ISSN 1725-2423

Official Journal of the European Union

C 132

Volume 48

English edition

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(Information)

COURT OF JUSTICE

COURT OF JUSTICE

JUDGMENT OF THE COURT

(Second Chamber)

of 14 April 2005

in Case C-460/01: Commission of the European Communities v Kingdom of the Netherlands [1]

(Failure of a Member State to fulfil its obligations — Regulations (EEC) Nos 2913/92 and 2454/93 — External Community transit procedure — Customs authorities — Procedures for collecting import duties — Time-limits — Non-compliance — Community own resources — Making available — Time-limit — Non-compliance — Default interest — Member State concerned — Default on payment)

(2005/C 132/01)

(Language of the case: Dutch)

In Case C-460/01, Commission of the European Communities (Agents: G. Wilms and H.M.H. Speyart) v Kingdom of the Netherlands (Agent: H.G. Sevenster) — action under Article 226 EC for failure to fulfil obligations, brought on 28 November 2001 — the Court (Second Chamber), composed of C.W.A. Timmermans, President of the Chamber, R. Schintgen and J.N. Cunha Rodrigues (Rapporteur), Judges; C- Stix-Hackl, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, gave a judgment on 14 April 2005, in which it:

1. *Declares that between 1 January 1991 and 31 December 1995:*

— *by failing to proceed with the entry in the accounts of the customs debt and other relevant duties and communicate the amount thereof to the debtor within three days of the time-limit laid down in Articles 3(3) and 6(1) of Council Regulation (EEC) No 1854/89 of 14 June 1989 on the entry in the accounts and terms of payment of the amounts of the import duties or export duties resulting from a customs debt, and in Articles 218(3) and 221(1) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, or at a later date pursuant to Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time-limits, when the principal of an external Community transit operation has not, within three months of being notified by the office of departure that the consignment has not been presented on time at the office of destination, provided proof of the regularity of the transit operation in question,*

— *by failing to make available in due time to the Commission the relevant Community own resources, and*

— *by refusing to pay the relevant default interest,*

the Kingdom of the Netherlands has failed to fulfil its obligations under the second sentence of the second subparagraph of Article 11a(2) of Commission Regulation (EEC) No 1062/87 of 27 March 1987 on provisions for the implementation of the Community transit procedure and for certain simplifications of that procedure, as amended by Commission Regulation (EEC) No 2560/92 of 2 September 1992, the third sentence of Article 49(2) of Commission Regulation (EEC) No 1214/92 of 21 April 1992 on provisions for the implementation of the Community transit procedure and for certain simplifications of that procedure, as amended by Commission Regulation (EEC) No 3712/92 of 21 December 1992, and the third sentence of Article 379(2) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code, and under Articles 2, 9, 10 and 11 of Council Regulation (EEC, Euratom) No 1552/89 of 29 May 1989 implementing Decision 88/376/EEC, Euratom, on the system of the Communities own resources;

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

[1] OJ C 84 of 06.04.2002.

JUDGMENT OF THE COURT

(Second Chamber)

of 14 April 2005

in Case C-104/02: Commission of the European Communities v Federal Republic of Germany [1]

(Failure of a Member State to fulfil its obligations — Regulations (EEC) Nos 2913/92 and 2454/93 — External Community transit procedure — Customs authorities — Procedures for collecting import duties — Time-limits — Non-compliance — Community own resources — Making available — Time-limit — Non-compliance — Default interest — Member State concerned — Default on payment)

(2005/C 132/02)

(Language of the case: German)

In Case C-104/02, Commission of the European Communities (Agent: G. Wilms) v Federal Republic of Germany (Agents: W. D. Plessing and R. Stüwe, assisted by D. Sellner), supported by Kingdom of Belgium, (Agent: A. Snoecx) — action under Article 226 EC for failure to fulfil obligations, brought on 20 March 2002 — the Court (Second Chamber), composed of C.W.A. Timmermans, President of the Chamber, R. Schintgen and J.N. Cunha Rodrigues (Rapporteur), Judges; C. Stix-Hackl, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, gave a judgment on 14 April 2005, in which it:

1. *Declares that by making own resources available to the Community too late, the Federal Republic of Germany has failed to fulfil its obligations under Article 49 of Commission Regulation (EEC) No 1214/92 of 21 April 1992 on provisions for the implementation of the Community transit procedure and for certain simplifications of that procedure and Article 379 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code, read together with Article 2(1) of Council Regulation (EEC, Euratom) No 1552/89 of 29 May 1989 implementing Decision 88/376/EEC, Euratom, on the system of the Communities' own resources;*

2. *Dismisses the remainder of the action;*

3. *Orders the Federal Republic of Germany to pay the costs;*

4. *Orders the Kingdom of Belgium to bear its own costs.*

[1] OJ C 131 of 01.06.2002.

JUDGMENT OF THE COURT

(Third Chamber)

of 17 March 2005

in Case C-437/02: Commission of the European Communities against Republic of Finland [1]

(Failure of a Member State to fulfil obligations — Fisheries — Regulations (EEC) Nos 3760/92 and 2847/93 — Conservation and management of fishery resources — Control measures for fishing activities)

(2005/C 132/03)

(Language of the case: Finnish)

In Case C-437/02, Commission of the European Communities (Agents: T. van Rijn and M. Huttunen) against Republic of Finland (Agents: T. Pynnä and E. Kourula) — action for failure to fulfil obligations under Article 226 EC, brought on 3 December 2002 — the Court (Third Chamber), composed of A. Rosas, President of the Chamber, A. Borg Barthet, A. La Pergola, J.-P. Puissochet (Rapporteur) and A. Ó Caoimh, Judges; D. Ruiz-Jarabo Colomer, Advocate General; R. Grass, Registrar, gave a judgment on 17 March 2005, in which it:

1. *Declares that, by failing, for the fishing years 1995 and 1996:*

   — *to enact appropriate detailed rules for the use of the fishing rights allocated to it and to carry out the inspections and other checks required by the applicable Community legislation;*

   — *to prohibit provisionally fishing within the appropriate periods in order to avoid exhausting the quotas, and*

   — *to institute the criminal or administrative measures which it was obliged to take against masters of vessels who infringed the rules relating to the common fisheries policy and against all other persons responsible for such infringements,*

   the Republic of Finland has failed to fulfil its obligations under Article 9(2) of Council Regulation (EEC) No 3760/92 of 20 December 1992 establishing a Community system for fisheries and aquaculture, and Articles 2, 21(1) and (2) of Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy.

2. *Orders the Republic of Finland to pay the costs.*

[1] OJ C 31 of 08.02.2003.

JUDGMENT OF THE COURT

(Third Chamber)

of 14 April 2005

in Case C-468/02: Kingdom of Spain v Commission of the European Communities ([1])

(EAGGF — Exclusion of certain expenditure — Public storage of olive oil — Arable crops sector)

(2005/C 132/04)

(Language of the case: Spanish)

In Case C-468/02 **Kingdom of Spain** (Agent: L. Fraguas Gadea) v **Commission of the European Communities** (Agent: S. Pardo Quintillán) — action for annulment under Article 230 EC, brought on 31 December 2002 — the Court (Third Chamber), composed of A. Rosas (Rapporteur), President of the Chamber, R. Schintgen and N. Colneric, Judges; P. Léger, Advocate General; R. Grass, Registrar, gave a judgment on 14 April 2005, in which it:

1. *Dismisses the action.*

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

([1]) OJ C 55, 08.03.2003.

JUDGMENT OF THE COURT

(First Chamber)

of 14 April 2005

in Case C-6/03 (reference for a preliminary ruling from the Verwaltungsgericht Koblenz): Deponiezweckverband Eiterköpfe v Land Rheinland-Pfalz ([1])

(Environment — Landfill of waste — Directive 1999/31 — Domestic legislation laying down more stringent rules — Compatibility)

(2005/C 132/05)

(Language of the case: German)

In Case C-6/03: reference for a preliminary ruling under Article 234 EC from the Verwaltungsgericht Koblenz (Germany), made by decision of 4 December 2002, received at the Court on 8 January 2003, in the proceedings pending before that court between Deponiezweckverband Eiterköpfe and Land Rheinland-Pfalz — the Court (First Chamber), composed of P. Jann, President of the Chamber, N. Colneric, J.N. Cunha Rodrigues (Rapporteur), M. Ilešič and E. Levits, Judges; D. Ruiz-Jarabo Colomer, Advocate General, K. Sztranc, Administrator, for the, Registrar, gave a judgment on 14 April 2005, the operative part of which is as follows:

1. *It is not contrary to Article 5(1) and (2) of Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste that a measure of domestic law should:*

   — *fix limits in respect of the acceptance of biodegradable waste for landfill lower than those fixed by the Directive, even if those limits are so low that they call for treatment by mechanical and biological processes or the incineration of such waste before it is landfilled,*

   — *fix earlier time-limits than those under the Directive in order to reduce the amount of waste going to landfill,*

   — *apply not only to biodegradable waste but also to non-biodegradable organic substances, and*

   — *apply not only to municipal waste but also to waste that may be disposed of as municipal waste.*

2. *The Community-law principle of proportionality is not applicable so far as concerns more stringent protective measures of domestic law adopted by virtue of Article 176 EC and going beyond the minimum requirements laid down by a Community directive in the sphere of the environment, inasmuch as other provisions of the Treaty are not involved.*

([1]) OJ C 101 of 26.04.2003.

JUDGMENT OF THE COURT

(Grand Chamber)

of 12 April 2005

in Case C-61/03: Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland ([1])

(Failure by a Member State to fulfil its obligations — EAEC Treaty — Scope — Military installations — Health and safety — Decommissioning of a nuclear reactor — Disposal of radioactive waste)

(2005/C 132/06)

(Language of the case: English)

In Case C-61/03: Commission of the European Communities (Agents: L. Ström and X. Lewis) v United Kingdom of Great

Britain and Northern Ireland (Agents: P. Ormond and C. Jackson and D. Wyatt, R. Plender and S. Tromans), supported by French Republic, (Agents: R. Abraham, G. de Bergues and E. Puisais) — action for failure to fulfil obligations under Article 141 EA, brought on 14 February 2003 — the Court (Grand Chamber), composed of V. Skouris, President, P. Jann, C.W.A. Timmermans, A. Rosas (Rapporteur), R. Silva de Lapuerta and A. Borg Barthet, Presidents of Chambers, N. Colneric, S. von Bahr, J. N. Cunha Rodrigues, P. Kūris, E. Juhász, G. Arestis and M. Ilešič, Judges; L. A. Geelhoed, Advocate General; H. von Holstein, Deputy Registrar, for the Registrar, gave a judgment on 12 April 2005, in which it:

1. *Dismisses the application;*

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

3. *Orders the French Republic to bear its own costs.*

([1]) OJ C 101 of 26.04.2003.

JUDGMENT OF THE COURT

(Second Chamber)

of 17 March 2005

in Case C-91/03: Kingdom of Spain v Council of the European Union ([1])

(Conservation and exploitation of fisheries resources — Regulation (EC) No 2371/2002)

(2005/C 132/07)

(Language of the case: Spanish)

In Case C-91/03, action for annulment under Article 230 EC, brought on 28 February 2003, **Kingdom of Spain** (Agent: N. Díaz Abad) v **Council of the European Union** (Agents: J. Carbery, F. Florindo Gijón and M. Balta), supported by the **Commission of the European Communities** (Agents: T. van Rijn and S. Pardo Quintillàn), and the **French Republic** (Agents: G. de Bergues and A. Colomb) — the Court (Second Chamber), composed of C.W.A. Timmermans, President of the Chamber, C. Gulmann, R. Schintgen, P. Kūris (Rapporteur) and J. Klučka, Judges; A. Tizzano, Advocate General; K. Sztranc, Administrator, for the Registrar, has given a judgment on 17 March 2005, in which it:

1. *Dismisses the action;*

2. *Orders the Kingdom of Spain to bear its own costs and those incurred by the Council of the European Union;*

3. *Orders the French Republic and the Commission of the European Communities to bear their own costs.*

([1]) OJ C 135 of 07.06.2003.

JUDGMENT OF THE COURT

(Third Chamber)

of 14 April 2005

in Case C-110/03: Kingdom of Belgium v Commission of the European Communities ([1])

(Action for anuulment — Regulation (EC) No 2204/2002 — Horizontal State aid — Aid for employment — Legal certainty — Subsidiarity — Proportionality — Coherence of Community action — Non-discrimination — Regulation (EC) No 994/98 — Objection of illegality)

(2005/C 132/08)

(Language of the case: French)

In Case C-110/03 Kingdom of Belgium (Agents: initially A. Snoecx, and subsequently by E. Dominkovits, assisted D. Waelbroeck and D. Brinckman) v Commission of the European Communities (Agent: G. Rozet) — action for annulment under Article 230 EC, brought before the Court on 10 March 2003 — the Court (Third Chamber), composed of A. Rosas, President of the Chamber, A. Borg Barthet, J. P. Puissochet, J. Malenovský (Rapporteur) and U. Lõhmus, Judges; D. Ruiz-Jarabo Colomer, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, gave a judgment on 14 April 2005, in which it:

1. *Dismisses the action;*

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

([1]) OJ C 112 of 10.05.2003.

JUDGMENT OF THE COURT

(Third Chamber)

of 14 April 2005

in Joined Cases C-128/03 and C-129/03 (reference for a preliminary ruling from the Consiglio di Stato): AEM SpA (C-128/03), AEM Torino SpA (C-129/03) v Autorità per l'energia elettrica e per il gas and Others [1]

(Internal market in electricity — Increased charge for access to and use of the national electricity transmission system — State aid — Directive 96/92/EC — Access to the system — Principle of non-discrimination)

(2005/C 132/09)

(Language of the case: Italian)

In Joined Cases C-128/03 and C-129/03: reference for a preliminary ruling under Article 234 EC from the Consiglio di Stato (Italy), made by decision of 14 January 2003, received at the Court on 24 March 2003, in the proceedings pending before that court between AEM SpA (C-128/03), AEM Torino SpA (C-129/03) and Autorità per l'energia elettrica e per il gas and Others, third party: ENEL Produzione SpA — the Court (Third Chamber), composed of A. Rosas, President of the Chamber, A. Borg Barthet, S. von Bahr (Rapporteur), J. Malenovský and U. Lõhmus, Judges; C. Stix-Hackl, Advocate General, L. Hewlett, Principal Administrator, for the Registrar, gave a judgment on 14 April 2005, the operative part of which is as follows:

1. *A measure such as the one at issue in the main proceedings, which imposes an increased charge for a transitional period for access to and use of the national electricity transmission system only on undertakings generating and distributing electricity from hydroelectric or geothermal installations to offset the advantage created for those undertakings, during the transitional period, by the liberalisation of the market in electricity following the implementation of Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity, constitutes different treatment of undertakings in relation to charges which is attributable to the nature and general scheme of the system of charges in question. That different treatment is not therefore per se State aid within the meaning of Article 87 EC.*

   However, aid cannot be considered separately from the effects of its method of financing. If, in a situation such as that in the main proceedings, there is hypothecation of the increased charge for access to and use of the national electricity transmission system to a national scheme of aid, in the sense that the revenue from the increase is necessarily allocated for the financing of the aid, that increase is an integral part of that scheme and must therefore be considered together with the latter.

