

Action brought on 12 September 2006 — Germany v Commission**(Case T-258/06)**

(2006/C 294/107)

*Language of the case: German***Parties***Applicant:* Federal Republic of Germany (represented by: M. Lumma and C. Schulze-Bahr)*Defendant:* Commission of the European Communities**Form of order sought**

- declare null and void the Commission's interpretative communication of 23 June 2006 on the Community law applicable to contract awards not or not fully subject to the provisions of the public procurement directives; and
- order the defendant to pay the costs.

Pleas in law and main arguments

The applicant takes issue with the Commission's interpretative communication on the Community law applicable to contract awards not or not fully subject to the provisions of the public procurement directives, which was placed on the Commission's internet website on 24 July 2006 and published in the *Official Journal* on 1 August 2006 (OJ 2006 C 179, p. 2).

As grounds for its action, the applicant submits that the Commission was not competent to issue the contested communication. It argues in this connection that the contested communication contains new rules on tendering which go beyond the obligations arising under existing Community law. These new rules will have legally binding effects for the Member States. The EC Treaty, however, contains no authorisation which would enable the defendant to adopt such rules. The present case therefore, in the applicant's view, essentially involves an instance of *de facto* legislation.

The applicant goes on to contend that, by establishing mandatory rules, the defendant has upset the institutional balance existing between the Council, the European Parliament and the Commission.

In conclusion the applicant submits that, even if the Commission were competent to issue the contested communication, the latter would still have to be declared null and void as the principle of legal certainty has been infringed. The defendant ought to have invoked the appropriate legal basis and made express reference to this in the legal measure in question. The Commission thus also breached the duty to state reasons laid down in Article 253 EC.

Action brought on 20 September 2006 — Torres v OHIM — Navisa Industrial Vinícola Española (MANSO DE VELASCO)**(Case T-259/06)**

(2006/C 294/108)

*Language in which the application was lodged: Spanish***Parties***Applicant:* Miguel Torres SA (Barcelona, Spain) (represented by: E. Armijo Chávarri and A. Castán Pérez-Gómez, lawyers)*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs)*Other party to the proceedings before the Board of Appeal of OHIM:* Navisa Industrial Vinícola Española SA**Form of order sought**

- annul the decision of the First Board of Appeal of OHIM of 29 June 2006 in Case R-865/2005-1;
- order OHIM to pay the costs.

Pleas in law and main arguments*Applicant for a Community trade mark:* Miguel Torres SA*Community trade mark concerned:* Word mark MANSO DE VELASCO for goods in Class 33 — application No 2261527*Proprietor of the mark or sign cited in the opposition proceedings:* Navisa Industrial Vinícola Española SA*Mark or sign cited in opposition:* Spanish word mark VELASCO for goods in Class 33*Decision of the Opposition Division:* Opposition upheld and refusal of the application*Decision of the Board of Appeal:* Dismissal of the appeal*Pleas in law:* Infringement of Article 8(1)(b) of Regulation (EC) No 40/94 ⁽¹⁾ given that there is no likelihood of confusion between the conflicting signs making them incompatible.

⁽¹⁾ Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ L 11 of 14.1.1994, p. 1).