2. *Article 9 of the Directive effects an exhaustive harmonisation of the protection it confers, with the result that it precludes the national patent legislation from offering absolute protection to the patented product as such, regardless of whether it performs its function in the material containing it.*

3. *Article 9 of the Directive precludes the holder of a patent issued prior to the adoption of that directive from relying on the absolute protection for the patented product accorded to it under the national legislation then applicable.*

4. *Articles 27 and 30 of the Agreement on Trade-Related Aspects of Intellectual Property Rights, constituting Annex 1C to the Agreement establishing the World Trade Organisation (WTO), signed at Marrakesh on 15 April 1994 and approved by Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994) do not affect the interpretation given of Article 9 of the Directive.*

([1]) OJ C 313, 06.12.2008.

Judgment of the Court (Fourth Chamber) of 1 July 2010 — European Commission v Federal Republic of Germany

(Case C-442/08) ([1])

(Failure of a State to fulfil its obligations — EEC-Hungary Association Agreement — Subsequent verification — Failure to comply with rules on origin — Decision of the authorities of the exporting State — Appeal — Commission inspection mission — Customs duties — Post-clearance recovery — Own resources — Making available — Default interest)

(2010/C 234/11)

Language of the case: German

Parties

Applicant: European Commission (represented by: A. Caeiros and B. Conte, acting as Agents)

Defendant: Federal Republic of Germany (represented by: M. Lumma and B. Klein, acting as Agents)

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 2, 6, 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 (OJ 1989 L 155, p. 1), and the corresponding provisions of Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources (OJ 2000 L 130, p. 1) — Late payment of the Communities' own resources in the event of subsequent collection of import tariffs and refusal to pay default interest — Obligation of the importing Member State not to delay implementation of the procedure for the subsequent collection of import tariffs for goods whose certificate of origin was revoked by the authorities of the exporting State — Obligation of the importing Member State to pay default interest due in the event of late entry of the own resources payable in respect of tariff claims time-barred as a result of the inactivity of those authorities during the legal proceedings brought in the exporting State for the annulment of the decisions revoking the certificates of origin

Operative part of the judgment

The Court:

1. *Declares that, by allowing customs claims to become time-barred, despite the receipt of a mutual assistance communication, paying the own resources owed in this connection late and refusing to pay the default interest payable, the Federal Republic of Germany has failed to fulfil its obligations under Articles 2, 6 and 9 to 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 and the same articles of Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources;*

2. *Orders the Federal Republic of Germany to pay the costs.*

([1]) OJ C 6, 10.1.2009.

Judgment of the Court (Fourth Chamber) of 8 July 2010 (reference for a preliminary ruling from the Svea hovrätt — Sweden) — Criminal proceedings against Otto Sjöberg (C-447/08), Anders Gerdin (C-448/08)

(Joined Cases C-447/08 and C-448/08) ([1])

(Freedom to provide services — Gambling — Offer of gambling via the internet — Promotion of gambling organised in other Member States — Activities reserved to public or non-profit-making bodies — Criminal penalties)

(2010/C 234/12)

Language of the case: Swedish

Referring court

Svea hovrätt

Parties in the main proceedings

Otto Sjöberg (C-447/08), Anders Gerdin (C-448/08)

Re:

References for a preliminary ruling — Svea Hovrätt — Interpretation of Arts. 12, 43, 49 and 54 EC — National legislation prohibiting, by means of criminal penalties, the promotion of participation in a lottery only in the case where it is organised in another Member State

Operative part of the judgment

1. *Article 49 EC must be interpreted as not precluding legislation of a Member State, such as that at issue in the main actions, which prohibits the advertising to residents of that State of gambling organised for the purposes of profit by private operators in other Member States;*

2. *Article 49 EC must be interpreted as precluding legislation of a Member State subjecting gambling to a system of exclusive rights, according to which the promotion of gambling organised in another Member State is subject to stricter penalties than the promotion of gambling operated on national territory without a licence. It is for the referring court to ascertain whether that is true of the national legislation at issue in the main actions.*

([1]) OJ C 327, 20.12.2008.

Judgment of the Court (Third Chamber) of 1 July 2010 (reference for a preliminary ruling from the Helsingin käräjäoikeus — Finland) — Sanna Maria Parviainen v Finnair Oyj

(Case C-471/08) ([1])

(Social policy — Directive 92/85/EEC — Protection of the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding — Articles 5(2) and 11(1) — Worker temporarily transferred to another job during her pregnancy — Compulsory transfer because of a risk to her safety or health and that of her child — Pay less than the average pay received before the transfer — Previous pay made up of a basic salary and various supplementary allowances — Calculation of the salary to which a pregnant worker is entitled during the period of her temporary transfer)

(2010/C 234/13)

Language of the case: Finnish

Referring court

Helsingin käräjäoikeus

Parties to the main proceedings

Applicant: Sanna Maria Parviainen

Defendant: Finnair Oyj

Re:

Reference for a preliminary ruling — Helsingin käräjäoikeus — Interpretation of Article 11(1) of Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (OJ 1992 L 348, p. 1) — Air hostess having worked as a purser, transferred on account of her pregnancy to ground activities which pay less than the post occupied before the transfer — Maintenance of remuneration equivalent to the remuneration received prior to the transfer

Operative part of the judgment

Article 11(1) of Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) must be interpreted as meaning that a pregnant worker who, in accordance with Article 5(2) thereof, has been temporarily transferred on account of her pregnancy to a job in which she performs tasks other than those she performed prior to that transfer, is not entitled to the pay she received on average prior to that transfer. In addition to the maintenance of her basic salary, such a worker is entitled, pursuant to Article 11(1), to pay components or supplementary allowances relating to her professional status, such as allowances relating to her seniority, her length of service and her professional qualifications. Although Article 11(1) of Directive 92/85 does not preclude the use of a method of calculating remuneration to be paid to such a worker based on the average amount of the allowances linked to working conditions of all the air crew in the same pay grade during a given reference period, the failure to take account of those pay components or supplementary allowances must be regarded as contrary to the latter provision.

([1]) OJ C 19, 24.1.2009.