[1] OJ C 289, 23.11.2002.

ORDER OF THE COURT OF FIRST INSTANCE

of 7 June 2004

in Case T-333/02: Gestoras Pro-Amnistía and Others v Council of the European Union (1)

(Action for damages — Justice and home affairs — Common position of the Council — Measures concerning persons, groups and entities involved in terrorist acts — Manifest lack of jurisdiction — Action manifestly unfounded)

(2004/C 228/90)

(Language of the case: French)

In Case T-333/02, Gestoras Pro-Amnistía, Juan Mari Olano Olano, residing in Gradignan (France), Julen Zelarain Errasti, residing in Madrid (Spain), represented by D. Rouget, lawyer, v Council of the European Union (Agents: M. Vitsentzatos et M. Bauer), supported by the Kingdom of Spain, represented by its Agent, with an address for service in Luxembourg, and by the United Kingdom of Great Britain and Northern Ireland (Agents: initially P. Ormond, subsequently C. Jackson, with an address for service in Luxembourg) — application for damages as compensation for damage allegedly suffered by the applicants as a result of the inclusion of Gestoras Pro-Amnistía in the list of persons, groups and entities involved in terrorist acts provided for in Article 1 of the Council Common Position of 27 December 2001 on the application of specific measures to combat terrorism (OJ 2001 L 344, p. 93), of the Council Common Position of 2 May 2002 updating Common Position 2001/931/CFSP (OJ 2002 L 116, p. 75), and of the Council Common Position of 17 June 2002 updating Common Position 2001/931/CFSP and repealing Common Position 2002/340/CFSP (OJ 2002 L 160, p. 32) — the Court of First Instance (Second Chamber), composed of J. Pirrung, President, A.W.H. Meij and N. J. Forwood, Judges; H. Jung, Registrar, has made an Order on 7 June 2004, the operative part of which is as follows:

1) *The action is dismissed.*

2) *Each party shall bear its own costs.*

(1) OJ C 19 of 25.1.2003.

ORDER OF THE COURT OF FIRST INSTANCE

of 27 May 2004

in Case T- 358/02: Deutsche Post AG and DHL International Srl v Commission of the European Communities (1)

(State aid — Approval by the Commission of aid granted by the Italian authorities to Poste Italiane — Action for annulment brought by competitors — Inadmissibility)

(2004/C 228/91)

(Language of the case: German)

In Case T- 358/02: Deutsche Post AG, established in Bonn (Germany), DHL International Srl., established in Rozzano (Italy), represented by J. Sedemund and T. Lübbig, lawyers, against Commission of the European Communities (Agents: V. Di Bucci, J. Flett and V. Kreuschitz), supported by the Italian Republic (Agents: initially U. Leanza, subsequently I. Braguglia, with an address for service in Luxembourg) and by Poste Italiane SpA, established in Rome (Italy), represented by B. O'Connor, Solicitor, and A. Fratini, lawyer — action for annulment of Commission Decision 2002/782/EC of 12 March 2002 on the aid granted by Italy to Poste Italiane SpA (formerly Ente Poste Italiane) (OJ 2002 L 282, p. 29) — the Court of First Instance (Second Chamber, Extended Composition), composed of J. Pirrung, President, V. Tiili, A.W.H. Meij, M. Vilaras and N.J. Forwood, Judges; H. Jung, Registrar, has made an order on 27 May 2004, the operative part of which is as follows:

1. *The action is dismissed as inadmissible.*

2. *The applicants shall bear their own costs and pay those incurred by the Commission and by Post Italiane SpA. The Italian Republic shall bear its own costs.*

(1) OJ C 44, 22.2.2003.

ORDER OF THE COURT OF FIRST INSTANCE

of 2 July 2004

in Case T-9/03, Federazione Regionale Coltivatori Diretti della Sardegna and CIA v Commission of the European Communities (1)

(State aid — Action for annulment and compensation — Decision finding an aid scheme incompatible with the common market — Actions brought by representatives of potential beneficiaries of that scheme — Inadmissibility)

(2004/C 228/92)

(Language of the case: Italian)

In Case T-9/03, COLDIRETTI — Federazione Regionale Coltivatori Diretti della Sardegna, established in Cagliari (Italy) —

Confederazione Italiana Agricoltori della Sardegna, established in Cagliari (Italy), represented by G. Dore and F. Ciulli, lawyers, against the Commission of the European Communities (Agent: V. di Bucci, with an address for service in Luxembourg), application, principally, for annulment of Commission Decision No 2002/785/EC of 7 May 2002 on the aid Italy is planning to grant under Article 21 of Region of Sardinia Law No 21/2000 to agricultural holdings using fuel other than methane, and, in the alternative, application for compensation for damage allegedly suffered by the applicants as the result of that decision, the Court of First Instance (Second Chamber, Extended Composition), composed of J. Pirrung, President, A.W.H. Meij, N.J. Forwood, I. Pelikánová and S.S. Papasavvas, Judges; Registrar: H. Jung, made an order on 2 July 2004, the operative part of which is as follows:

1. *The action is dismissed as inadmissible.*

2. *The applicants are ordered to pay the costs.*

(1) OJ C 55 of 8.3.2003.

