5. In light of Article 59 of the Vienna convention on the law of the Treaties, is the TRIPS agreement on trade-related aspects of intellectual property rights (OJ 1994 L 336), which was concluded within the context of the World Trade Organisation and entered into force on 1 January 1996, thus after the Community Agreement of 1993 (OJ 1994 L 337) entered into force, to be interpreted as meaning that its provisions governing homonyms in vine names apply in place of those of the Community Agreement of 1993 where there is inconsistency between the two, given that the parties to both agreements are the same?

6. In the case of two names that are homonyms and refer to two different wines produced in two different countries both party to the TRIPS Agreement (and both where the homonym relates to two geographical names used in both the countries party to TRIPS and where it relates to a geographical name in one country and the like name relates to a vine traditionally cultivated in another country party to TRIPS), must Articles 22 to 24 of the Third Part of Annex C to the Treaty Establishing the World Trade Organisation, which contains the TRIPS Agreement (OJ 1994 L 336), which entered into force on 1 January 1996, be interpreted as meaning that both the names may continue to be used provided that they have been used in the past by the respective producers either in good faith or for at least 10 years prior to 15 April 1994 (Article 24(4)) and each name clearly indicates the country or region or area of the origin of the wine to which it refers in such a way as not to mislead consumers?'

Reference for a preliminary ruling by the Arbeitsgericht Düsseldorf by order of that court of 5 May 2004 in the case of Ms Gül Demir against Securicor Aviation Limited, Securicor Aviation (Germany) Limited and Kötter Security GmbH & Co. KG.

(Case C-233/04)

(2004/C 201/20)

Reference has been made to the Court of Justice of the European Communities by order of the Arbeitsgericht Düsseldorf (Labour Court, Düsseldorf) (Germany) of 5 May 2004, received at the Court Registry on 3 June 2004, for a preliminary ruling in the case of Ms Gül Demir against Securicor Aviation Limited, Securicor Aviation (Germany) Limited and Kötter Security GmbH & Co. KG, on the following question:

1. In examining whether there is — irrespective of the question of ownership — a transfer of a business within the meaning of Article 1 of Directive 2001/23/EC [1] in the context of a fresh award of a contract, does the transfer of the assets from the original contractor to the new contractor — having regard to all the facts — presuppose their transfer for independent commercial use by the transferee? By extension, is conferment on the contractor of a right to determine the manner in which the assets are to be used in its own commercial interest the essential criterion for a transfer of assets? On that basis, is it necessary to determine the operational significance of the contracting authority's assets for the service provided by the contractor?

2. If the Court answers Question 1 in the affirmative:

   (a) Is it precluded to classify assets as being for independent commercial use if they are made available to the contractor by the contracting authority solely for their use and responsibility for maintaining those assets, including the associated costs, is borne by the contracting authority?

   (b) Is there independent commercial use by the contractor when, for the purpose of conducting airport security checks, it uses the walk-through metal detectors, hand-held metal detectors and X-ray equipment supplied by the contracting authority?

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[1] OJ L 82, 22.3.2001, p. 16.

Action brought on 4 June 2004 by the Commission of the European Communities against the Kingdom of Spain

(Case C-235/04)

(2004/C 201/21)

An action against the Kingdom of Spain was brought before the Court of Justice of the European Communities on 4 June 2004 by the Commission of the European Communities, represented by D.M. van Beek and Gregorio Valero Jordana, acting as Agents, with an address for service in Luxembourg.

The applicant claims that the Court should:

1. Declare that, by failing to classify territories of a sufficient number and size as special protection areas for birds in order to provide protection for all the species of birds listed in Annex I to Council Directive 79/409/EEC [1] of 2 April 1979 on the conservation of wild birds and for the migratory species not mentioned in the said Annex I, the Kingdom of Spain has failed to fulfil its obligations under that directive;

2. Order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

Article 4(1) and (2) of Directive 79/409/EC places on Members States an obligation to classify territories as special protection areas for the conservation of birds, to ensure effective protection of the species listed in Annex I to that directive and of regularly occurring migratory species, in order to guarantee their survival and reproduction in their area of distribution. That obligation relates, as a minimum, to all the most suitable territories, as regards their number and size, for the conservation of the species concerned, having regard to their protection requirements. What constitutes a sufficient number of special protection areas is determined by reference to the objective pursued.

The Member Stakes enjoy a degree of latitude in determining which territories best meet the requirements listed in Article 4 of the directive, but they must base their evaluations solely on scientific ornithological criteria. In the case of Spain, the inventory of important bird areas (IBA) drawn up by the Sociedad Española de Ornitología (Spanish Ornithological Society) in 1998 (SEO/Birdlife Inventory 98) constitutes the best documented and most accurate basis available for defining the most suitable territories for conservation and, in particular, for the survival and reproduction of important species. That inventory is based on balanced ornithological criteria, making it possible to indicate which places are most suitable for guaranteeing conservation of all the species mentioned in Annex 1 and other migratory species, and identifies the priority areas for the conservation of birds in Spain.

From a comparison of the data of the SEO/Birdlife Inventory 98 with the special protection areas designated by the Kingdom of Spain, for Spanish territory as a whole, and from a more detailed analysis by the Autonomous Communities, it can be inferred that the number and size of the areas classified as special protection areas fall short of what scientific evidence indicates as the areas most suitable for providing adequate protection of the birds covered by Article 4 of the directive.

[1] OJ L 103 of 25.4.1979, p. 1.

Reference for a preliminary ruling by the Tribunale di Cagliari by order of that court of 14 May 2004 in the case of Enirisorse SpA and Sotacarbo SpA

(Case C-237/04)

(2004/C 201/22)

Reference has been made to the Court of Justice of the European Communities by order of the Tribunale di Cagliari (Cagliari District Court) of 14 May 2004, received at the Court Registry on 7 June 2004, for a preliminary ruling in the case of Enirisorse SpA and Sotacarbo SpA on the following questions:

(a) Does Article 33 of Law [273/02] implement an incompatible State aid in favour of Sotacarbo SpA., within the meaning of Article 87 of the Treaty and does it do so, moreover, unlawfully in so far as the Commission was not informed of that aid, within the meaning of Article 88(3) EC?

(b) Does Article 33 of Law [273/02] conflict with Articles 43, 44, 48 and 49 et seq. EC, concerning freedom of establishment and the free movement of services?

Action brought on 14 June 2004 by the Commission of the European Communities against the Hellenic Republic

(Case C-250/04)

(2004/C 201/23)

An action against the Hellenic Republic was brought before the Court of Justice of the European Communities on 14 June 2004 by the Commission of the European Communities, represented by Georgios Zavvos and Michael Shotter, of its Legal Service.

The Commission claims that the Court should:

— declare that, by failing to adopt, or in any event to notify to the Commission, the laws, regulations and administrative provisions necessary to comply with Directive 2002/19/EC [1] of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive), the Hellenic Republic has failed to fulfil its obligations under that directive;

— order the Hellenic Republic to pay the costs.