

**Operative part of the judgment**

1. Acquiescence, within the meaning of Article 9(1) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks, is a concept of European Union law and the proprietor of an earlier trade mark cannot be held to have acquiesced in the long and well-established honest use, of which he has long been aware, by a third party of a later trade mark which is identical with that of the proprietor if that proprietor was not in any position to oppose that use.
2. Registration of the earlier trade mark in the Member State concerned does not constitute a prerequisite for the running of the period of limitation in consequence of acquiescence prescribed in Article 9(1) of Directive 89/104. The prerequisites for the running of that period of limitation, which it is for the national court to determine, are, first, registration of the later trade mark in the Member State concerned, second, the application for registration of that mark being made in good faith, third, use of the later trade mark by its proprietor in the Member State where it has been registered and, fourth, knowledge by the proprietor of the earlier trade mark that the later trade mark has been registered and used after its registration.
3. Article 4(1)(a) of Directive 89/104 must be interpreted as meaning that the proprietor of an earlier trade mark cannot obtain the cancellation of an identical later trade mark designating identical goods where there has been a long period of honest concurrent use of those two trade marks where, in circumstances such as those in the main proceedings, that use neither has nor is liable to have an adverse effect on the essential function of the trade mark which is to guarantee to consumers the origin of the goods or services.

<sup>(1)</sup> OJ C 24, 30.1.2010.

**Judgment of the Court (Fourth Chamber) of 22 September 2011 — European Commission v Kingdom of Spain**

(Case C-90/10) <sup>(1)</sup>

*(Failure of a Member State to fulfil obligations — ‘Habitats’ directive — Conservation of natural habitats — Wild fauna and flora — Articles 4(4) and 6(1) and (2) — Establishment of priorities for special areas of conservation and of adequate protection thereof — Failure to ensure adequate legal protection of the special areas of conservation in the Canary Islands)*

(2011/C 331/05)

Language of the case: Spanish

**Parties**

**Applicant:** European Commission (represented by: S. Pardo Quintillán and D. Recchia, Agents)

**Defendant:** Kingdom of Spain (represented by: F. Díez Moreno, Agent)

**Intervener in support of the defendant:** Republic of Finland (represented by M. Pere, Agent)

**Re:**

Failure of a Member State to fulfil obligations — Infringement of Article 4(4) and Article 6(1) and (2) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7) — Sites of Community importance — Conservation measures — Macaronesian biogeographical region

**Operative part of the judgment**

The Court:

## 1. Declares that

- by failing to establish, in accordance with Article 4(4) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, conservation priorities in relation to the special areas of conservation corresponding to the sites of Community importance for the Macaronesian biogeographical region identified by the Commission Decision of 28 December 2001 adopting the list of sites of Community importance for the Macaronesian biogeographical region, pursuant to Council Directive 92/43/EEC (OJ 2002 L 5, p. 16), and
- by failing to adopt and apply, in accordance with Article 6(1) and (2) of Directive 92/43/EEC, the appropriate conservation measures and a protection system to prevent the deterioration of habitats and significant disruption to species, ensuring the legal protection of the special areas of conservation corresponding to the sites referred to in Decision 2002/11/EC situated in Spanish territory,

the Kingdom of Spain has failed to fulfil its obligations under Article 4(4) and Article 6(1) and (2) of Directive 92/43/EEC;

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

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

<sup>(1)</sup> OJ C 113, 1.5.2010.

**Judgment of the Court (Third Chamber) of 22 September 2011 (reference for a preliminary ruling from the Bundesverwaltungsgericht — Germany) — Mesopotamia Broadcast A/S METV (C-244/10), Roj TV A/S (C-245/10) v Bundesrepublik Deutschland**

(Joined Cases C-244/10 and C-245/10) <sup>(1)</sup>

*(Directive 89/552/EEC — Television broadcasting activities — Possibility for a Member State to prohibit on its territory the activities of a television broadcaster established in another Member State — Ground based on infringement of the principles of international understanding)*

(2011/C 331/06)

Language of the case: German

**Referring court**

Bundesverwaltungsgericht