2. *The rule of non-discriminatory access to the national electricity transmission system laid down in Directive 96/92 does not preclude a Member State from adopting a measure, such as the one at issue in the main proceedings, which imposes an increased charge for a transitional period for access to and use of that system only on certain electricity generation and distribution undertakings to offset the advantage created for those undertakings, during the transitional period, by the altered legal framework following the liberalisation of the market in electricity as a result of the implementation of that directive. However, it is a matter for the national court to satisfy itself that the increased charge does not go beyond what is necessary to offset that advantage.*

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[1] OJ C 146 of 21.06.2003.

JUDGMENT OF THE COURT

(Grand Chamber)

of 12 April 2005

in Case C-145/03 Reference for a preliminary ruling from the Juzgado de lo Social nº 20 de Madrid: Heirs of Annette Keller v Instituto Nacional de la Seguridad Social (INSS) and Others [1]

(Social security — Articles 3 and 22 of Regulation No 1408/71 — Article 22 of Regulation No 574/72 — Hospital treatment in a Member State other than the competent Member State — Need for vital urgent treatment — Transfer of the insured person to a hospital institution in a non-member country — Scope of forms E 111 and E 112)

(2005/C 132/10)

(Language of the case: Spanish)

In Case C-145/03: reference for a preliminary ruling under Article 234 EC from the Juzgado de lo Social nº 20 de Madrid (Spain), made by decision of 6 November 2001, received at the Court on 31 March 2003, in the proceedings pending before that court between the Heirs of Annette Keller and Instituto Nacional de la Seguridad Social (INSS), Instituto Nacional de Gestión Sanitaria (Ingesa), formerly Instituto Nacional de la Salud (Insalud) — the Court (Grand Chamber), composed of V. Skouris, President, P. Jann, C.W.A. Timmermans, A. Rosas, R. Silva de Lapuerta, K. Lenaerts (Rapporteur) and A. Borg Barthet, Presidents of Chambers, N. Colneric, S. von Bahr, J.N. Cunha Rodrigues, E. Juhász, G. Arestis and M. Ilešič, Judges; L.A. Geelhoed, Advocate General; H. von Holstein, Deputy Registrar, for Registrar, gave a judgment on 12 April 2005, the operative part of which is as follows:

1. *Article 22(1)(a)(i) and (c)(i) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community and Article 22(1) and (3) of Council Regulation (EEC) No 574/72 of 21 March 1972 laying down the procedure for implementing Regulation No 1408/71, both as amended and updated by Council Regulation (EEC) No 2001/83 of 2 June 1983, must be interpreted as meaning that, where the competent institution has consented, by issuing a Form E 111 or Form E 112, to one of its insured persons receiving medical treatment in a Member State other than the competent Member State, it is bound by the findings as regards the need for urgent vitally necessary treatment made during the period of validity of the form by doctors authorised by the institution of the Member State of stay, and by the decision of those doctors, taken during that period on the basis of those findings and the current state of medical knowledge, to transfer the patient to a hospital establishment in another State, even if that State is a non-member country. However, in such a situation, in accordance with Article 22(1)(a)(i) and (c)(i) of Regulation No 1408/71, the insured person's right to the benefits in kind provided on behalf of the competent institution is subject to the condition that, under the legislation administered by the institution of the Member State of stay, that institution is obliged to provide persons insured with it with the benefits in kind corresponding to such treatment.*

In such circumstances, the competent institution is not entitled to require the person concerned to return to the competent Member State in order to undergo a medical examination there or to have him examined in the Member State of stay, nor to make the above findings and decisions subject to its approval.

2. *Where doctors authorised by the institution of the Member State of stay have for reasons of vital urgency and in the light of current medical knowledge chosen to transfer the insured person to a hospital establishment in a non-member country, Article 22(1)(a)(i) and (c)(i) of Regulation No 1408/71 must be interpreted as meaning that the cost of the treatment provided in that State must be borne by the institution of the Member State of stay in accordance with the legislation administered by that institution, under the same conditions as those applicable to insured persons covered by that legislation. In the case of treatment which is among the benefits provided for by the legislation of the competent Member State, it is then for the institution of that State to bear the cost of the benefits thus provided, by reimbursing the institution of the Member State of stay under the conditions laid down in Article 36 of Regulation No 1408/71.*

Where the cost of the treatment provided in an establishment in a non-member country has not been assumed by the institution of the Member State of stay, but it is established that the person concerned was entitled to have the cost borne and the treatment is among the benefits provided for by the legislation of the competent Member State, it is for the competent institution to reimburse to that person or his heirs directly the cost of that treatment, so as to ensure a level of assumption of costs equivalent to that which that person would have enjoyed if the provisions of Article 22(1) of Regulation No 1408/71 had been applied.

([1]) OJ C 146 of 21.06.2003.

JUDGMENT OF THE COURT

(Second Chamber)

of 14 April 2005

in Case C-157/03: Commission of the European Communities v Kingdom of Spain ([1])

(Failure of a Member State to fulfil obligations — Directives 68/360/EEC, 73/148/EEC, 90/365/EEC and 64/221/EEC — Right of residence — Residence permit — Third-country national who is a member of the family of a Community national — Time-limit for issue of residence permit)

(2005/C 132/11)

(Language of the case: Spanish)

In Case C-157/03, Commission of the European Communities (Agents: C. O'Reilly and L. Escobar Guerrero) v Kingdom of Spain (Agent: N. Díaz Abad) — action under Article 226 EC for failure to fulfil obligations, brought on 7 April 2003 — the Court (Second Chamber), composed of C.W.A. Timmermans, President of the Chamber, C. Gulmann, J. Makarczyk (Rapporteur), P. Kūris and J. Klučka, Judges; C. Stix-Hackl, Advocate General; R. Grass, Registrar, gave a judgment on 14 April 2005, in which it:

1. — *Declares that, by failing to transpose correctly into its national law Council Directive 68/360/EEC of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families, Council Directive 73/148/EEC of 21 May 1973 on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services and Council Directive 90/365/EEC of 28 June 1990 on the right of residence for employees and self-employed persons who have ceased their occupational activity, in particular, by requiring third-country nationals who are members of the family of a Community national who has exercised his right to freedom of movement to obtain a residence visa for the issue of a residence permit, and*

— *by failing, in breach of the provisions of Council Directive 64/221/EEC of 25 February 1964 on the co-ordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health, to issue a residence permit as soon as possible and in any event not later than six months from the date on which the application for that permit was submitted,*

the Kingdom of Spain has failed to fulfil its obligations under those directives;

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

([1]) OJ C 135 of 07.06.2003.

JUDGMENT OF THE COURT

(Grand Chamber)

of 15 March 2005

in Case C-160/03: Kingdom of Spain v Eurojust ([1])

(Action for annulment under Article 230 EC — Action brought by a Member State challenging calls for applications, issued by Eurojust, for positions as members of the temporary staff — No jurisdiction of the Court — Inadmissible)

(2005/C 132/12)

(Language of the case: Spanish)

In Case C-160/03: Kingdom of Spain (Agent: L. Fraguas Gadea), supported by Republic of Finland (Agent: T. Pynnäv) v Eurojust (Agent: J. Rivas de Andrés and D. O'Keeffe) — action for annulment under Article 230 EC, brought on 8 April 2004 — the Court (Grand Chamber), composed of V. Skouris, President, P. Jann, C.W.A. Timmermans, A. Rosas (Rapporteur) and A. Borg Barthet, Presidents of Chambers, R. Schintgen, N. Colneric, S. von Bahr, J.N. Cunha Rodrigues, E. Juhász, G. Arestis, M. Ilešič and J. Malenovský, Judges; M. Poiares Maduro, Advocate General; H. von Holstein, Deputy Registrar, for the Registrar, gave a judgment on 15 March 2005, in which it:

1. *Declares that the application is inadmissible;*

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

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

([1]) OJ C 146 of 21.6.2003.

JUDGMENT OF THE COURT

(First Chamber)

of 17 March 2005

in Case C-170/03 (reference for a preliminary ruling from the Hoge Raad der Nederlanden): Staatssecretaris van Financiën v J.H.M. Feron ([1])

(Regulation (EEC) No 918/83 — Relief from customs duties — Meaning of 'personal property' and 'possession' — Motor vehicle made available to a person by his employer)

(2005/C 132/13)

(Language of the case: Dutch)

In Case C-170/03: reference for a preliminary ruling under Article 234 EC from the Hoge Raad der Nederlanden (Netherlands), made by decision of 11 April 2003, received at the Court on 14 April 2003, in the proceedings pending before that court between Staatssecretaris van Financiën and J.H.M. Feron — the Court (First Chamber), composed of P. Jann, President of the Chamber, A. Rosas, K. Lenaerts, S. von Bahr (Rapporteur) and K. Schiemann, Judges; M. Poiares Maduro, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, gave a judgment on 17 March 2005, the operative part of which is as follows:

A car such as that at issue in the main proceedings is to be regarded as personal property within the meaning of Article 1(2)(c) of Council Regulation (EEC) No 918/83 of 28 March 1983 setting up a Community system of reliefs from customs duty and thus eligible for relief from import duty under Articles 2 and 3 of the regulation.

([1]) OJ C 146 of 21.06.2003.

JUDGMENT OF THE COURT

(Grand Chamber)

of 15 March 2005

in Case C-209/03 Reference for a preliminary ruling from the High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court) The Queen (on the application of Dany Bidar) v London Borough of Ealing, Secretary of State for Education and Skills ([1])

(Citizenship of the Union — Articles 12 EC and 18 EC — Assistance for students in the form of subsidised loans — Provision limiting the grant of such loans to students settled in national territory)

(2005/C 132/14)

(Language of the case: English)

In Case C-209/03: reference for a preliminary ruling under Article 234 EC from the High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court) (United Kingdom), made by decision of 12 February 2003, received at the Court on 15 May 2003, in the proceedings pending before that court between the Queen (on the application of Dany Bidar) and London Borough of Ealing, Secretary of State for Education and Skills — the Court (Grand Chamber), composed of V. Skouris, President, P. Jann, C.W.A. Timmermans, A. Rosas, K. Lenaerts (Rapporteur) and A. Borg Barthet, Presidents of Chambers, J.-P. Puissochet, R. Schintgen, N. Colneric, M. Ilešič, J. Malenovský, J. Klučka and U. Lõhmus, Judges; L.A.Geelhoed, Advocate General, H. von Holstein, Deputy Registrar, for the Registrar, gave a judgment on 15 March 2005, the operative part of which is as follows:

1. *Assistance, whether in the form of subsidised loans or of grants, provided to students lawfully resident in the host Member State to cover their maintenance costs falls within the scope of application of the EC Treaty for the purposes of the prohibition of discrimination laid down in the first paragraph of Article 12 EC.*

2. *The first paragraph of Article 12 EC must be interpreted as precluding national legislation which grants students the right to assistance covering their maintenance costs only if they are settled in the host Member State, while precluding a national of another Member State from obtaining the status of settled person as a student even if that national is lawfully resident and has received a substantial part of his secondary education in the host Member State and has consequently established a genuine link with the society of that State.*

3. *There is no need to limit the temporal effects of the present judgment.*

([1]) OJ C 171 of 19.07.2003.

JUDGMENT OF THE COURT

(Third Chamber)

of 17 March 2005

in Case C-228/03 (reference for a preliminary ruling from the Korkein oikeus): The Gillette Company, Gillette Group Finland Oy v LA-Laboratories Ltd Oy ([1])

(Trade marks — Directive 89/104/EEC — Article 6(1)(c) — Limitations on the protection conferred by the trade mark — Use by a third party where it is necessary to indicate the intended purpose of a product or service)

(2005/C 132/15)

(Language of the case: Finnish)

In Case C-228/03: reference for a preliminary ruling under Article 234 EC from the Korkein oikeus (Finland), made by decision of 23 May 2003, received at the Court on 26 May 2003, in the proceedings pending before that court between The Gillette Company, Gillette Group Finland Oy and LA-Laboratories Ltd Oy — the Court (Third Chamber), composed of A. Rosas, President of the Chamber, A. Borg Barthet, S. von Bahr, U. Lõhmus and A. Ó Caoimh (Rapporteur), Judges; A. Tizzano, Advocate General; R. Grass, Registrar, gave a judgment on 17 March 2005, the operative part of which is as follows:

1. *The lawfulness or otherwise of the use of the trade mark under Article 6(1)(c) of the First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks depends on whether that use is necessary to indicate the intended purpose of a product.*

   Use of the trade mark by a third party who is not its owner is necessary in order to indicate the intended purpose of a product marketed by that third party where such use in practice constitutes the only means of providing the public with comprehensible and complete information on that intended purpose in order to preserve the undistorted system of competition in the market for that product.

It is for the national court to determine whether, in the case in the main proceedings, such use is necessary, taking account of the nature of the public for which the product marketed by the third party in question is intended.

Since Article 6(1)(c) of Directive 89/104 makes no distinction between the possible intended purposes of products when assessing the lawfulness of the use of the trade mark, the criteria for assessing the lawfulness of the use of the trade mark with accessories or spare parts in particular are thus no different from those applicable to other categories of possible intended purposes for the products.

2. *The condition of 'honest use' within the meaning of Article 6(1)(c) of Directive 89/104, constitutes in substance the expression of a duty to act fairly in relation to the legitimate interests of the trade mark owner.*

The use of the trade mark will not be in accordance with honest practices in industrial and commercial matters if, for example:

— *it is done in such a manner as to give the impression that there is a commercial connection between the third party and the trade mark owner;*

— *it affects the value of the trade mark by taking unfair advantage of its distinctive character or repute;*

— *it entails the discrediting or denigration of that mark;*

— *or where the third party presents its product as an imitation or replica of the product bearing the trade mark of which it is not the owner.*

The fact that a third party uses a trade mark of which it is not the owner in order to indicate the intended purpose of the product which it markets does not necessarily mean that it is presenting it as being of the same quality as, or having equivalent properties to, those of the product bearing the trade mark. Whether there has been such presentation depends on the facts of the case, and it is for the referring court to determine whether it has taken place by reference to the circumstances.

Whether the product marketed by the third party has been presented as being of the same quality as, or having equivalent properties to, the product whose trade mark is being used is a factor which the referring court must take into consideration when it verifies that that use is made in accordance with honest practices in industrial or commercial matters.

3. *Where a third party that uses a trade mark of which it is not the owner markets not only a spare part or an accessory but also the product itself with which the spare part or accessory is intended to be used, such use falls within the scope of Article 6(1)(c) of Directive 89/104 in so far as it is necessary to indicate the intended purpose of the product marketed by the latter and is made in accordance with honest practices in industrial and commercial matters.*

([1]) OJ C 171 of 19.07.2003.