ORDER OF THE COURT OF FIRST INSTANCE

of 27 May 2004

in Case T-61/03: Irwin Industrial Tool Co. v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (1)

(Community trade mark — Word mark QUICK-GRIP — Absolute ground for refusal — Descriptiveness — Article 7(1)(c) of Regulation (EC) No 40/94 — Refusal to register — Action manifestly lacking any foundation in law)

(2004/C 228/93)

(Language of the case: English)

In Case T-61/03: Irwin Industrial Tool Co., established in Hoffman Estates, Illinois (United States), represented by G. Farrington, Solicitor, against Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Agents: G. Humphreys and S. Laitinen) — action brought against the decision of the Third Board of Appeal of OHIM of 20 November 2002 (Case R 110/2002-3) refusing to register the word mark QUICK-GRIP as a Community trade mark — the Court of First Instance (Fourth Chamber), composed of H. Legal, President, V. Tiili and M. Vilaras, Judges; H. Jung, Registrar, has made an order on 27 May 2004, the operative part of which is as follows:

1. *The action is dismissed.*

2. *The applicant shall pay the costs.*

(1) OJ C 101 of 26.4.2003.

ORDER OF THE COURT OF FIRST INSTANCE

of 9 June 2004

in Case T-96/03: Manuel Camós Grau v Commission of the European Communities (1)

(Investigation of the European Anti-fraud Office (OLAF) concerning the management and financing of the Institute for European-Latin American Relations — Possible conflict of interests with regard to an investigator — Decision to remove the investigator from the team — Action for annulment — Preparatory measures — Inadmissible)

(2004/C 228/94)

(Language of the case: French)

In Case T-96/03: Manuel Camós Grau, an official of the Commission of the European Communities, residing in Brussels (Belgium), represented by M.-A. Lucas, lawyer, against Commission of the European Communities (Agents: initially H. van Lier, then J.-F. Pasquier and C. Ladenburger, with an address for service in Luxembourg) — application for, first, annulment of the decision of the European Anti-fraud Office (OLAF) of 17 May 2002 to remove one of the investigators from the investigation concerning the Institute for European-Latin American relations in order to avoid any apparent conflict of interests, without annulling the measures adopted by that investigator, and also the decision implicitly rejecting the applicant's complaint of 29 July 2002 against that decision and, second, damages by way of compensation for the non-material damage and damage to his career allegedly sustained as a consequence of those decisions — the Court of First Instance (Fourth Chamber), composed of H. Legal, President, and V. Tiili and M. Vilaras, Judges; H. Jung, Registrar, made an order on 9 June 2004, in which it:

1. *Dismisses the application as inadmissible;*

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

(1) OJ C 112 of 10.5.2003.

ORDER OF THE COURT OF FIRST INSTANCE

of 2 June 2004

in Case T-123/03 Pfizer Ltd v Commission of the European Communities [1]

(Medicinal products for human use — Initiation, under Article 30 of Directive 2001/83/EC, of the procedure under Article 32 of that directive — Application for annulment — Measure against which an action may be brought — Preparatory measure — Inadmissible)

(2004/C 228/95)

(Language of the case: English)

In Case T-123/03: Pfizer Ltd, established in Sandwich, Kent (United Kingdom), represented by D. Anderson QC, K. Bacon, Barrister, I. Dodds-Smith and T. Fox, Solicitors, against Commission of the European Communities (Agents: H. Støvlbaek and X. Lewis, acting as Agents, with an address for service in Luxembourg) — application for the annulment of the Commission Decision of 6 January 2003 initiating a referral to the European Agency for the Evaluation of Medicinal Products (EMEA) in relation to Lopid under Article 30 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 (OJ 2001 L 311, p. 67) — the Court of First Instance (Fourth Chamber), composed of: H. Legal, President, V. Tilli and M. Vilaras, Judges; H. Jung, Registrar, has made an order on 2 June 2004, the operative part of which is as follows:

1. *The application is dismissed as inadmissible.*

2. *The applicant shall pay the costs.*

([1]) OJ C 171 of 19.7.2003.

