

**Form of order sought**

- Annulment of the decision of the European Commission of 28 February 2008 (referred to in letter of 3 April 2008 sent by the Commission to the Liga para a Protecção da natureza (LPN)) whereby the Commission closed the file on the complaint No 2003/4523 relating to the construction of the Baixo Sabor dam, in so far as that decision wrongly presupposes compliance with the procedural formalities essential for the exercise of LPN's rights to participate in the administrative procedure relating to the 'Baixa Sabor Dam' project, initiated with complaint No 2003/4523 addressed to the European Commission;
- Annulment also of the decision whereby the Secretariat-General of the Commission tacitly rejected the confirmatory application submitted by LPN on 19 February 2008 under Article 8 of Regulation No 1049/2001 <sup>(1)</sup>
- Order payment to LPN of token compensation for the infringement of LPN's legitimate expectations that the Commission would act fairly and would comply with procedural rules;
- Request of the Commission, under Article 64 *et seq.* of the Rules of Procedure, that it submit to the Court the said decision to close the file of 28 February 2008, which has been neither notified to the applicant nor published;
- Order the Commission to pay the costs.

**Pleas in law and main arguments**Decision to close the file

The decision to close the file is invalid since it is based on a clear infringement of the right to present preliminary comments which the Commission itself granted to LPN.

The Commission has refused access to any material in the file which would have enabled LPN to exercise its right to submit preliminary comments, and has not specified the 'internal rules' (which it claims exist) on the basis of which that right was granted by it.

There has also been an infringement of the fundamental principles of good faith, fairness, transparency and proper administration, since the comments cannot even have been analysed before adoption of the final decision to close the file (clearly demonstrated by the fact that less than 24 hours elapsed between the sending of the preliminary comments — 40 pages in Portuguese, with fresh facts and arguments — and the decision to close the file).

Decision of implied rejection

Having regard to Regulations No 1367/2006 <sup>(2)</sup> and No 1049/2001, which confirm unequivocally the right of access to 'internal rules' based on which the right to submit preliminary comments is granted, the silence — first of the Commission, then of the Secretariat General on the confirmatory application — is inexplicable and flatly contravenes the right of access to documents and information laid down by those regulations.

<sup>(1)</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, p. 43).

<sup>(2)</sup> Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ L 264, p. 13).

**Action brought on 22 May 2008 — Forum 187 v Commission****(Case T-189/08)**

(2008/C 183/50)

*Language of the case: English***Parties**

*Applicant:* Forum 187 ASBL (Brussels, Belgium) (represented by: A. Sutton, G. Forwood, Barristers)

*Defendant:* Commission of the European communities

**Form of order sought**

- annul the contested decision insofar as it does not provide reasonable prospective transitional periods for the coordination centres covered by the judgment of the Court of Justice of 22 June 2006;
- order the Commission to pay costs of this case and
- take such other or further steps as justice may require.

**Pleas in law and main arguments**

In the present case, the applicant seeks the annulment of the Commission Decision 2008/283/EC of 13 November 2007 on the aid scheme implemented by Belgium for coordination centres established in Belgium, amending Decision 2003/757/EC <sup>(1)</sup> following the partial annulment of that first decision by the Court of Justice <sup>(2)</sup>. In that ruling, the ECJ held that the 2003 decision did not provide transitional measures for those coordination centres with an application for renewal of their authorisation pending on the date on which the contested decision was notified, or with an authorisation which expired at the same time as or shortly after the notification of that decision.

The contested decision creates transitional periods for the category of centres covered by the Court's ruling.

The applicant states in support of its contentions that the contested decision:

- is incompatible with Community law on existing aids, as consistently interpreted by the European Courts;
- denies the centres their legitimate expectations to benefit from a reasonable period after the Commission's final decision closing the existing aid procedure (notified to the applicant on 17 March 2008), to re-arrange their business and fiscal affairs;
- infringes Article 254(3) EC;
- by providing for the retroactive levying and payment taxes in an existing aid case, in effect orders the recovery of the aid as if it was illegal aid and this fails to respect the principle that existing aids schemes should only be changed prospectively, at a date after the final Commission decision closing the existing aid procedure;
- fails to respect the legitimate expectations of coordination centres which relied on the order of the President of the Court of Justice of 26 June 2003 <sup>(3)</sup> as a legal basis upon which they could obtain the renewal of authorisations;
- infringes the principles of equal treatment and non-discrimination by providing different treatment without objective justification for different groups of centres.

<sup>(1)</sup> OJ 2008 L 90, p. 7.

<sup>(2)</sup> Joined Cases C-182/03 and C-217/03, *Belgium and Forum 187 v Commission*, [2006] ECR I-5479].

<sup>(3)</sup> Joined Cases C-182/03 R and C-217/03 R, *Belgium and Forum 187 v Commission*, [2003] ECR I-6887].

**Action brought on 22 May 2008 — JOOP! v OHIM**

(Case T-191/08)

(2008/C 183/51)

*Language in which the application was lodged: German*

**Parties**

*Applicants:* JOOP! GmbH (Hamburg, Germany) (represented by: H. Schmidt-Hollburg, W. Möllering, A. Löhde, H. Leo, A. Witte, T. Frank, A. Theil, H.-P. Rühland, B. Willers and T. Rein)

*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs)

**Form of order sought**

- Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market of 6 March 2008 in Case R 1822/2007-1;
- Order the Office for Harmonisation in the Internal Market to pay the costs including those incurred during the appeal proceedings.

**Pleas in law and main arguments**

*Community trade mark concerned:* figurative mark representing an exclamation mark, for goods in Classes 14, 18 and 25 (Application No 5 332 176).

*Decision of the Examiner:* Rejection of the registration.

*Decision of the Board of Appeal:* Dismissal of the appeal.

*Pleas in law:* Infringement of Article 7(1)(b) and (c) of Regulation (EC) No 40/94 <sup>(1)</sup>, as the mark applied for has distinctive character and its availability does not have to be preserved.

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