JUDGMENT OF THE COURT

(Grand Chamber)

of 12 April 2005

in Case C-265/03: Reference for a preliminary ruling from the Audiencia Nacional: Igor Simutenkov v Ministerio de Educación y Cultura, Real Federación Española de Fútbol ([1])

(Communities-Russia Partnership Agreement — Article 23(1) — Direct effect — Conditions relating to employment — Principle of non-discrimination — Football — Limit on the number of professional players having the nationality of non-member countries who may appear on a team in a national competition)

(2005/C 132/16)

(Language of the case: Spanish)

In Case C-265/03: reference for a preliminary ruling under Article 234 EC from the Audiencia Nacional (Spain), made by decision of 9 May 2003, received at the Court on 17 June 2003, in the proceedings pending before that court between **Igor Simutenkov** and **Ministerio de Educación y Cultura**, **Real Federación Española de Fútbol** — the Court (Grand Chamber), composed of V. Skouris, President, P. Jann, C.W.A. Timmermans and A. Rosas, Presidents of Chambers, C. Gulmann, A. La Pergola, J.-P. Puissochet, J. Makarczyk, P. Kūris, M. Ilešič (Rapporteur), U. Lõhmus, E. Levits and A. Ó Caoimh, Judges; C. Stix-Hackl, Advocate General; R. Grass, Registrar, gave a judgment on 12 April 2005, the operative part of which is as follows:

Article 23(1) of the Agreement on partnership and cooperation establishing a partnership between the European Communities and their Member States, of one part, and the Russian Federation, of the other part, signed in Corfu on 24 June 1994 and approved on behalf of the Communities by Decision 97/800/ECSC, EC, Euratom: Council and Commission Decision of 30 October 1997, must be construed as precluding the application to a professional sportsman of Russian nationality, who is lawfully employed by a club established in a Member State, of a rule drawn up by a sports federation of that State which provides that clubs may field in competitions organised at national level only a limited number of players from countries which are not parties to the Agreement on the European Economic Area.

([1]) OJ C 213 of 06.09.2003.

JUDGMENT OF THE COURT

(Second Chamber)

of 14 April 2005

in Case C-335/03: Portuguese Republic v Commission of the European Communities ([1])

(EAGGF — Beef premium — Monitoring — Representativeness of sampling — Transposition of monitoring results to the preceding years — Reasons)

(2005/C 132/17)

(Language of the case: Portuguese)

In Case C-335/03 Portuguese Republic (Agent: L. Fernandes, assisted by C. Botelho Moniz and E. Maia Cadete) v Commission of the European Communities (Agents: A. Alves Vieira and L. Visaggio, assisted by N. Castro Marques and F. Costa Leite) — action for annulment under Article 230 EC, brought on 25 July 2003, — the Court (Second Chamber), composed of C.W.A. Timmermans, President of the Chamber, R. Silva de Lapuerta (Rapporteur), C. Gulmann, R. Schintgen and J. Klučka,, Judges; L.A. Geelhoed, Advocate General; K. Sztranc, Administrator, for the Registrar, gave a judgment on 14 April 2005, in which it:

1. *Dismisses the action;*

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

([1]) OJ C 239 of 04.10.2003.

JUDGMENT OF THE COURT

(Fourth Chamber)

of 17 March 2005

in Case C-467/03: Reference for a preliminary ruling from the Finanzgericht München in Ikegami Electronics (Europe) GmbH v Oberfinanzdirektion Nürnberg ([1])

(Common Customs Tariff — Tariff headings — Tariff classification of a digital recording machine — Classification under the Combined Nomenclature)

(2005/C 132/18)

(Language of the case: German)

In Case C-467/03: reference for a preliminary ruling under Article 234 EC from the Finanzgericht München (Germany), made by decision of 24 June 2003, received at the Court on 6 November 2003, in the proceedings between Ikegami Electronics (Europe) GmbH and Oberfinanzdirektion Nürnberg — the Court (Fourth Chamber), composed of K. Lenaerts (Rapporteur), President of the Chamber, J.N. Cunha Rodrigues and E. Levits, Judges; J. Kokott, Advocate General; K. Sztranc, Administrator, for the Registrar, gave a judgment on 17 March 2005, the operative part of which is as follows:

A machine which, for video-surveillance purposes, records signals from cameras and, after compressing them, reproduces them on screen, performs a specific function other than data processing within the meaning of Note 5(E) to Chapter 84 of the Combined Nomenclature of the Common Customs Tariff in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended by Commission Regulation (EC) No 2031/2001 of 6 August 2001.

([1]) OJ C 21 of 24.01.2004.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 10 March 2005

in Case C-469/03: Reference for a preliminary ruling from the Tribunale di Bologna Filomeno Mario Miraglia ([1])

(Article 54 of the Convention implementing the Schengen Agreement — Principle ne bis in idem — Scope — Decision of a Member State's judicial authorities to discontinue prosecution by reason solely of the initiation of similar proceedings in another Member State)

(2005/C 132/19)

(Language of the case: Italian)

In Case C-469/03: reference for a preliminary ruling under Article 35 EU from the Tribunale di Bologna (Italy), made by decision of 22 September 2003, received at the Court on 10 November 2003, in the in the criminal proceedings brought against Filomeno Mario Miraglia — the Court (Fifth Chamber), composed of R. Silva de Lapuerta, President of the Chamber, R. Schintgen (Rapporteur) and P. Kūris, Judges; A. Tizzano, Advocate General; L. Hewlett, Principal Administrator, for the Registrar, gave a judgment on 10 March 2005, the operative part of which is as follows:

The principle ne bis in idem, enshrined in Article 54 of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, signed on 19 June 1990 at Schengen, does not fall to be applied to a decision of the judicial authorities of one Member State declaring a case to be closed, after the Public Prosecutor has decided not to pursue the prosecution on the sole ground that criminal proceedings have been started in another Member State against the same defendant and for the same acts, without any determination whatsoever as to the merits of the case.

([1]) OJ C 21 of 24.01.2004.

JUDGMENT OF THE COURT

(First Chamber)

of 17 March 2005

in Case C-109/04 (Reference for a preliminary ruling from the Bundesverwaltungsgericht): Karl Robert Kranemann v Land Nordrhein-Westfalen ([1])

(Article 48 of the EC Treaty (now, after amendment, Article 39 EC) — Freedom of movement for workers — Civil servant undergoing preparatory practical training — Practical training completed in another Member State — Reimbursement of travel expenses limited to the domestic stretch of the journey)

(2005/C 132/20)

(Language of the case: German)

In Case C-109/04: reference for a preliminary ruling under Article 234 EC from the Bundesverwaltungsgericht (Germany), made by decision of 17 December 2003, received at the Court on 2 March 2004, in the proceedings pending before that court between Karl Robert Kranemann and Land Nordrhein-Westfalen — the Court (First Chamber), composed of P. Jann, President of the Chamber, K. Lenaerts (Rapporteur), N. Colneric, K. Schiemann and E. Levits, Judges; L.A. Geelhoed, Advocate General, R. Grass, Registrar, gave a judgment on 17 March 2005, the operative part of which is as follows:

Article 48 of the EC Treaty (now, after amendment, Article 39 EC) precludes a national measure which grants a person who has completed a practical training period under conditions of genuine and effective activity as an employed person in a Member State other than his Member State of origin the right to reimbursement of travel expenses only up to the amount incurred in respect of the domestic stretch of the journey, while providing that, if such an activity were carried out on national territory, all the travel costs would be reimbursed.

([1]) OJ C 106 of 30.04.2004.

JUDGMENT OF THE COURT

(Third Chamber)

of 17 March 2005

in Case C-128/04: Reference for a preliminary ruling from the Rechtbank van eerste aanleg te Dendermonde in the criminal proceedings against Annic Andréa Raemdonck and Raemdonck-Janssens BVBA ([1])

(Road transport — Social legislation — Regulation (EEC) No 3821/85 — Requirement to instal and use a tachograph — Regulation (EEC) No 3820/85 — Exception for vehicles carrying material and equipment)

(2005/C 132/21)

(Language of the case: Dutch)

In Case C-128/04: reference for a preliminary ruling under Article 234 EC from the Rechtbank van eerste aanleg te Dendermonde (Belgium), made by decision of 19 January 2004, received at the Court on 9 March 2004, in the criminal proceedings against Annic Andréa Raemdonck and Raemdonck-Janssens BVBA — the Court (Third Chamber), composed of A. Rosas (Rapporteur), President of the Chamber, A. La Pergola, J.-P. Puissochet, U. Lõhmus and A. Ó Caoimh, Judges; M. Poiares Maduro, Advocate General; R. Grass, Registrar, gave a judgment on 17 March 2005, in which it ruled:

1. *The terms 'material or equipment' in Article 13(1)(g) of Council Regulation (EEC) No 3820/85 of 20 December 1985 on the harmonisation of certain social legislation relating to road transport must, in the context of the exemption scheme provided for in Article 3(2) of Council Regulation (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport, be construed as covering not only 'tools and instruments', but also the goods, such as building materials or cables, which are required for the performance of the work involved in the main activity of the driver of the vehicle concerned.*

([1]) OJ C 106 of 30.04.2004.

JUDGMENT OF THE COURT

(Third Chamber)

of 14 April 2005

in Case C-243/04 P: Zoé Gaki-Kakouri v Court of Justice of the European Communities ([1])

(Appeal — System of payment for members and former members of the Court — Rights of a woman divorced from a former member of the Court who is deceased)

(2005/C 132/22)

(Language of the case: French)

In Case C-243/04 P: appeal under Article 56 of the Statute of the Court of Justice, lodged on 9 June 2004, by **Zoé Gaki-Kakouri**, residing in Athens (Greece), (lawyer: H. Tagaras), the other party to the proceedings being **the Court of Justice of the European Communities** (Agent: M. Schauss) — the Court (Third Chamber), composed of A. Rosas (Rapporteur), President of the Chamber, A. Borg Barthet, A. La Pergola, S. von Bahr and J. Malenovský, Judges; L.A. Geelhoed, Advocate General; R. Grass, Registrar, gave a judgment on 14 April 2005, in which it:

1. *Dismisses the appeal.*

2. *Orders Mrs Gaki-Kakouri to pay the costs.*

([1]) OJ C 190, 24.07.2004.

Reference for a preliminary ruling from the Oberster Gerichtshof by order of that court of 2 February 2005 in Reisch Montage AG v Kiesel Baumaschinen Handels GmbH

(Case C-103/05)

(2005/C 132/23)

(Language of the case: German)

Reference has been made to the Court of Justice of the European Communities by order of the Oberster Gerichtshof (Germany) of 2 February 2005, received at the Court Registry on 28 February 2005, for a preliminary ruling in the proceedings between Reisch Montage AG and Kiesel Baumaschinen Handels GmbH on the following question:

Can a claimant rely on Article 6(1) of Regulation (EC) No 44/2001 ([1]) when bringing a claim against a person domiciled in the forum state and against a person resident in another Member State, but where the claim against the person domiciled in the forum state is already inadmissible by the time the claim is brought, because bankruptcy proceedings have been commenced against him, which, under national law, results in a procedural bar?

([1]) Council Regulation (EC) No 44/2001 of 22.12.2000 (OJ 2001 L 12, p. 1).

Action brought on 3 March 2005 by the Commission of the European Communities against the Republic of Austria

(Case C-109/05)

(2005/C 132/24)

(Language of the case: German)

An action against the Republic of Austria was brought before the Court of Justice of the European Communities on 3 March 2005 by the Commission of the European Communities, represented by Minas Konstantinidis and Bernard Schima, with an address for service in Luxembourg.

The Commission claims that the Court should:

1. declare that by restricting, in Paragraph 5(1) of the Verordnung über die Abfallvermeidung, Sammlung und Behandlung von Altfahrzeugen (Regulation on waste prevention, collection and treatment of end-of life vehicles), the obligation to take end-of-life vehicles back free of charge to:

   (1) end-of-life vehicles of those makes which have been put into circulation by the existing manufacturers and importers, and

   (2) vehicles registered in Austria,

   the Republic of Austria has failed to fulfil its obligations under Article 5 of Directive 2000/53/EC of the European Parliament and of the Council of 18 September 2000 on end-of life vehicles; ([1])

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

Pleas in law and main arguments

The provision of the Austrian regulation on end-of-life vehicles stating that manufacturers or importers have to take back end-of-life vehicles of those makes which they have put into circulation, in so far as those vehicles were registered in Austria, infringes Article 5 of Directive 2000/53/EC of the European Parliament and of the Council of 18 September 2000.

The directive obliges the Member States to set up return systems in such a way that all end-of-life vehicles are taken back irrespective of their make and establishes an obligation to take back end-of-life vehicles free of charge. These objectives are not achieved by the Austrian legislation since it has a dual restriction: the obligation to take vehicles back is limited to makes which the relevant manufacturer or importer has put into circulation, and it is limited to vehicles registered in Austria.

The Commission is unable to subscribe to the view of the Republic of Austria that the distinction drawn on the basis of registration in Austria is objectively justified because that is the only way of avoiding a disproportionately heavy burden being placed on individual manufacturers by the obligation to take vehicles back. It states, on the contrary, that if it should turn out in practice that a disproportionate burden is placed on individual manufacturers or importers or the collectors in a Member State because end-of-life vehicles registered abroad are taken back free of charge, account is to be taken of that within the framework of the procedure under the fourth subparagraph of Article 5(4). This provision states that the Commission is to monitor regularly implementation of the obligation to take vehicles back in order to ensure that it does not result in market distortions.

([1]) OJ L 269, 21.10.2000, p. 34.

Reference for a preliminary ruling from the Consiglio di Stato (Sixth Chamber) by order of that court of 22 October 2004 in the case of Ministero dell'Industria, Commercio ed Artigianato v Spa Lucchini Siderurgica

(Case C-119/05)

(2005/C 132/25)

(Language of the case: Italian)

Reference has been made to the Court of Justice of the European Communities by order of the Consiglio di Stato (Sixth Chamber) (Italy) of 22 October 2004, received at the Court Registry on 14 March 2005, for a preliminary ruling in the proceedings between Ministero dell'Industria, Commercio ed Artigianato and Spa Lucchini Siderurgica on the following questions:

1. In the light of the principle of the primacy of immediately applicable Community law, in the form in this case of general ECSC Decision No 3484 of 1985, the Commission decision of 20 June 1990, notified on 20 July 1990, and Commission decision No 5259 of 16 September 1996, requiring the recovery of aid — which all formed the basis for the recovery measure challenged in the present proceedings (namely Decree No 20357 of 20 September 1996 overturning Decrees Nos 17975 of 8 March 1996 and 18337 of 3 April 1996) — is it legally possible and compulsory for the national administrative authority to recover aid from a private recipient even though a final civil judgment has been delivered confirming the unconditional obligation to pay the aid in question?

2. Or, in view of the generally accepted principle that decisions on the recovery of aid are governed by Community law but the implementation thereof and the associated recovery procedure, in the absence of Community provisions on the matter, is governed by national law (regarding which principle see the judgment of the Court of Justice in Joined Cases 205 to 215/82 Deutsche Milchkontor v Germany), is the recovery procedure rendered legally impossible by virtue of a specific judicial decision that has become res judicata (Article 2909 of the Civil Code), thereby being conclusive as between the private individual and the administration, and requires the administration to comply with it?

