

3. Are the courts of that Member State precluded from declaring conduct unlawful, and on that basis awarding damages on grounds of unfairness and unlawfulness, where the conduct in question appears to be authorised by both sides of industry and such authorisation is consistent with Community law, albeit in the form of the directive which has not yet been transposed into national law?
4. Should Article 17(3) of ... Directive [93/104] be construed as permitting — on its own terms, and thus wholly independently of Article 17(2) thereof and the list of occupations and professions set out therein — the collective measures adopted by both sides of industry and the provision made thereunder for derogations in relation to weekly rest periods?

(<sup>1</sup>) OJ 1993 L 307, p. 18.

**Reference for a preliminary ruling from the Vestre Landsret (Denmark) lodged on 26 June 2009 — Skatteministeriet v DSV Road A/S**

(Case C-234/09)

(2009/C 205/45)

*Language of the case: Danish*

#### Referring court

Vestre Landsret

#### Parties to the main proceedings

*Applicant:* Skatteministeriet

*Defendant:* DSV Road A/S

#### Questions referred

1. Must Article 204(1)(a) with reference to Articles 92 and 96 in conjunction with Article 1 and Article 4(9) and (10) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (<sup>1</sup>) be interpreted as meaning that
  - a) a customs debt arises if a transit procedure for goods which do not physically exist is initiated by mistake in the NCTS system by an authorised consignor, and as a consequence the transit procedure cannot subsequently be discharged in accordance with the rules, or that

- b) a customs debt does not arise, since the transit procedure is presumed to apply solely to physically existing goods, so that the mistaken generation of a transit in the NCTS system for goods which do not physically exist does not lead to the imposition of customs duties?

2. If Question 1(a) is answered in the affirmative, must the concept of the 'importation of goods' in Article 4(10) together with the concept of 'goods' in Article 204(1)(a) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code be interpreted as meaning that the concept covers both physically existing goods and goods which do not physically exist?

(<sup>1</sup>) OJ 1992 L 302, p. 1.

**Reference for a preliminary ruling from the Cour de cassation (France) lodged on 29 June 2009 — DHL Express France SAS v Chronopost SA**

(Case C-235/09)

(2009/C 205/46)

*Language of the case: French*

#### Referring court

Cour de cassation

#### Parties to the main proceedings

*Applicant:* DHL Express France SAS

*Defendant:* Chronopost SA

#### Questions referred

1. Must Article 98 of Council Regulation (EC) No 40/94 of 20 December 1993 (<sup>1</sup>) on the Community trade mark be interpreted as meaning that the prohibition issued by a Community trade mark court has effect as a matter of law throughout the entire area of the Community?
2. If not, is that court entitled to apply specifically that prohibition to the territories of other States in which the acts of infringement are committed or threatened?
3. In either case, are the coercive measures which the court, by application of its national law, has attached to the prohibition issued by it applicable within the territories of the Member States in which that prohibition would have effect?