ORDER OF THE COURT OF FIRST INSTANCE

of 25 May 2004

in Case T-264/03: Jürgen Schmoldt and Others v Commission of the European Communities [1]

(Action for annulment — Procedural time-limit — Natural or legal persons — Acts of individual concern to them — Decision — Thermal insulation standards — Inadmissibility)

(2004/C 228/96)

(Language of the case: German)

In Case T-264/03: Jürgen Schmoldt, residing in Dallgow-Döberitz (Germany), Kaefer Isoliertechnik GmbH & Co. KG, established in Bremen (Germany), Hauptverban der Deutschen Bauindustrie eV, established in Berlin (Germany), represented by H.-P. Schneider, lawyer, against Commission of the European Communities (Agents: K. Wiedner, assisted by A. Böhlke, lawyer, with an address for service in Luxembourg) — application for annulment of Article 1 of, and Table 1 of the Annex to, Commission Decision 2003/312/EC of 9 April 2003 on the publication of the reference of standards relating to thermal insulation products, geotextiles, fixed fire-fighting equipment and gypsum blocks in accordance with Council Directive 89/106/EEC (OJ 2003 L 114, p. 50), — the Court of First Instance (Third Chamber), composed of J. Azizi, (President), M. Jaeger and F. Dehousse, Judges; H. Jung, Registrar, has made an order on 25 May 2004, the operative part of which is as follows:

1. *The action is dismissed as inadmissible;*

2. *The applicants shall bear their own costs and those incurred by the defendant, including those relating to the interlocutory proceedings in Case T-264/03 R.*

([1]) OJ C 239, 4.10.2003.

Action brought on 25 May 2004 by Ryanair Limited against the Commission of the European Communities

(Case T-196/04)

(2004/C 228/97)

(Language of the case: English)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 25 May 2004 by Ryanair Limited, Dublin, Ireland, represented by Mr D. Gleeson and Mr A. Collins Barristers and Dr V. Power, Solicitor.

The applicant claims that the Court should:

— Annul the decision of 12 February 2004 concerning the advantages authorised by the Walloon Region and Brussels South Charleroi Airport to the airline Ryanair at the time of its installation at Charleroi.

— Order the Commission to pay the costs of these proceedings.

Pleas in law and main arguments:

The applicant company is an airline which specialises in low fares flights. On the occasion of the establishment by the applicant of a base at Brussels South Charleroi Airport the Walloon Region of Belgium implemented a number of aid measures in favour of the applicant. By the contested decision the Commission found that a part of these measures, namely a reduction in airport landing charges as well as discounts on ground handling services, constituted state aid incompatible with the common market within the meaning of Article 87 EC. The same decision declared a number of other aid measures granted by the airport to the applicant compatible with the common market subject to several conditions.

In support of its application for the annulment of this decision, the applicant submits that the duty to give reasons under Article 253 EC was infringed. In particular the applicant claims that the contested decision fails to provide reasons for treating the Walloon Region and the airport as independent entities, even though the region owns and controls the airport. Further, the applicant claims that no reasons are given for treating the region as a legislator/regulator and not as an airport owner, and that the Commission failed to consider evidence of the behaviour of other airports and failed to assess the airport's business plan in a correct manner.

The applicant also considers that there has been a misapplication of Article 87 EC because not all elements of the first paragraph of that article were satisfied; the agreement does not amount to State aid when viewed objectively; and the Commission failed to analyse the situation from the perspective of both the alleged benefactor and beneficiary.

Action brought on 21 June 2004 by Monique Negenman against Commission of the European Communities

(Case T-255/04)

(2004/C 228/98)

(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 June 2004 by Monique Negenman, residing in Roosendaal (Netherlands), represented by L. Vogel, lawyer.

The applicant claims that the Court should:

— annul the decision adopted by the appointing authority on 8 March 2004 (and notified on 11 March 2004) rejecting the applicant's complaint of 25 November 2003 against the administrative decisions of 23 October and 30 October 2004 fixing the dates of the beginning and end of the applicant's maternity leave;

— order the defendant to pay compensation of EUR 10 000, with the express reservation that this amount may subsequently be increased, reduced or subject to further clarification;

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

Pleas in law and main arguments

The applicant in the present case maintains that the appointing authority incorrectly calculated the dates of the beginning and the end of her maternity leave.

In support of her claims, she alleges that there has been a breach of Article 58 of the Staff Regulations (as worded before 1 May 2004) and of the principle of legitimate expectations, laid down in particular in Article 35 of the Staff Regulations, in that the appointing authority fixed the dates of the beginning and the end of her maternity leave on the basis of the actual date of her confinement, whereas under Article 58 of the Staff Regulations maternity leave starts six weeks before the expected date of confinement as shown in a certificated produced by the official concerned.