Action brought on 21 March 2005 by Commission of the European Communities against United Kingdom of Great Britain and Northern Ireland

(Case C-126/05)

(2005/C 132/26)

(Language of the case: English)

An action against United Kingdom of Great Britain and Northern Ireland was brought before the Court of Justice of the European Communities on 21 March 2005 by Commission of the European Communities, represented by N. Yerrell, acting as agent, with an address for service in Luxembourg.

The Applicant claims that the Court should:

1. find that the United Kingdom has failed its obligations under the EC Treaty by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Directive 2000/34/EC ([1]) of 22 June 2000 amending Directive 93/104/EC ([2]) concerning certain aspects of the organisation of working time to cover sectors and activities excluded from that directive and/or by failing to inform the Commission thereof;

2. condemn the United Kingdom to bear the costs of the procedure.

Pleas in law and main arguments:

The period within which the directive had to be transposed expired on 1 August 2003.

([1]) OJ L 195, 01.08.2000, p. 41.
([2]) OJ L 307, 13.12.1993, p. 18.

Action brought on 21 March 2005 by the Commission of the European Communities against the United Kingdom of Great Britain and Northern Ireland

(Case C-131/05)

(2005/C 132/27)

(Language of the case: English)

An action against the United Kingdom of Great Britain and Northern Ireland was brought before the Court of Justice of the European Communities on 21 March 2005 by the Commission of the European Communities, represented by Mr Michel Van Beek, acting as Agent, assisted by Mr Frédéric Louis, avocat, and Mr Antonio Capobianco, avvocato, with an address for service in Luxembourg.

The applicant claims that the Court should:

1. declare that, in failing to comply with its obligations under Article 6(1) of Council Directive 79/409/EEC on the conservation of wild birds ([1]) and under Article 12(2) and Article 13(1), both read in conjunction with Article 2(1) of Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora, ([2]) the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under these Directives;

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

Pleas in law and main arguments

The Commission maintains that:

— by limiting the prohibition contained in Article 6(1) of Directive 79/409/EEC, the Wild Birds Directive, regarding the sale, transport for sale, keeping for sale and the offering for sale of wild birds to species resident in, or visitors to, Great Britain, the United Kingdom has infringed the aforementioned article as the prohibition is clearly intended to cover all species of naturally occurring birds in the wild state in the European territory of the Member Staes to which the Treaty applies;

— by limiting the prohibition contained in Article 12(2) of Directive 92/43/EEC, the Habitats Directive, regarding the keeping, transport and sale or exchange, and offering for sale or exchange of the animal species listed in Annex IV(a) of the Directive to animal species whose natural range includes Great Britain, the United Kingdom has infringed the aforementioned article as, as a consequence of that limitation, the list of protected animal species covered by the UK legislation is shorter than the list in Annex IV of the directive;

— by limiting the prohibition on the trade in plant species contained in Article 13(1) of the Habitats Directive to species 'whose natural range includes any area in Great Britain as listed in Schedule 4 [of the 1994 Regulations]' the United Kingdom has infringed the aforementioned Article as, as a consequence of that limitation, the list of protected plant species in Schedule 4 is shorter than the list of protected species in Annex IV(b) of the Habitats Directive.

([1]) OJ L 103, 25.04.1979, p. 1.
([2]) OJ L 206, 22.07.1992, p. 7.

Action brought on 21 March 2005 by the Commission of the European Communities against the Federal Republic of Germany

(Case C-132/05)

(2005/C 132/28)

(Language of the case: German)

An action against the Federal Republic of Germany was brought before the Court of Justice of the European Communities on 21 March 2005, by the Commission of the European Communities, represented by Eugenio De March and Sabine Grünheid, with an address for service in Luxembourg.

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

1. declare that, by formally refusing to prosecute, on its territory, the use of the name 'Parmesan' for the labelling of products which do not conform to the specification of the protected designation of origin 'Parmigiano Reggiano' and thus, promoting the use of the reputation of the genuine, Community-wide protected product, the Federal Republic of Germany has failed to fulfil its obligations under Article 13(1)(b) of Council Regulation (EEC) No 2081/92 of 14 July 1992 ([1]) on the protection of geographical indications and designations of origin for agricultural products and foodstuffs;

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

Pleas in law and main arguments

The Commission is of the opinion that the placing on the market on German territory of cheese, under the designation 'Parmesan', which does not conform to the specification of the designation 'Parmigiano Reggiano' infringes Article 13(1)(b) of Regulation (EEC) No 2081/92, which the German authorities are obliged to prohibit of their own motion.

Since the designation 'Parmigiano Reggiano' is a registered protected designation of origin on the 'list of protected geographical indications and designations of origin' since 1996 and is, thus, protected Community-wide, the Member States have to protect this name from any misuse, imitation or evocation. This is the case even if the real place of origin of the product is stated or it is a translation of a protected name that is being used.

The Commission contends that 'Parmesan' is a translation borrowed from the French for 'Parmigiano Reggiano'. According to the Commission, 'Parmesan' and 'Parmigiano Reggiano' are synonymous, as evidenced by the history of the origins of the protected name and proof in numerous reference books, ranging from 1516 to the present, which refer to the manufacturing of cheese in the particular region of origin in Italy. As a result of the registration of the protected designation of origin 'Parmigiano Reggiano', the geographical expressions 'Parmigiano' and 'Reggiano' enjoy Community-wide protection not only individually, but also together.

According to the Commission, there are no valid reasons for the Federal Republic of Germany's view that the expression 'Parmigiano' is, when used alone, to be regarded as a generic name in the sense of Article 3 of Regulation (EEC) No 2081/92, which the consumer does not associate with a specific geographical area.

Since it follows from this that the use of the designation 'Parmesan' is reserved exclusively to producers in the specific Italian region who produce cheese according to a mandatory specification, the Federal Republic of Germany has failed to fulfil its obligations under Article 13(1)(b) of Regulation (EEC) No 2081/92 by refusing to prohibit the misuse of the name 'Parmesan' on German territory.

([1]) OJ 1992 L 208, p. 1.

Action brought on 23 March 2005 by Commission of the European Communities against Italian Republic

(Case C-135/05)

(2005/C 132/29)

(Language of the case: Italian)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 23 March 2005 by the Commission of the European Communities, represented by D. Recchia and M. Konstantinidis, of its Legal Service, acting as Agents.

The applicant claims that the Court should:

1. Declare that, by failing to adopt all the necessary measures, the Italian Republic has failed to fulfil its obligations under Articles 4, 8 and 9 of Council Directive 75/442/EEC ([1])on waste, as amended by Directive 91/156/EEC, ([2]) under Article 2(1) of Council Directive 91/689/EEC ([3]) on hazardous waste and Article 14(a), (b) and (c) of Council Directive 1999/31/EC ([4]) on the landfill of waste;

2. Order the Italian Republic to pay the costs.

Pleas in law and main arguments

On the basis of numerous documents, the Commission has learned of the large number of tips in Italian territory operating illegally and without control by the public authorities, some of which contain hazardous waste,

The Commission considers that while it tolerates the presence of such tips, the Italian Republic is infringing its obligations under Articles 4, 8 and 9 of Council Directive 75/442/EEC on waste, as amended by Directive 91/156/EEC, and under Articles 2(1) of Council Directive 912/689/EEC on hazardous waste.

As regards the tips existing as at 16 July 2991, with permits or already functioning by that date, the lack of information on the reorganisation plans which the managers of such tips should have submitted by 16 July 2002 prompts the Commission to consider that such reorganisation plans and the relevant authorisation measures and measures for the possible closure of tips not meeting the requirements of the directive are non-existent.

The Commission considers therefore that the Italian Republic has failed to fulfil its obligations under Article 14(a), (b) and (c) of Council Directive 1999/31/EC on the landfill of waste.

([1]) OJ L 194 of 25.7.1975, p. 39.
([2]) OJ L 78 of 26.3.1991, p. 32.
([3]) OJ L 377 of 31.12.1991, p. 20.
([4]) OJ L 182 of 16.7.1999, p. 1.

Action brought on 24 March 2005 by United Kingdom of Great Britain and Northern Ireland against Council of the European Union

(Case C-137/05)

(2005/C 132/30)

(Language of the case: English)

An action against the Council of the European Union was brought before the Court of Justice of the European Communities on 24 March 2005 by United Kingdom of Great Britain and Northern Ireland, represented by C. Jackson, acting as Agent, with an address for service in Luxembourg.

The applicant claims that the Court should:

1. annul Council Regulation (EC) No 2252/2004 of 13 December 2004 on standards for security features and biometrics in passports and travel documents issued by Member States ([1]);

2. determine, pursuant to Article 231 EC, that, following the annulment of the Passports Regulation, and pending the adoption of new legislation in this matter, the provisions of the Passports Regulation should remain effective, except in so far as they have the effect of excluding the United Kingdom from participating in the application of the Passport Regulation;

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

Pleas in law and main arguments

1. The United Kingdom was denied the right to take part in the adoption of Council Regulation (EC) No 2252/2004 of 13 December 2004 on standards for security features and biometrics in passports and travel documents issued by Member States (the Passport Regulation) despite having given notice of its wish to do so pursuant to Article 5(1) of the Protocol integrating the Schengen acquis into the framework of the European Union (the Schengen Protocol) and to Article 3(1) of the Protocol on the position of the United Kingdom and Ireland. The annulment of the Passports Regulation is sought on the grounds that the exclusion of the United Kingdom from its adoption entails the infringement of an essential procedural requirement and/or the infringement of the Treaty, within the meaning of Article 230, second paragraph, EC.

2. The main contention of the United Kingdom is that, in so excluding it from the adoption of the Passports Regulation, the Council acted on the basis of an erroneous interpretation of the relationship between Article 5 and Article 4 of the Schengen Protocol. It is contended more particularly as follows:

   (a) The Council's interpretation, according to which the right of participation conferred by Article 5 of the Schengen Protocol applies only to measures building on provisions of the Schengen acquis in which the United Kingdom participates pursuant to a Council decision adopted on the basis of Article 4, is contradicted by the structure and language of those Articles, by the very nature of the Article 5 mechanism, and by the Declaration on Article 5 that was annexed to the Final Act of the Treaty of Amsterdam.

   (b) The Council's interpretation of Article 5 of the Schengen Protocol is not required to enable the 'without prejudice' rule in Article 7 of the Protocol on the Position of the United Kingdom and Ireland to have useful effect. Nor is such an interpretation required to preserve the integrity of the Schengen acquis. Indeed, as a means of safeguarding the acquis, its adverse impact on the United Kingdom would be grossly disproportionate.

(c) Given the broad and loose conception of measures building on the Schengen acquis which the Council employs in its practice, the mechanism of Article 5 of the Schengen Protocol, as interpreted by the Council, would be liable to function in a way that violates the principle of legal certainty and the fundamental principles governing enhanced cooperation.

3. In the alternative, the United Kingdom contends that, if the Council's interpretation of the relationship between Article 5 and Article 4 of the Schengen Protocol were correct, this would necessarily entail taking a narrow view of the notion of a measure that builds upon the Schengen acquis within the meaning of Article 5, as a measure inextricably connected with the acquis; and the Passports Regulation is not such a measure.

([1]) OJ L 385, p. 1.

Reference for a preliminary ruling from the Cour de Cassation (Belgium) by judgment of that court of 17 March 2005 in Levi Strauss & Co v Casucci Spa

(Case C-145/05)

(2005/C 132/31)

(Language of the case: French)

Reference has been made to the Court of Justice of the European Communities by judgment of the Cour de Cassation (Belgium) of 17 March 2005, received at the Court Registry on 31 March 2005, for a preliminary ruling in the proceedings between Levi Strauss & Co and Casucci Spa on the following questions:

1. For the purposes of determining the scope of protection of a trade mark which has been lawfully acquired on the basis of its distinctive character, in accordance with Article 5(1) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks ([1]), must the court take into account the perception of the public concerned at the time when use commenced of the trade mark or similar sign which allegedly infringes the trade mark?

2. If not, may the court take into account the perception of the public concerned at any time after commencement of the use complained of? Is it entitled in particular to take into account the perception of the public concerned at the time it delivers its ruling?

3. Where, in application of the criterion referred to in the first question, the court finds that the trade mark has been infringed, is it entitled, as a general rule, to order cessation of the infringing use of the sign?

4. Can the position be different if the claimant's trade mark has lost its distinctive character wholly or in part after commencement of the infringing use, but solely where that loss is due wholly or in part to an act or omission by the proprietor of that trade mark?

([1]) OJ L 40, 11.02.1989, p. 1.

Reference for a preliminary ruling from the Cour d'appel de Paris by judgment of 23 March 2005 in Harold Price v Conseil des ventes volontaires de meubles aux enchères publiques

(Case C-149/05)

(2005/C 132/32)

(Language of the case: French)

Reference has been made to the Court of Justice of the European Communities by judgment of the Cour d'appel de Paris of 23 March 2005, received at the Court Registry on 4 April 2005, for a preliminary ruling in the proceedings pending between Harold Price and the Conseil des ventes volontaires de meubles aux enchères publiques on the following questions:

1. Does Council Directive 92/51/EEC of 18 June 1992 on a second general system for the recognition of professional education and training to supplement Directive 89/48/EEC ([1]) apply to the activity of director of voluntary sales of chattels by public auction which is governed by Articles L.321-1 to L.321-3, L.321-8 and L.321-9 of the Code de commerce?

2. If so, can the host Member State avail itself of the derogation in the second indent of Article 4(1)(b) as provided for by the sixth ([2]) indent of Article 4(1)(b) of the Directive?

([1]) OJ L 209 of 24.07.1992, p. 25.

([2]) Tr. : Scil. the third indent.

Action brought on 5 April 2005 by the Commission of the European Communities against the Federal Republic of Germany

(Case C-152/05)

(2005/C 132/33)

(Language of the case: German)

An action against the Federal Republic of Germany was brought before the Court of Justice of the European Communities on 5 April 2005 by the Commission of the European Communities, represented by R. Lyal and K. Gross, with an address for service in Luxembourg.

The Commission claims that the Court should:

1. declare that by excluding, in the first sentence of Paragraph 2(1) of the Eigenheimzulagengesetz (Law on allowances for owner-occupied homes), the grant, to persons subject to unlimited taxation, of owner-occupied home allowance in respect of properties situated in other Member States irrespective of whether comparable assistance can be claimed there, the Federal Republic of Germany has failed to fulfil its obligations under Articles 18, 39 and 43 of the EC Treaty;

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

Pleas in law and main arguments

In the European Commission's view, the owner-occupied home allowance granted by the German State has discriminatory features. Persons subject to unlimited taxation in Germany who acquire a flat or house for the purpose of habitation in Germany are entitled to owner-occupied home allowance. Persons subject to unlimited taxation in Germany who live outside Germany and want to acquire a property there for the purpose of habitation are, by contrast, not granted owner-occupied home allowance.

