

Reference for a preliminary ruling from the Oberster Patent- und Markensenat (Austria) lodged on 27 September 2007 — Verein Radetzky-Orden v Bundesvereinigung Kameradschaft 'Feldmarschall Radetzky'

(Case C-442/07)

(2007/C 283/40)

Language of the case: German

Referring court

Oberster Patent — und Markensenat

Parties to the main proceedings

Applicant: Verein Radetzky-Orden

Defendant: Bundesvereinigung Kameradschaft 'Feldmarschall Radetzky'.

Question referred

Is Article 12(1) of [First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks] to be construed as meaning that a trade mark is put to (genuine) use to distinguish goods and services of one undertaking from those of other undertakings in the case where a non-profit-making association uses the trade mark in announcements for events, on business papers and on advertising material and that trade mark is used by the association's members when collecting and distributing donations inasmuch as those members wear badges featuring that trade mark?

Reference for a preliminary ruling from the Sąd Rejonowy Gdańsk — Północ w Gdańsku (Republic of Poland) lodged on 27 September 2007 — MG Probud Gdynia Sp. z o.o. v Hauptzollamt Saarbrücken

(Case C-444/07)

(2007/C 283/41)

Language of the case: Polish

Referring court

Sąd Rejonowy Gdańsk — Północ w Gdańsku (Poland)

Parties to the main proceedings

Applicant: MG Probud Gdynia Sp. z o.o., Gdynia

Defendant: Hauptzollamt Saarbrücken

Questions referred

- 1 In the light of Articles 3, 4, 16, 17 and 25 of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings⁽¹⁾, that is to say, in the light of the rules governing the jurisdiction of the courts of the State in which insolvency proceedings are opened, the law applicable to those proceedings and the conditions governing, and the effects of recognition of, those proceedings, do the public administrative authorities of a Member State have the power to seize funds held in the bank account of an economic subject following a declaration of its insolvency made in another EU Member State (application of the so-called seizure of assets), thereby contravening the national legal rules of the Member State which opened such proceedings (Article 4 of Regulation No 1346/2000), where the conditions for the application of the provisions of Articles 5 and 10 of that regulation do not exist?
- 2 In the light of Article 25(1) et seq. of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings, may the administrative authorities of the Member State in which secondary insolvency proceedings have not been opened and which must recognise the insolvency proceedings pursuant to Article 16 of that regulation refuse, on the basis of domestic legal rules, to recognise decisions made by the State of the opening of insolvency proceedings relating to the conduct and closure of insolvency proceedings pursuant to Articles 31 to 51 of the Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters?

⁽¹⁾ OJ 2000 L 160, p. 1.

Appeal brought on 27 September 2007 by Ayuntamiento de Madrid and Madrid Calle 30, SA against the order of the Court of First Instance (Fourth Chamber) delivered on 12 July 2007 in Case T-177/06 Ayuntamiento de Madrid and Madrid Calle 30, SA v Commission of the European Communities

(Case C-448/07 P)

(2007/C 283/42)

Language of the case: Spanish

Parties

Appellants: Ayuntamiento de Madrid and Madrid Calle 30, SA (represented by: J.L. Buendía Sierra and R. González-Gallarza Granizo, abogados)

Other party to the proceedings: Commission of the European Communities

Form of order sought

- annul the order of the Court of First Instance (Fourth Chamber) of 12 July 2007 in Case T-177/06 Ayuntamiento de Madrid and Madrid Calle 30, SA v Commission of the European Communities;
- refer the case back to the Court of First Instance for judgment.

Pleas in law and main arguments

In the order under appeal, the Court of First Instance held inadmissible the action brought by Ayuntamiento de Madrid and Madrid Calle 30, SA, which sought the annulment of the classification by the Commission (Eurostat) of Madrid Calle 30 in the 'public administration' sector, in accordance with the 'European System of Accounts' (ESA 95) provided for in Annex A to Council Regulation (EC) No 2223/96 ⁽¹⁾ of 25 June 1996. That classification was based on accounts published by the Commission (Eurostat) on 24 April 2006, using the data of 2005 on the government deficit and government debt for the application of the Protocol on the excessive deficit procedure annexed to the EC Treaty.

The appellants consider that the Court of First Instance erred in holding that the news release 48/2006 did not constitute an implied decision of the Commission (Eurostat) with binding legal effects and consequently was not a legal act against which an action could be brought.

In support of their appeal, the appellants emphasise the central role of the Commission (Eurostat) in the final approval of the figures of government deficit and debt of the Member States, based not only on the relevant legislation (Article 104 EC, the Protocol on the excessive deficit procedure and Council Regulation (EC) No 3605/93 ⁽²⁾ of 22 November 1993 on the application of the Protocol on the excessive deficit procedure annexed to the Treaty establishing the European Community, as amended by Regulation (EC) No 2103/2005 ⁽³⁾) but also on the institutional architecture of the regulatory system.

The appellants consider that in the order under appeal the Court of First Instance came to an erroneous conclusion by not accepting that the Commission (Eurostat) is obliged to check whether the government accounts comply with the accounting rules of ESA 95 before publishing the data on the government deficit and debt of the Member States. The appellants add that the absence of reservations and/or amendments on the part of the Commission (Eurostat), within the relevant period laid down in Regulation (EC) No 3605/93, as amended, implies that the act which has been approved without reservations and/or amendments becomes final and is therefore a legal act against which an action can be brought. The appellants further claim that the act in question entails legal effects with significant

consequences in various areas, such as for example, under the excessive deficit procedure or the Structural Funds procedure.

⁽¹⁾ Council Regulation (EC) No 2223/96 of 25 June 1996 on the European system of national and regional accounts in the Community (OJ L 310, p. 1).

⁽²⁾ OJ L 332, p. 7.

⁽³⁾ Council Regulation (EC) No 2103/2005 of 12 December 2005 amending Regulation (EC) No 3605/93 as regards the quality of statistical data in the context of the excessive deficit procedure (OJ L 337, p. 1).

Action brought on 3 October 2007 — Commission of the European Communities v Italian Republic

(Case C-449/07)

(2007/C 283/43)

Language of the case: Italian

Parties

Applicant: Commission of the European Communities (represented by: E. Montaguti and R. Vidal Puig, acting as Agents)

Defendant: Italian Republic

Forms of order sought

The applicant claims that the Court should:

- declare that, by not adopting (all) the laws, regulations and administrative provisions necessary to comply with Directive 2004/36/EC ⁽¹⁾ of the European Parliament and of the Council of 21 April 2004 on the safety of third-country aircraft using Community airports, the Italian Republic has failed to fulfil its obligations under Article 11 of that Directive;
- order the Italian Republic to pay the costs.

Pleas in law and main arguments

The period prescribed for the transposition of Directive 2004/36/EC into national law expired on 30 April 2006.

⁽¹⁾ OJ 2004 L 143, p. 76.