Removal from the Register of Case T-306/99 ([1])

(2004/C 228/99)

(Language of the case: Dutch)

By order of 11 May 2004, the President of the Second Chamber (Extended Composition) of the Court of First Instance of the European Communities has ordered the removal from the Register of Case T-306/99, Oliecentrum Nederland B.V., supported by the Kingdom of the Netherlands v Commission of the European Communities.

([1]) OJ C 63, 4.3.2000.

Removal from the Register of Case T-307/99 ([1])

(2004/C 228/100)

(Language of the case: Dutch)

By order of 11 May 2004, the President of the Second Chamber (Extended Composition) of the Court of First Instance of the European Communities has ordered the removal from the Register of Case T-307/99, Oliecentrum Strijbos B.V., supported by the Kingdom of the Netherlands v Commission of the European Communities.

([1]) OJ C 63, 4.3.2000.

Removal from the Register of Case T-308/99 [1]

(2004/C 228/101)

(Language of the case: Dutch)

By order of 24 May 2004, the President of the Second Chamber (Extended Composition) of the Court of First Instance of the European Communities has ordered the removal from the Register of Case T-308/99, H. Peeters Service B.V., supported by the Kingdom of the Netherlands v Commission of the European Communities.

[1] OJ C 63, 4.3.2000.

Removal from the Register of Case T-310/99 [1]

(2004/C 228/102)

(Language of the case: Dutch)

By order of 11 May 2004, the President of the Second Chamber (Extended Composition) of the Court of First Instance of the European Communities has ordered the removal from the Register of Case T-310/99, Strijbos en zoon B.V., supported by the Kingdom of the Netherlands v Commission of the European Communities.

[1] OJ C 63 of 4.3.2000.

Removal from the Register of Case T-311/99 [1]

(2004/C 228/103)

(Language of the case: Dutch)

By order of 11 May 2004, the President of the Second Chamber (Extended Composition) of the Court of First Instance of the European Communities has ordered the removal from the Register of Case T-311/99, Tankstation Haarhuis B.V., supported by the Kingdom of the Netherlands v Commission of the European Communities.

[1] OJ C 63 of 4.3.2000.

Removal from the Register of Case T-312/99 [1]

(2004/C 228/104)

(Language of the case: Dutch)

By order of 11 May 2004, the President of the Second Chamber (Extended Composition) of the Court of First Instance of the European Communities has ordered the removal from the Register of Case T-312/99, Technische Handelsonderneming Van Dooren B.V., supported by the Kingdom of the Netherlands v Commission of the European Communities.

[1] OJ C 63 of 4.3.2000.

Removal from the Register of Case T: 220/02 [1]

(2004/C 228/105)

(Language of the case: French)

By order of 12 May 2004, the Court of First Instance of the European Communities (Single Judge: M.E. Martins Ribeiro), has ordered the removal from the Register of Case T-220/02, Antonio Silva v Commission of the European Communities.

[1] OJ C 247 of 12.10.2002.

Removal from the Register of Case T-242/03 [1]

(2004/C 228/106)

(Language of the case: German)

By order of 25 May 2004, the President of the Second Chamber of the Court of First Instance of the European Communities has ordered the removal from the Register of Case T-242/03, Ulf Jacoby v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM).

[1] OJ C 200 of 23.8.2003.

Removal from the Register of Case T-380/03 [1]

(2004/C 228/107)

(Language of the case: German)

By order of 6 July 2004, the President of the Second Chamber of the Court of First Instance of the European Communities has ordered the removal from the Register of Case T-380/03, Korn- og Foderstof Kompagniet v Commission of the European Communities.

[1] OJ C 21 of 24.1.2004.

Removal from the Register of Case T-423/03 [1]

(2004/C 228/108)

(Language of the case: Dutch)

By order of 24 May 2004, the President of the Second Chamber of the Court of First Instance of the European Communities has ordered the removal from the Register of Case T-423/03, Elisabeth Saskia SMIT v Europol.

[1] OJ C 47 of 21.2.2004.

Removal from the Register of Case T-89/04 [1]

(2004/C 228/109)

(Language of the case: Dutch)

By order of 24 May 2004, the President of the First Chamber of the Court of First Instance of the European Communities has ordered the removal from the Register of Case T-89/04, C.I. Bieger v Europol.

[1] OJ C 106 of 30.4.2004.

III

(Notices)

(2004/C 228/110)

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

OJ C 201, 7.8.2004

Past publications

OJ C 190, 24.7.2004

OJ C 179, 10.7.2004

OJ C 168, 26.6.2004

OJ C 156, 12.6.2004

OJ C 146, 29.5.2004

OJ C 106, 30.4.2004

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