Three groups of people are placed at a disadvantage by the German rules: (i) State employees who are resident abroad; (ii) frontier workers at least 90 % of whose income is subject to German income tax; and (iii) diplomats and European Union officials from Germany.

The Commission regards this, according to the status of the affected group of persons, as infringing freedom of movement for workers (Article 39 EC), freedom of establishment (Article 43 EC) or freedom of movement under Article 18 EC. All the cases have a sufficient cross-border element to justify the applicability of the relevant Treaty provision.

The Commission considers that the decision of the Court of Justice in Case C-279/93 *Schumacker* can be transposed to the present instance. Every person who is subject to unlimited taxation in Germany — and thus in principle pays tax on his worldwide income in Germany and in this way participates in the financing of Germany society — must be able to benefit from advantages financed out of taxation in the same way as a person resident in Germany. It is necessary to avoid a situation where the persons concerned are not granted advantages connected with their personal situation either in the State where they reside or in the State where they pursue their occupation.

In practice it is not very likely that a person subject to unlimited taxation in Germany will subject to unlimited taxation in another State. Account can be taken of that exceptional situation by prohibiting concurrent receipt of the German owner-occupied home allowance and comparable foreign assistance.

The restriction of owner-occupied home allowance to properties situated in Germany is not justified. The housing situation in Germany can also be improved if, for example, frontier workers acquire residential property not far over the border instead of moving to Germany. The German Government did not explain adequately in the pre-litigation procedure what purpose is ultimately served by limiting the assistance to German territory. Even if it were permissible for a Member State to promote housing construction in its territory alone, the German rules are not in themselves logical. If the Federal Republic of Germany wishes to promote every form of housing construction in Germany, it is not evident why the assistance is restricted to persons subject to unlimited taxation in Germany. Persons subject to limited taxation in Germany can also acquire residential accommodation there and thus promote housing construction.

Community law does not in any way require that the acquisition of second homes in other Member States be supported financially. It is for the national legislature alone to determine the scope of the assistance. Its freedom of decision is, however, limited by the fundamental freedoms enshrined in the EC Treaty.

Action brought on 5 April 2005 by the Commission of the European Communities against the Hellenic Republic

(Case C-156/05)

(2005/C 132/34)

(Language of the case: Greek)

An action against the Hellenic Republic was brought before the Court of Justice of the European Communities on 5 April 2005 by the Commission of the European Communities, represented by Eleni Tserepa-Lacombe and Nicola Yerrell, of its Legal Service, with an address for service in Luxembourg.

The Commission claims that the Court should:

1. declare that, by failing to adopt or, in any event, to notify to the Commission the laws, regulations and administrative provisions necessary to comply with Directive 2000/34/EC ([1]) of the European Parliament and of the Council of 22 June 2000 amending Council Directive 93/104/EC concerning certain aspects of the organisation of working time to cover sectors and activities excluded from that Directive, the Hellenic Republic has failed to fulfil its obligations under the Directive;

2. order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

The period for transposition of the Directive into national law expired on 1 August 2003.

([1]) OJ L 195, 1.8.2000, p. 41.

Action brought on 6 April 2005 by the Commission of the European Communities against the Grand Duchy of Luxembourg

(Case C-159/05)

(2005/C 132/35)

(Language of the case: French)

An action against the Grand Duchy of Luxembourg was brought before the Court of Justice of the European Communities on 6 April 2005 by the Commission of the European Communities, represented by D. Maidani, acting as Agent, with an address for service in Luxembourg.

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

1. declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements ([1]) and, in any event, by failing to communicate them to the Commission, the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive;

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

Pleas in law and main arguments

The period allowed for transposition of the Directive into national law expired on 27 December 2003.

([1]) OJ L 168, 27.06.2002, p. 43.

Action brought on 7 April 2005 by the Commission of the European Communities against the Italian Republic

(Case C-161/05)

(2005/C 132/36)

(Language of the case: Italian)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 7 April 2005 by the Commission of the European Communities, represented by C. Cattabriga, member of the Commission's Legal Service.

The applicant claims that the Court should:

1. declare that, by failing to notify the data referred to in Articles 15(4) and 18(1) of Council Regulation (EEC) No 2847/93 ([1]) of 12 October 1993 establishing a control system applicable to the common fisheries policy, the Italian Republic has failed to fulfil its obligations under those provisions;

2. order the Italian Republic to pay the costs.

Pleas in law and main arguments

Articles 15(4) and 18(1) of Regulation No 2847/93 require the Member States to notify by computer transmission and within a certain period the Commission of certain data. The Italian authorities did not notify within the prescribed periods the data in question for 1999 and 2000. The Italian Republic has therefore infringed its notification obligations under those provisions.

([1]) OJ 1993 L 261 of 20.10.1993, p. 1.

Action brought on 8 April 2005 by the Commission of the European Communities against the Portuguese Republic

(Case C-163/05)

(2005/C 132/37)

(Language of the case: Portuguese)

An action against the Portuguese Republic was brought before the Court of Justice of the European Communities on 8 April 2005 by the Commission of the European Communities, represented by Ramón Vidal Puig, acting as Agent, with an address for service in Luxembourg.

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

1. declare that, by failing to adopt the laws, regulations and administrative provisions which are necessary in order to comply with Directive 2002/7/EC ([1]) of the European Parliament and of the Council of 18 February 2002 amending Council Directive 96/53/EC laying down for certain road vehicles circulating within the Community the maximum authorised dimensions in national and international traffic and the maximum authorised weights in international traffic, the Portuguese Republic has failed to fulfil its obligations under that directive;

2. order the Portuguese Republic to pay the costs.

Pleas in law and main arguments

The period for transposing the directive into national law expired on 9 March 2004.

([1]) OJ 2002 L 67, p. 47.

Action brought on 8 April 2005 by the Commission of the European Communities against the Grand Duchy of Luxembourg

(Case C-165/05)

(2005/C 132/38)

(Language of the case: French)

An action against the Grand Duchy of Luxembourg was brought before the Court of Justice of the European Communities on 8 April 2005 by the Commission of the European Communities, represented by Gérard 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 imposing in its legislation an obligation on nationals of non-member countries married to migrant workers from the European Union to obtain a work permit and by failing to bring its legislation into line with Community law, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 11 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community; ([1])

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

Pleas in law and main arguments:

Article 11 of Regulation No 1612/68 provides that, where a national of a Member State is pursuing an activity as an employed or self-employed person in the territory of another Member State, his spouse and those of the children who are under the age of 21 years or dependent on him are to have the right to take up any activity in an employed capacity throughout the territory of that State, even if they are not nationals of any Member State.

The right to work is unconditional and means that a spouse or other family member who is a national of a non-member country cannot be required to apply for or obtain a work permit in order to be able to take up an activity as an employed person inasmuch as that would have the effect of rendering that right subject to a further prior condition at variance with the express provisions of the aforementioned Article 11.

Luxembourg nationals are not required to hold a work permit in order to be able to take up employment in the Grand Duchy. It is for that reason contrary to Article 3 of Regulation No 1612/68 to impose such an obligation on nationals of non-member countries married to migrant workers from the European Union.

The national statutory framework must dispel all doubt and ambiguity not only as to the content of the applicable national rules but also in regard to the formal value of those rules.

The incompatibility of the national legislation with Treaty provisions, even those directly applicable, can be definitively removed only by way of internal provisions that are mandatory in nature and have the same legal status as those to be amended.

([1]) OJ, English Special Edition 1968 (II), p. 475.

Appeal brought on 15 April 2005 by O. Mancini against the judgment delivered on 3 February 2005 by the Court of First Instance in Case T-137/03 between O. Mancini and the Commission of the European Communities

(Case C-172/05 P)

(2005/C 132/39)

(Language of the case: French)

An appeal against the judgment delivered on 3 February 2005 by the Fourth Chamber of the Court of First Instance of the European Communities in Case T-137/03 between O. Mancini and the Commission of the European Communities was brought before the Court of Justice of the European Communities on 15 April 2005 by O. Mancini, represented by E. Boigelot, avocat, with an address for service in Luxembourg.

The appellant claims that the Court should:

— declare her appeal admissible and well-founded and

— annul the judgment of the Court of First Instance of the European Communities in Case T-137/03 between O. Mancini and the Commission of the European Communities delivered on 3 February 2005.

The appellant also seeks an order that the Court of Justice should decide the case itself and, upholding the appellant's original action in Case T-137/03, should:

— annul the decision of the appointing authority of 28 June 2002 not to appoint the appellant to the post of medical officer with the 'Brussels Medical Service' Unit — DG Admin B8;

— annul the express decision rejecting the appellant's complaint lodged on 29 July 2002 pursuant to Article 90(2) of the Staff Regulations and rejected by express decision on 23 January 2003 served on the appellant on 27 January 2003;

— annul the appointment of Dr Dolmans to the post of medical officer, which entailed inter alia the rejection of the appellant's application for the vacant post;

— order the defendant to pay the appellant the sum of EUR 15 000 assessed on an equitable basis by way of damages for non-material loss and damage to career;

— in any event, order the respondent to pay the costs.

Pleas in law and main arguments

The grounds of the appeal are, in accordance with Article 58 of the Statute of the Court of Justice, an infringement of Community law and a breach of procedure before the Court of First Instance which adversely affect the interests of the appellant.

COURT OF FIRST INSTANCE

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 17 March 2005

in Case T-192/98 Comité des industries du coton and des fibres connexes de l'Union européenne (Eurocoton) v Council of the European Union ([1])

(Dumping — Failure by the Council to adopt a Commission proposal for a regulation imposing a definitive anti-dumping duty — Absence of simple majority necessary for the adoption of a regulation — Obligation to state reasons)

(2005/C 132/40)

(Language of the case: English)

In Case T-192/98: Comité des industries du coton and des fibres connexes de l'Union européenne (Eurocoton), established in Brussels (Belgium), represented by C. Stanbrook, QC, and A. Dashwood, Barrister, against Council of the European Union (Agent: S. Marquardt, assisted by G.M. Berrisch, lawyer), supported by United Kingdom of Great Britain and Northern Ireland, (Agent: initially M. Ewing, subsequently K. Manji) — action for annulment of the Council's decision of 5 October 1998 to reject the proposal for a Council Regulation (EC) imposing definitive anti-dumping duties on imports of certain unbleached cotton fabrics originating in the People's Republic of China, Egypt, India, Indonesia and Pakistan, definitively collecting the provisional duty imposed by Commission Regulation (EC) No 773/98 of 7 April 1998 (OJ 1998 L 111, p. 19) and terminating the anti-dumping proceeding in respect of imports of these fabrics originating in Turkey, submitted by the Commission of the European Communities on 21 September 1998 (document COM (98) 540 final) — the Court of First Instance (Fourth Chamber, Extended Composition), composed of H. Legal, President, P. Lindh, P. Mengozzi, I. Wiszniewska-Białecka and V. Vadapalas, Judges; H. Jung, Registrar, gave a judgment on 17 March 2005, in which it:

1. *Annuls the Council's decision of 5 October 1998 to reject the Commission's proposal for a Council Regulation (EC) imposing definitive anti-dumping duties on imports of certain unbleached cotton fabrics originating in the People's Republic of China, Egypt, India, Indonesia and Pakistan, definitively collecting the provisional duty imposed by Regulation (EC) No 773/98 (OJ 1998 L 111, p. 19) and terminating the anti-dumping proceeding in respect of imports of these fabrics originating in Turkey, submitted by the Commission of the European Communities on 21 September 1998 (document COM (98) 540 final).*

2. *Orders the Council of the European Union to pay the costs.*

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

([1]) OJ C 160 of 5.6.1999.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 17 March 2005

in Case T-195/98 Ettlin Gesellschaft für Spinnerei und Weberei AG and Others v Council of the European Union ([1])

(Dumping — Failure by the Council to adopt a Commission proposal for a regulation imposing a definitive anti-dumping duty — Absence of simple majority necessary for the adoption of a regulation — Obligation to state reasons)

(2005/C 132/41)

(Language of the case: English)

In Case T-195/98: Ettlin Gesellschaft für Spinnerei und Weberei AG and Others, established in Ettlingen (Germany), Textil Hof Weberei GmbH & Co. KG, established in Hof (Germany), Spinnweberei Uhingen GmbH, established in Uhingen (Germany), F. A. Kümpers GmbH & Co., established in Rheine

(Germany), Tenthorey SA, established in Eloyes (France), Les tissages des héritiers de G. Perrin — Groupe Alain Thirion (HGP-GAT Tissages), established in Thiéfosse (France), Établissements des fils de Victor Perrin SARL, established in Thiéfosse (France), Filatures & tissages de Saulxures-sur-Moselotte, established in Saulxures-sur-Moselotte (France), Tissage Mouline Thillot, established in Le Thillot (France), Filature Niggeler & Küpfer SpA, established in Capriolo (Italy), Standardtela SpA, established in Milan (Italy), Verlener Textilwerk, Grimmelt, Wevers & Co. GmbH, established in Velen (Germany), represented by C. Stanbrook, QC, and A. Dashwood, Barrister, against Council of the European Union (Agent: S. Marquardt, assisted by G.M. Berrisch, lawyer) supported by United Kingdom of Great Britain and Northern Ireland (Agent: initially M. Ewing, subsequently K. Manji) — action for annulment of the Council's decision of 5 October 1998 to reject the Commission's proposal for a Council Regulation (EC) imposing definitive anti-dumping duties on imports of certain unbleached cotton fabrics originating in the People's Republic of China, Egypt, India, Indonesia and Pakistan, definitively collecting the provisional duty imposed by Commission Regulation (EC) No 773/98 of 7 April 1998 (OJ 1998 L 111, p. 19) and terminating the anti-dumping proceeding in respect of imports of these fabrics originating in Turkey, submitted by the Commission of the European Communities on 21 September 1998 (document COM (98) 540 final) — the Court of First Instance (Fourth Chamber, Extended Composition), composed of H. Legal, President, P. Lindh, P. Mengozzi, I. Wiszniewska-Białecka and V. Vadapalas, Judges; H. Jung, Registrar, gave a judgment on 17 March 2005, in which it:

1. *Annuls the Council's decision of 5 October 1998 to reject the Commission's proposal for a Council Regulation (EC) imposing definitive anti-dumping duties on imports of certain unbleached cotton fabrics originating in the People's Republic of China, Egypt, India, Indonesia and Pakistan, definitively collecting the provisional duty imposed by Regulation (EC) No 773/98 (OJ 1998 L 111, p. 19) and terminating the anti-dumping proceeding in respect of imports of these fabrics originating in Turkey, submitted by the Commission of the European Communities on 21 September 1998 (document COM (98) 540 final).*

2. *Orders the Council of the European Union to pay the costs.*

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

(1) OJ C 160 of 5.6.1999.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 17 March 2005

in Case T-177/00, Koninklijke Philips Electronics NV v Council of the European Union (1)

(Dumping — Failure by the Council to adopt a Commission proposal for a regulation imposing a definitive anti-dumping duty — Absence of simple majority necessary for the adoption of a regulation — Obligation to state reasons)

(2005/C 132/42)

(Language of the case: English)

In Case T-177/00, Koninklijke Philips Electronics NV, established in Eindhoven (Netherlands), represented by C. Stanbrook, QC, and F. Ragolle, lawyer, against Council of the European Union (Agent: S. Marquardt, assisted by G.M. Berrisch, lawyer) — action for annulment of the Council's decision of 8 May 2000 to reject the proposal for a Council Regulation (EC) imposing a definitive anti-dumping duty on imports of certain parts of television camera systems originating in Japan, submitted by the Commission of the European Communities on 7 April 2000 (document COM (2000) 195 final) — the Court of First Instance (Fourth Chamber, Extended Composition), composed of H. Legal, President, P. Lindh, P. Mengozzi, I. Wiszniewska-Białecka and V. Vadapalas, Judges; H. Jung, Registrar, gave a judgment on 17 March 2005, in which it:

1. *Annuls the Council's decision of 8 May 2000 to reject the proposal for a Council Regulation (EC) imposing a definitive anti-dumping duty on imports of certain parts of television camera systems originating in Japan, submitted by the Commission of the European Communities on 7 April 2000 (document COM (2000) 195 final).*

2. *Orders the Council of the European Union to pay the costs.*

(1) OJ C 273 of 23.9.2000.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 15 March 2005

in Case T-29/02 Global Electronic Finance Management (GEF) SA v Commission of the European Communities [1]

(Arbitration clause — Non-performance of contract — Counterclaim)

(2005/C 132/43)

(Language of the case: English)

In Case T-29/02: Global Electronic Finance Management (GEF) SA, established in Brussels (Belgium), represented by E. Storme and A. Gobien, lawyers, against Commission of the European Communities (Agents: R. Lyal and C. Giolito, assisted by J. Stuyck) — application, based on an arbitration clause within the meaning of Article 238 EC, for an order that the Commission pay the sum of EUR 40 693 and issue a credit note in the sum of EUR 273 516, together with a counterclaim by the Commission that the applicant should be ordered to reimburse to it the sum of EUR 273 516, plus default interest at the rate of 7 % a year as from 1 September 2001 — the Court of First Instance (First Chamber, Extended Composition), composed of B. Vesterdorf, President, M. Jaeger, P. Mengozzi, E. Martins Ribeiro and F. Dehousse, Judges; J. Plingers, Administrator, for the Registrar, gave a judgment on 15 March 2005, in which it:

1. *Dismisses the applicant's claim for reimbursement of the sum of EUR 40 693 and for the issue of a credit note for EUR 273 516;*

2. *Upholds the Commission's counterclaim and, consequently, orders the applicant to pay the Commission the sum of EUR 273 516, plus default interest, at the annual statutory rate applicable in Belgium, from 1 September 2001 until full payment of the debt;*

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

[1] OJ C 118 of 18.5.2002.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 16 March 2005

in Case T-283/02 EnBW Kernkraft GmbH v Commission of the European Communities [1]

(TACIS Programme — Services provided in connection with a nuclear power station in Ukraine — Not paid for — Jurisdiction of the Court of First Instance — Action for compensation — Non-contractual liability)

(2005/C 132/44)

(Language of the case: German)

In Case T-283/02: EnBW Kernkraft GmbH, fomerly Gemeinschaftskernkraftwerk Neckar GmbH, established in Neckarwestheim (Germany), represented by S. Zickgraf, lawyer, against Commission of the European Communities (Agents: S. Fries and F. Hoffmeister, with an address for service in Luxembourg) — application for compensation under Article 288 EC in respect of damage allegedly suffered by the applicant following failure by the Commission to pay for the services provided by it under the TACIS programme in relation to the Zaporozhe nuclear power station (Ukraine) — the Court of First Instance (Fourth Chamber), composed of H. Legal, President, V. Tiili and V. Vadapalas, Judges; D. Christensen, Administrator, for the Registrar, gave a judgment on 16 March 2005, in which it:

1. *Dismisses the application;*

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

[1] OJ C 289 of 23.11.2002.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 16 March 2005

in Case T-112/03 L'Oréal SA v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) [1]

(Community trade mark — Opposition proceedings — Application for word mark FLEXI AIR — Earlier word mark FLEX — Relative ground for refusal — Likelihood of confusion — Request for proof of genuine use — Article 8(1)(b), Article 8(2)(a)(ii) and Article 43(2) of Regulation (EC) No 40/94)

(2005/C 132/45)

(Language of the case: English)

In Case T-112/03: L'Oréal SA, established in Paris (France), represented X. Buffet Delmas d'Autane, lawyer, against Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Agents: B. Filtenborg, S. Laitinen and G. Schneider), the other party to the proceedings before the Board of Appeal of OHIM having been Revlon (Suisse) SA, established in Schlieren (Switzerland) — action brought against the decision of the Fourth Board of Appeal of OHIM of 15 January 2003 (Case R 396/2001-4) relating to opposition proceedings between L'Oréal SA and Revlon (Suisse) SA — the Court of First Instance (Second Chamber), composed of J. Pirrung, President, A.W.H. Meij and I. Pelikánová, Judges; B. Pastor, Deputy Registrar, for the Registrar, gave a judgment on 16 March 2005, in which it:

1. *Dismisses the application;*

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

[1] OJ C 135 of 7.6.2003.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 17 March 2005

in Case T-160/03 AFCon Management Consultants and Others v Commission of the European Communities [1]

(Tacis Programme — Invitation to tender — Irregularities in the tendering procedure — Action for damages)

(2005/C 132/46)

(Language of the case: English)

In Case T-160/03: AFCon Management Consultants, established in Bray (Ireland), Patrick Mc Mullin, resident in Bray, Seamus O'Grady, resident in Bray, represented by B. O'Connor, solicitor, and I. Carreño, lawyer, against Commission of the European Communities (Agents: J. Enegren and F. Hoffmeister, with an address for service in Luxembourg) — application for compensation for the damage allegedly suffered as a result of irregularities in the tendering procedure for a project financed by the Tacis programme ('Project FDRUS 9902 — Agricultural extension services in South Russia') — 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, gave a judgment on 17 March 2005, in which it:

1. *Orders the Commission to pay AFCon the sum of EUR 48 605, together with interest thereon from delivery of this judgment until full payment. The rate of interest to be applied is to be calculated on the basis of the European Central Bank's rate for its main refinancing operations, in force during the period concerned, plus two percentage points. The amount of interest is to be calculated on the basis of compound interest;*

2. *Dismisses the application as to the remainder;*

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

(1) OJ C 200 of 23.8.2003.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 17 March 2005

in Case T-285/03 Agraz, SA and Others v Commission of the European Communities (1)

(Agriculture — Common organisation of the markets in processed fruit and vegetable products — Production aid for processed tomato products — Method of calculating the amount — 2000-01 marketing year)

(2005/C 132/47)

(Language of the case: French)

In Case T-285/03: Agraz, SA and Others, established in Madrid (Spain), Agrícola Conservera de Malpica, SA, established in Tolède (Spain), Agridoro Soc. coop. rl, established in Pontenure (Italy), Alfonso Sellitto SpA, established in Mercato S. Severino (Italy), Alimentos Españoles, Alsat, SL, established in Don Benito, Badajoz (Spain), AR Industrie Alimentari SpA, established in Angri (Italy), Argo Food — Packaging & Innovation Co. SA, established in Serres (Greece), Asteris Industrial Commercial SA, established in Athens (Greece), Attianese Srl, established in Nocera Superiore (Italy), Audecoop distillerie Arzens — Techniques séparatives (AUDIA), established in Montréal (France), Benincasa Srl, established in Angri, Boschi Luigi & Figli SpA, established in Fontanellato (Italy), CAS SpA, established in Castagnaro (Italy), Calispa SpA, established in Castel San Giorgio (Italy), Campil — Agro Industrial do Campo do Tejo, L[da], established in Cartaxo (Portugal), Campoverde Srl, established in Carinola (Italy), Carlo Manzella & C. Sas, established in Castel San Giovanni (Italy), Carmine Tagliamonte & C. Srl, established in Sant'Egidio del Monte Albino (Italy), Carnes y Conservas Españolas, SA, established in Mérida (Spain), Cbcotti Srl, established in Nocera Inferiore (Italy), Cirio del Monte Italia SpA, established in Rome (Italy), Consorzio Ortofrutticoli Trasformati Polesano (Cotrapo) Soc. coop. rl, established in Fiesso Umbertiano (Italy), Columbus Srl, established in Parma (Italy), Compal — Companhia produtora de Conservas Alimentares, SA, established in Almeirim (Portugal), Conditalia Srl, established in Nocera Superiore, Conservas El Cidacos, SA, established in Autol (Spain), Conservas Elagón, SA, established in Coria (Spain), Conservas Martinete, SA, established in Puebla de la Calzada (Spain), Conservas Vegetales de Extremadura, SA, established in Bajadoz, Conserve Italia Soc. coop. rl, established in San Lazzaro di Savena (Italy), ConservesFranceSA, established in Nîmes (France), Conserves Guintrand SA, established in Carpentras (France), Conservificio Cooperativo Valbiferno Soc. coop. rl, established in Guglionesi (Italy), Consorzio Casalasco del Pomodoro Soc. coop. rl, established in Rivarolo del Re ed Uniti (Italy), Consorzio Padano Ortofrutticolo (Copador) Soc. coop. rl, established in Collecchio (Italy), Copais Food and Beverage Company SA, established in Nea Ionia (Greece), Tin Industry D. Nomikos SA, established in Marousi (Greece), Davia Srl, established in Gragnano (Italy), De Clemente Conserve Srl, established in Fisciano (Italy), DE. CON Srl, established in Scafati (Italy), Desco SpA, established in Terracina (Italy), 'Di Lallo' — Di Teodoro di Lallo & C. Snc, established in Scafati, Di Leo Nobile — SpA Industria Conserve Alimentari, established in Castel San Giorgio, Marotta Emilio, established in Sant'Antonio Abate (Italy), E. & O. von Felten SpA, established in Fontanini (Italy), Egacoop, S. Coop., L[da], established in Andosilla (Spain),Elais SA, established in Athens, Emiliana Conserve Srl, established in Busseto (Italy), Perano Enrico & Figli Spa, established in San Valentino Torio (Italy), FIT — Fomento da Indústria do Tomate, SA, established in Águas de Moura (Portugal), Faiella & C. Srl, established in Scafati, 'Feger' di Gerardo Ferraioli SpA, established in Angri, Fratelli D'Acunzi Srl, established in Nocera Superiore, Fratelli Longobardi Srl, established in Scafati, Fruttagel Soc. coop. rl, established in Alfonsine (Italy), G3 Srl, established in Nocera Superiore, Giaguaro SpA, established in Sarno (Italy), Giulio Franzese Srl, established in Carbonara di Nola (Italy), Greci Geremia & Figli SpA, established in Parme, Greci — Industria Alimentar SpA, established in Parme, Greek Canning Co. SA Kyknos, established in Nauplie (Greece), Grilli Paolo & Figli — Sas di Grilli Enzo e Togni Selvino, established in Gambettola (Italy), Heinz Iberica, SA, established in Alfaro (Spain), IAN — Industrias Alimentarias de Navarra, SA, established in Vilafranca (Spain), Industria Conserve Alimentari Aniello Longobardi — Di Gaetano, Enrico & Carlo Longobardi Srl, established in Scafati, Industrias de Alimentação Idal, L[da], established in Benavente (Portugal), Industrias y Promociones Alimentícias, SA, established in Miajadas (Spain), Industrie Rolli Alimentari SpA, established in Roseto degli Abruzzi (Italy), Italagro — Indústria de Transformação de Produtos Alimentares, SA, established in Castanheira do Ribatejo (Portugal), La Cesenate Conserve Alimentari SpA, established in Cesena (Italy), La Dispensa di Campagna Srl, established in Castagneto Carducei (Italy), La Doria SpA, established in Angri, La Dorotea di Giuseppe Alfano & C. Srl, established in Sant'Antonio Abate, La Regina del Pomodoro Srl, established in Sant'Egidio del Monte Albino, 'La Regina di San Marzano' di Antonio, Felice e Luigi Romano Snc, established in Scafati, La Rosina Srl, established in Angri, Le Quattro Stelle Srl, established in Angri, Lodato Gennaro & C. SpA, established in Castel San Giorgio, Louis Martin production SAS,

established in Monteux (France), Menú Srl, established in Medolla (Italy), Mutti SpA, established in Montechiarugolo (Italy), National Conserve Srl, established in Sant'Egidio del Monte Albino, Nestlé España, SA, established in Miajadas, Nuova Agricast Srl, established in Verignola (Italy), Pancrazio SpA, established in Cava De'Tirreni (Italy), Pecos SpA, established in Castel San Giorgio, Pelati Sud di De Stefano Catello Sas, established in Sant'Antonio Abate, Pomagro Srl, established in Fisciano, Pomilia Srl, established in Nocera Superiore, Raffaele Viscardi Srl, established in Scafati, Rispoli Luigi & C. Srl, established in Altavilla Silentina (Italy), Rodolfi Mansueto SpA, established in Collecchio, Riberal de Navarra S. en C., established in Castejon (Spain), Salvati Mario & C. SpA, established in Mercato San Severino, Saviano Pasquale Srl, established in San Valentino Torio, Sefa Srl, established in Nocera Superiore, Serraiki Konservopia Oporokipeftikon Serko SA, established in Serres, Sevath SA, established in Xanthi (Greece), Silaro Conserve Srl, established in Nocera Superiore, ARP — Agricoltori Riuniti Piacentini Soc. coop. rl, established in Gariga di Podenzano (Italy), Société coopérative agricole de transformations and de ventes (SCATV), established in Camaret-sur-Aigues (France), Sociedade de Industrialização de Produtos Agrícolas — Sopragol, SA, established in Mora (Portugal), Spineta SpA, established in Pontecagnano Faiano (Italy), Star Stabilimento Alimentare SpA, established in Agrate Brianza (Italy), Steriltom Aseptic — System Srl, established in Plaisance (Italy), Sugal Alimentos, SA, established in Azambuja (Portugal), Sutol — Indústrias Alimentares, L^{da}, established in Alcácer do Sal (Portugal), Tomsil — Sociedade Industrial de Concentrado de Tomate, SA, established in Ferreira do Alentejo (Portugal), Transformaciones Agrícolas de Badajoz, SA, established in Villanueva de la Serena (Spain), Zanae — Nicoglou levures de boulangerie industrie commerce alimentaire SA, established in Thessalonica (Greece), represented by J. da Cruz Vilaça, R. Oliveira, M Melícias and D. Choussy, avocats, against Commission of the European Communities (Agent: M. Nolin, with an address for service in Luxembourg) — the Court of First Instance (Third Chamber), composed of J. Azizi, President, F. Dehousse and E. Cremona, Judges; J. Palacio González, Principal Administrator, for the Registrar, gave a judgment on 17 March 2005, in which it:

1. *Dismisses the application;*

2. *Orders the applicants to bear five sixths of their costs and the Commission, in addition to bearing its own costs, to pay one sixth of the applicant's costs.*

([1]) OJ C 251 of 18.10.2003.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 16 March 2005

in Case T-329/03 Fabio Andrés Ricci v Commission of the European Communities ([1])

(Officials — Competition — Condition for admission — Professional experience — Decisions of the competition selection board — Type of control exercised by the appointing authority — Evaluation of experience — Legitimate expectations)

(2005/C 132/48)

(Language of the case: Italian)

In Case T-329/03: Fabio Andrés Ricci, residing in Turin (Italy), represented by M. Condinanzi, lawyer, against Commission of the European Communities (Agents: J. Currall and H. Tserepa-Lacombe, and A. Dal Ferro, lawyer, with an address for service in Luxembourg) — application for annulment of the decision of the Commission not to appoint the applicant in connection with vacancy notice COM/2001/5265/R — the Court of First Instance (Second Chamber), composed of J. Pirrung, President, N.J. Forwood and S. Papasavvas, Judges; J. Palacio González, Principal Administrator, for the Registrar, gave a judgment on 16 March 2005, in which it:

1. *Dismisses the application;*

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

([1]) OJ C 275, 15.11.2003.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 17 March 2005

in Case T-362/03 Antonio Milano v Commission of the European Communities ([1])

(Officials — Recruitment — Competition — Refusal of admission to a competition — Action for annulment and damages)

(2005/C 132/49)

(Language of the case: Italian)

In Case T-362/03: Antonio Milano, residing in Isernia (Italy), represented by S. Scarano, lawyer, against Commission of the

European Communities (Agent: J. Currall and A. Dal Ferro, lawyer, with an address for service in Luxembourg) — application for annulment of the decisions not to admit the applicant to Open Competition COM/A/4/02 for the creation of a list of persons suitable to take the post of head of representation (Grade A 3) in Rome and an order that the defendant compensate the damage incurred — the Court of First Instance (Third Chamber), composed of M. Jaeger, President, J. Azizi and E. Cremona, Judges; J. Palacio González, Principal Administrator, for the Registrar, gave a judgment on 17 March 2005, in which it:

1. *Dismisses the application;*

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

([1]) OJ C 304, 13.12.2003.

ORDER OF THE COURT OF FIRST INSTANCE

of 16 February 2005

in Case T-142/03 Fost Plus VZW v Commission of the European Communities ([1])

(Action for annulment — Action brought by a legal person — Act of individual concern to it — Decision 2003/82/EC — Targets for recovery and recycling of packaging waste — Directive 94/62/EC — Inadmissibility)

(2005/C 132/50)

(Language of the case: Dutch)

In Case T-142/03: Fost Plus VZW, established in Brussels (Belgium), represented by P. Wytinck and H. Viaene, lawyers, against Commission of the European Communities (Agents: M. van Beek and M. Konstantidinis, with an address for service in Luxembourg) — application for annulment of Article 1 of Commission Decision 2003/82/EC of 29 January 2003 confirming measures notified by Belgium pursuant to Article 6(6) of Directive 94/62/EC of the European Parliament and the Council on packaging and packaging waste (OJ L 31, p. 32) — the Court of First Instance (Third Chamber), composed, in deliberation, of J. Azizi, President, M. Jaeger and F. Dehousse, Judges; H. Jung, Registrar, made an order on 16 February 2005, the operative part of which is as follows:

1. *The application is dismissed as inadmissible.*

2. *The applicant shall bear its own costs and pay those incurred by the defendant.*

([1]) OJ C 146 of 21. 6.2003.

ORDER OF THE COURT OF FIRST INSTANCE

of 19 January 2005

in Case T-372/03 Yves Mahieu v Commission of the European Communities ([1])

(Officials — Time-limits for complaints and actions — Implied rejection of the complaint — Inadmissibility)

(2005/C 132/51)

(Language of the case: French)

In Case T-372/03: Yves Mahieu, official of the Commission of the European Communities, residing in Auderghem (Belgium), represented by L. Vogel, lawyer, against Commission of the European Communities (Agents: J. Currall and H. Krämer, with an address for service in Luxembourg), — application for, firstly, the annulment of the decisions implicitly rejecting the claim brought by the applicant on 29 October 2002 against the decision of the Commission of 6 August 2002 rejecting his request made on the basis of Articles 24 and 90(1) of the Staff Regulations in connection with the mental harassment which he allegedly suffered and, secondly, damages — the Court of First Instance (Fifth Chamber), composed of M. Vilaras, President, F. Dehousse and D. Šváby, Judges; H. Jung, Registrar, made an order on 19 January 2005, the operative part of which is as follows:

1. *The action is dismissed as inadmissible;*

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

([1]) OJ C 7, 10.1.2004.

ORDER OF THE COURT OF FIRST INSTANCE

of 14 February 2005

in Case T-81/04 Bouygues SA and Bouygues Telecom v Commission of the European Communities ([1])

(State aid — Mobile telephony — Complaint — Action in respect of a failure to act — Definition of position by the Commission bringing an end to the failure to act — No need to give a ruling — Action for annulment — Interim letter — Inadmissibility)

(2005/C 132/52)

(Language of the case: French)

In Case T-81/04: Bouygues SA, established in Paris (France), and Bouygues Telecom, established in Boulogne-Billancourt (France), represented by B. Amory and A. Verheyden, lawyers, against Commission of the European Communities (Agents: J.L. Buendía Sierra, C. Giolito and M. Niejahr, with an address for service in Luxembourg) — principally, an application under Article 232 EC for a declaration that, by not defining its position on the head of complaint, set out in the applicants' formal complaint, relating to the aid granted by the French authorities to Orange France and SFR in the form of a retroactive reduction in the royalty payments due in respect of the UMTS (Universal Mobile Telecommunications System) licence granted to those undertakings, the Commission failed to take a decision, contrary to the EC Treaty, and, in the alternative, an application based on Article 230 EC for annulment of the decision rejecting that head of complaint in the formal complaint allegedly contained in a letter of 11 December 2003 sent by the Commission to the applicants — the Court of First Instance (Fourth Chamber), composed of H. Legal, President, P. Mengozzi and I. Wiszniewska-Białecka, Judges; H. Jung, Registrar, made an order on 14 February 2005, the operative part of which is as follows:

1. *It is unnecessary to rule on the pleas in law seeking a declaration that the Commission failed to take a decision on the head of complaint, contained in the applicants' formal complaint, relating to the retroactive reduction of the royalty payments due in respect of the UMTS licence granted to Orange and SFR by the French authorities.*

2. *The alternative pleas in law seeking annulment of the decision contained in the Commission's letter of 11 December 2003 are rejected as being inadmissible.*

3. *It is unnecessary to rule on the applications for leave to intervene submitted by Société française du radiotéléphone (SFR) and Orange France SA.*

4. *Bouygues SA and Bouygues Telecom shall pay half of the costs.*

5. *The Commission shall pay half of the costs.*

([1]) OJ C 106 of 30.04.2004.

ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE

of 10 February 2005

in Case T-291/04 R, Enviro Tech Europe Ltd and Enviro Tech International, Inc., v Commission of the European Communities

(Interim measures — Directives 67/548/EEC and 2004/73/EC)

(2005/C 132/53)

(Language of the case: English)

In Case T-291/04 R: Enviro Tech Europe Ltd, established in Surrey (United Kingdom), and Enviro Tech International, Inc., established in Chicago, Illinois (United States), represented by C. Mereu and K. Van Maldegem, lawyers, against Commission of the European Communities (Agents: X. Lewis and D. Recchia, with an address for service in Luxembourg) — application for, first, suspension of the inclusion of n-propyl-bromide in Commission Directive 2004/73/EC of 29 April 2004, adapting to technical progress for the 29th time Council Directive 67/548/EEC of 27 June 1967 on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances (OJ 2004 L 152, p. 1) and, second, further interim measures — the President of the Court of First Instance made an order on 10 February 2005, the operative part of which is as follows:

1. *The application for interim measures is dismissed.*

2. *Costs are reserved.*

Action brought on 11 February 2005 by P. against Commission of the European Communities

(Case T-103/05)

(2005/C 132/54)

(Language of the case: Spanish)

An action against Commission of the European Communities was brought before the Court of First Instance of the European Communities on 11 February 2005 by P., residing in Barcelona (Spain), represented by Matías Griful I Ponsati, lawyer.

The applicant claims that the Court should:

1. Annul the contested decision of 28 October 2004 and the decision of 10 May 2004;

2. Uphold the applicant's right to receive his remuneration from 15 April 2004 until he is certified medically fit and able to work;

3. Order the Commission to pay the costs.

Pleas in law and main arguments

The present action is against the decision of the appointing authority of 28 October 2004 which, after noting that the defendant's medical department had confirmed that the applicant was fit to travel and work on a half-time basis, confirmed suspension of payment of his salary from 15 April 2004 until the date on which he commenced performing his duties at the Commission's offices in Brussels.

It is claimed in that connection that the applicant, whose appointment to a post at the Commission's Representative Office in Barcelona was justified by family circumstances, was subject to anxiety and depression as a result of the abolition of his post at that office.

In support of his claims, the applicant alleges:

— Infringement of Articles 11, 12 and 13 of the European Social Charter, in that they uphold entitlement to protection of health, safety, social security and social and medical assistance;

— Infringement of Part II of the European Social Security Code of 16 April 1964, in particular Article 10 thereof, in that, by granting the right to home visits by a doctor, it grants patients a right not to have to leave their homes;

— Infringement of Article 10 of Convention No 102 and Article 13 of Convention No 130 of the ILO;

— Infringement of Articles 72 and 73 of the Staff Regulations.

Action brought on 2 March 2005 by David Tas against the Commission of the European Communities

(Case T-124/95)

(2005/C 132/55)

(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 2 March 2005 by David Tas, residing in Brussels (Belgium), represented by Sébastien Orlandi, Xavier Martin, Albert Coolen, Jean-Noël Louis and Etienne Marchal, lawyers,with an address for service in Luxembourg.

The applicant claims that the Court should:

— annul the Selection Board's decision in competition EPSO/A/4/03 not to admit him to the tests in the competition;

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicant, who possesses a university diploma of 'M Sc in Business Administration', was a candidate in competition EPSO/A/4/03 for the drawing up of a reserve list of assistant administrators at Grade A8 in the auditing sphere. He challenges the Selection Board's decision to exclude him from the competition on the grounds that his university diploma did not satisfy the conditions of the competition notice.

In support of his action, the applicant pleads infringement of the conditions for admission fixed in the competition notice and a manifest error of assessment. He also claims that two other candidates, who were admitted to the competition tests, held the same diploma awarded by the same faculty of the same university and on that basis alleges breach of the principle of equal treatment.

Action brought on 9 March 2005 by Sandrine Corvoisier and Others against the European Central Bank

(Case T-126/05)

(2005/C 132/56)

(Language of the case: French)

An action against the European Central Bank was brought before the Court of First Instance of the European Communities on 9 March 2005 by Sandrine Corvoisier, residing in Frankfurt-am-Main, Roberta Friz, residing in Frankfurt-am-Main, Hundjy Preud'homme, residing in Frankfurt, and Elvira Rosati, residing in Frankfurt-am-Main, represented by Georges Vandersanden and Laure Levi, lawyers.

The applicants claim that the Court should:

— annul vacancy notice ECB/156/04 aimed at filling six posts as 'Records Management Specialists',

— in so far as necessary, annul the decisions rejecting the 'administrative reviews' and 'grievance procedures' brought by the applicants, decisions dated 1 October and 21 December 2004 respectively and notified between 27 December 2004 and 13 January 2005,

— annul any decision taken in implementation of the vacancy notice and, in particular, recruitment decisions,

— order the defendant to produce its administrative file,

— order the defendant to award damages for pecuniary harm, which should be assessed on an equitable basis and provisionally at EUR 40 000, and for non-pecuniary harm, which should be assessed on an equitable basis at EUR 4,

— order the defendant to pay the costs.

Pleas in law and main arguments

The applicants occupy posts at the ECB as 'Research Analysts' , in grade E/F. One of the conditions required for access to their post was that the person concerned must hold a university degree.

On 13 July 2004, the applicant published the vacancy notice in question, aimed at recruiting six 'Records Management Specialists' in order to assist in and supplement the Bank's archives unit. Those posts were classified in the same grade as the applicants' posts, i.e. in grade E/F. The vacancy notice required that candidates had completed their secondary education.

In support of their action, the applicants claim that there has been a breach of Article 20.2 of the Internal Rules of the ECB, the ECB 's Guidelines on the 'development track' , of the administrative circular on recruitment and also of the principle *patere legem ipse quam fecisti*. They refer to the fact that a university degree was an essential requirement for their recruitment whereas the contested notice required only completion of secondary education; they also rely on a breach of the principle of non-discrimination. The applicants further claim that there has been a breach of Articles 45 and 46 of the Conditions of Employment, relying on the fact that there was no prior consultation of the Staff Committee. Last, the applicants claim that there has been a manifest error of assessment.

Action brought on 14 March 2005 by Dominique Albert-Bousquet and 142 Others against the Commission of the European Communities

(Case T-130/05)

(2005/C 132/57)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 14 March 2005 by Dominique Albert-Bousquet, residing in Brussels, and 142 other officials, represented by Sébastien Orlandi, Xavier Martin, Albert Coolen, Jean-Noël Louis and Etienne Marchal, lawyers, with an address for service in Luxembourg.

The applicants claim that the Court should:

— annul the decisions to appoint the applicants officials of the European Communities, in so far as those decisions determine their grade of recruitment in accordance with Article 12 of Annex XIII to the Staff Regulations;

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicants in this case, who were all recruited after 1 May 2004 as successful candidates in competitions for which notices had been published before that date, object to the alleged discrimination arising from the fact that their conditions of classification, in accordance with Article 12 of Annex XIII to Regulation (EC, Euratom) No 723/2004 amending the Staff Regulations of Officials, are different from those of the successful candidates in the same competitions who were recruited before that amendment of the Staff Regulations.

In support of their claims, the applicants plead:

— breach of the principle of equal treatment,

— infringement of Articles 31(1) and 29(1) of the Staff Regulations,

— infringement of Article 5(5) of the Staff Regulations,

— breach of the principle of the protection of legitimate expectations.

The applicants submit in that regard that it is apparent from Community case-law that the successful candidates in a competition are in a comparable situation and must therefore be accorded the same treatment. In addition, they submitted their applications with a view to being recruited to fill one of the vacant posts referred to in the respective notices of the competitions which they passed. They were therefore entitled to foster reasonable expectations of being recruited to the posts and at the grades specified in the notices of the competitions which they passed.

Action brought on 21 March 2005 by Carlos Andrés and Others against the European Central Bank

(Case T-131/05)

(2005/C 132/58)

(Language of the case: French)

An action against the European Central Bank was brought before the Court of First Instance of the European Communities on 21 March 2005 by Carlos Andrés, residing in Frankfurt am Main, and eight others, represented by Georges Vandersanden and Laure Levi, lawyers.

The applicants claim that the Court should:

— annul the applicants' salary statements for July 2004;

— order the defendant to pay damages to compensate for the harm suffered by the applicants, consisting of the award of EUR 5 000 per applicant on account of a loss of purchasing power since 1 July 2001, of arrears of pay corresponding to an increase in the applicants' salary of 1,86 % for the period from 1 July 2001 to 30 June 2002, 0,92 % for the period from 1 July 2002 to 30 June 2003 and 2,09 % for the period from 1 July 2003 to 30 June 2004, and of the application of interest to the amount of the applicants' arrears of salary from their respective due date until the date of actual payment. That rate of interest should be calculated on the basis of the rate set by the European Central Bank for the main refinancing operations, applicable during the period concerned, plus two points.

— order the defendant to pay all the costs.

Pleas in law and main arguments

The subject-matter of this case is the salary increase contained in the applicants' salary statements for July 2004, which they claim was established in disregard of the obligation to consult the staff of the European Central Bank (ECB), and of the methods of calculation relating to general salary adjustments, as organised by an agreement concluded between the management and the staff ('the Memorandum of Understanding'). It is also disputed that the increase in question, applied following the judgment of the Court of First Instance of 20 November 2003 in Case T-63/02 *Cerafogli and Poloni* v *ECB* [2003] ECR-SC I-A-291 and II-1405, did not have retroactive effects for the years 2001, 2002 and 2003.

In support of their claims, the applicants plead:

— infringement both of Article 45 and 46 of the Conditions of Employment and of the Memorandum of Understanding, and breach of the principle of good administration;

— breach of the duty to state reasons, as well as, in this instance, a manifest error of assessment. It is argued in this regard that the tables drawn up by the Bank to justify the proposed percentage salary increase in question are the result of an incorrect application of the methods of calculation;

— breach of the principle of the protection of legitimate expectations.

Action brought on 26 March 2005 by the Kingdom of Belgium against the Commission of the European Communities

(Case T-134/05)

(2005/C 132/59)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 26 March 2005 by the Kingdom of Belgium, represented by Jean-Pierre Buyle and Christophe Steyaert, lawyers.

The applicant claims that the Court should:

— annul the decision of the Commission of 19 January 2005, insofar as it states that 'former ESF claims' are not time-barred and, where appropriate, insofar as it states that such claims give rise to default interest calculated on the basis of Article 86 of Regulation No 2342/2202/EC;

— order the Commission to pay the costs.

Pleas in law and main arguments

From 1987 to 1992 the Commission asked the applicant to repay certain sums paid out of the European Social Fund (ESF) and transferred by the Commission directly to various Belgian bodies acting as promoters but not used by them in accordance with the rules relating to the ESF.

In 2004 the Commission set off certain sums payable by the applicant by virtue of its former claims against claims the applicant had against the Commission. Following that setting off, the applicant sent several letters to the Commission to which the Commission replied by the contested decision, stating that the former claims were not time-barred, contrary to the contention of the applicant.

In support of its application the applicant submits that the claims at issue are time-barred pursuant to Article 3.1 of Regulation No 2988/95/EC or, in the alternative, pursuant to the provisions of Belgian law, applicable here pursuant to Article 2.4 of Regulation No 2988/95/EC.

The applicant also disputes the charging by the Commission of default interest. According to the applicant there are specific rules on the subject, namely in Regulation No 1865/90/EEC and Regulation No 448/2001/EC, derogating from Article 86 of 2342/2002/EC which is relied on by the Commission to justify the imposition of default interest. The applicant submits that those specific rules do not provide for the imposition of default interest in respect of ESF action decided on before 6 July 1990 and, therefore, the Commission cannot claim default interest on the claims in question.

Action brought on 29 March 2005 by Franco Campoli against the Commission of the European Communities

(Case T-135/05)

(2005/C 132/60)

(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 29 March 2005 by Franco Campoli, residing in London, represented by Stéphane Rodrigues and Alice Jaume, lawyers, with an address for service in Luxembourg.

The applicant claims that the Court should:

— annul the decision of the appointing authority of 13 December 2004 rejecting the complaint lodged by the applicant on the basis of Article 90(2) of the Staff Regulations, taken together with, first, the decision of the appointing authority challenged in that complaint, which amended on 1 May 2004 the weighting, household allowance and standard educational allowance applicable to the applicant's pension, and also, second, the applicant's payslips in that they apply that decision from May 2004;

— order the Commission to pay the costs.

Pleas in law and main arguments

In the present case, the applicant seeks, in substance, the application of the weighting applicable to his pension before 1 May 2004, with retroactive effect to 1 May 2004.

In that regard, the applicant observes that, with the aim of covering the transition between the old and new weighting systems following the amendment of the system of Staff Regulations governing the European civil service, Article 20(2) of Annex XIII to the Staff Regulations provides for a transitional period of five years, from 1 May 2004 to 1 May 2009, during which the weighting is to be gradually reduced.

In support of his application, the applicant invokes, fundamentally, an objection of illegality, on the basis of Article 241 of the Treaty, on the ground that the application of Article 20 of Annex XIII to the Staff Regulations is unlawful in this case.

He claims, in that regard:

— breach of the principle of legitimate expectations, owing to the assurances which in his submission were given by the administration to the effect that the new Staff Regulations would have no negative impact on his situation,

— failure to respect the principles of equal treatment and non-discrimination, owing to the differentiation established according to the place of residence of officials in service and in receipt of a pension,

— failure to respect his acquired rights, owing to the amendment of his fundamental conditions of employment, considered as at the date of his retirement,

— breach of the principle of sound administration.

Action brought on 30 March 2005 by EARL Salvat Père et Fils and Others against the Commission of the European Communities

(Case T-136/05)

(2005/C 132/61)

(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 30 March 2005 by EARL Salvat Père et Fils, established in Saint-Paul de Fenouillet (France), Comité interprofessionnel des vins doux naturels et vins de liqueur à appellations contrôlées (CIVDN), established in Perpignan (France), and Comité national des interprofessionnels des vins à appellation d'origine, established in Paris (France), represented by Hugues Calvet and Olivier Billard, lawyers.

The applicants claim that the Court should:

— annul Articles 1.1 and 1.3 of the Commission's decision of 19 January 2005 concerning the 'Plan Rivesaltes' and the CIVDN parafiscal levies implemented by France;

— order the Commission to pay the costs.

Pleas in law and main arguments

By the contested decision the Commission concluded that the set-aside premium per hectare financed by an inter-trade contribution in the context of the 'Plan Rivesaltes' and the promotional and operational activities of the controlled designations of origin 'Rivesaltes', 'Grand Rousillon', 'Muscat de Rivesaltes' and 'Banyuls' financed by inter-trade contributions constituted State aid within the meaning of Article 87 EC.

The applicants seek for that decision to be annulled, submitting first that its statement of reasons is inadequate, in breach of Article 253 EC, and does not enable the applicants to understand the Commission's reasons for considering that the criteria relating to State aid defined in the case-law of the Court of Justice were satisfied in this case. The applicants also submit that the contested decision resulted from a breach of Article 87 EC, since the Commission did not show either that the measures in question were financed by means made available to the national authorities or that the inter-trade contributions, intended to finance the promotional and operational activities of the controlled designations of origin, were attributable to the State.

Action brought on 1 April 2005 by LA PERLA S.p.A. against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-137/05)

(2005/C 132/62)

(Language of the case: Italian)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) was brought before the Court of First Instance of the European Communities on 1 April 2004 by LA PERLA S.p.A., represented by Renzo Maria Morresi and Alberto Dal Ferro, lawyers.

Cielo Brands — Gestao e Investimentos Lda. was also a party to the proceedings before the Board of Appeal.

The applicant claims that the Court should:

— annul in full the contested decision reinstating the decision of the Cancellation Division and therefore declaring the contested trade mark invalid;

— order Cielo Brands — Gestao e Investimentos Lda to pay the costs of the proceedings, including the previous two sets of proceedings before OHIM.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity is sought:	The word mark NIMEI LA PERLA MODERN CLASSIC — Application for registration no 713.446 in respect of goods in Class 14 (jewellery, gold articles, watches; precious metals; pearls; precious stones).
Proprietor of the Community trade mark:	Cielo Brands — Gestao e Investimentos Lda
Applicant for declaration of invalidity:	The applicant
Trade mark or sign right of applicant:	Italian trade marks: — La PERLA (Figurative trade mark no. 769.526), in respect of goods in Class 25. — LA PERLA PARFUMS (Word mark no 776.082), in respect of goods in Class 3. — La PERLA (Figurative trade mark no. 804.992) in respect of goods in Classes 3, 9, 14, 16, 18, 24, 25 and 35. — La PERLA (Figurative trade mark no GE2000 C 000428) in respect of goods in Class 3. — La PERLA (Figurative trade mark no GE2002 C 000181) in respect of goods in Class 3.
Decision of the Cancellation Division:	Granting the application for a declaration of invalidity and a declaration of invalidity of the Community trade mark.
Decision of the Board of Appeal:	Granting the appeal and annulment of the decision of the Cancellation Division.
Pleas in law:	— Infringement of Article 8(5) and (1)(a) and (b) and Article 73 of Regulation (EC) No 40/94 on the Community trade mark. — Infringement of Rule 50(2)(h) of Regulation (EC) No 2868/95 of 13 December 1995 implementing Regulation No 40/94.

Action brought on 31 March 2005 by Charlotte Becker and Others against the European Parliament

(Case T-139/05)

(2005/C 132/63)

(Language of the case: French)

An action against the European Parliament was brought before the Court of First Instance of the European Communities on 31 March 2005 by Charlotte Becker, residing in Manton (France), Seamus Killeen, residing in Sutton (Dublin), Robert Payne, residing in Terenure (Dublin), Deirdre Gallagher, residing in Terenure, Paul Van Raij, residing in Overveen (Netherlands), Wilhemus Van Miltenburg, residing in Huizen (Netherlands), represented by Georges Vandersanden, Laure Levi and Aurore Finchelstein, lawyers.

The applicant claims that the Court should:

— annul the applicants' pension slips for May 2004, with the exception of Ms Gallagher's, with the effect of applying a weighting at the rate for the capital of their country of residence or, at the very least, a weighting such as will adequately reflect the differences in the cost of living between the places in which the applicants are deemed to incur their expenditure and thus corresponding with the principle of equivalence,

— as regards Ms Gallagher, annul her payslip for May 2004, with the effect of applying a weighting to the allowance which she receives for being assigned to non-active service, fixed at the rate for the capital of the country of residence or, at the very least, a weighting such as will adequately reflect the differences in the cost of living in the place where the applicant is deemed to incur her expenditure and thus corresponding to the principle of equivalence;

— order the Commission to pay the costs.

Pleas in law and main arguments

In support of their action, the applicants put forward the same pleas in law and arguments as those put forward in Case T-35/05.

Action brought on 29 March 2005 by the Italian Republic against the Commission of the European Communities

(Case T-140/05)

(2005/C 132/64)

(Language of the case: Italian)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 29 March 2005 by the Italian Republic, represented by Antonio Cingolo, Avvocato dello Stato.

The applicant claims that the Court should:

1. annul Decision No 00556 of 21 January 2005 concerning SPD Objective 2 Tuscany 2000-2006 (No CCI 2000.IT.16.2.DO.001) — Suspension of the request for payment;

2. annul Decision No 00582 of 24 January 2005 concerning SPD Lazio Ob. 2 CCI No 2000IT162DO009 (2000-2006) — Certification and declaration of interim costs and request for payment (December 2004);

3. annul Decision No 00728 of 26 January 2005 concerning PEP Campania Ob. 1 — 2000-2006 (No CCI 1999 IT 16 1 PO 007) — Declaration of interim costs and request for payment;

4. annul Decision No 00860 of 31 January 2005 concerning PEP Campania Ob. 1 — 2000-2006 (No CCI 1999 IT 16 1 PO 007) — Declaration of interim costs and request for payment;

5. annul Decision No 02787 of 21 March 2005 concerning SPD Liguria No CCI 2000 IT 162 DO 006 — Certification of the declarations of interim costs and request for payment (December 2004);

6. annul Decision No 02590 of 16 March 2005 concerning the Commission's payment of an amount different from that requested. Ref. SPD Ob. 2 Lazio 2000-2006;

7. annul Decision No 02594 of 16 March 2005 concerning the Commission's payment of an amount different from that requested. Ref. SPD Tuscany Ob. 2 (No CCI 2000.IT.16.2.DO.001);

8. annul Decision No 02855 of 22 March 2005 concerning the Commission's payment of an amount different from that requested. Programme: PEP Campania (No CCI 1999IT161PO007);

9. annul all related and consequential measures;

10. order the Commission to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are those advanced in Case T-345/04 *Italian Republic* v *Commission* ([1]).

([1]) OJ 2004 C 262 of 23.10.2004, p. 55.

Action brought on 12 April 2005 by Pablo Muñiz against the Commission of the European Communities

(Case T-144/05)

(2005/C 132/65)

(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 12 April 2005 by Pablo Muñiz, residing in Brussels (Belguim), represented by B. Dehandschutter, lawyer.

The applicant claims that the Court should:

1. annul the Commission decision of 3 February 2005 in so far as it refuses full access to the documents requested by the applicant;

2. annul the Commission decision of 3 February 2005 in so far as it refuses partial access to the requested documents;

3. order the defendant to bear the costs.

Pleas in law and main arguments

The applicant is a lawyer specialising in advising clients on customs related issues. In order to best advise his clients the applicant addressed, on 13 October 2004, a request to the Commission for access to the minutes of the September meeting of the Customs Code Committee — Tariff and Statistical Nomenclature Section as well as for access to certain TAXUD documents. This request was refused on 1 December 2004, on the basis of Article 4.3 of Regulation 1049/2001. The applicant requested a review of the initial decision on 15 December 2004. The contested decision was issued as a result of that request, and confirmed the previous decision to refuse access.

The applicant contends that the contested decision infringes Article 4.3 of Regulation 1049/2001. According to the applicant, the reasons provided for refusing access, namely that disclosure of the requested documents would seriously undermine the Commission's decision making process, are not valid grounds under this provision. The applicant also contends, in the same context, that the contested decision erroneously reasoned by reference to a category of documents rather than evaluate the content of each one of the requested documents.

The applicant further considers that Article 4.6 of the same regulation was violated, in that the Commission refused even partial access to the requested documents. He also argues that the contested decision circumvents Article 2.1 of that regulation by leading to a systematic refusal to disclose internal documents, on the sole ground that the relevant file is not closed.

Finally, the applicant considers that an overriding public interest, consisting in the need for interested parties to have a better understanding of the decisions adopted on tariff classifications matters, justified disclosure of the requested documents.

III

(Notices)

(2005/C 132/66)

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

OJ C 115, 14.5.2005

Past publications

OJ C 106, 30.4.2005

OJ C 93, 16.4.2005

OJ C 82, 2.4.2005

OJ C 69, 19.3.2005

OJ C 57, 5.3.2005

OJ C 45, 19.2.2005

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