

**Re:**

Appeal brought against the judgment of the Court of First Instance (Fifth Chamber, Extended Composition) of 10 April 2008 in Case T-271/03 *Deutsche Telekom v Commission*, by which the Court of First Instance dismissed the application for annulment of Commission Decision 2003/707/EC of 21 May 2003 relating to a proceeding under Article 82 EC (Case COMP/C-1/37.451, 37.578, 37.579 — *Deutsche Telekom AG*) (OJ 2003 L 263, p. 9), and, in the alternative, reduction of the fine imposed on the applicant — Abuse of a dominant position — Charges for access to the fixed-line telecommunications network in Germany — Abusive nature of pricing practices of a dominant undertaking charging its competitors tariffs for wholesale access to the local loop that are higher than the prices it charges for retail access to the local network

**Operative part of the judgment**

The Court:

1. Dismisses the appeal;
2. Orders *Deutsche Telekom AG* to pay the costs.

(<sup>1</sup>) OJ C 223, 30.8.2008.

**Judgment of the Court (First Chamber) of 28 October 2010**  
**— European Commission v Republic of Lithuania**

(Case C-350/08) (<sup>1</sup>)

*(Failure of a Member State to fulfil obligations — 2003 Act of Accession — Obligations of the accession States — Acquis communautaire — Directives 2001/83/EC and 2003/63/EC — Regulation (EEC) No 2309/93 and Regulation (EC) No 726/2004 — Medicinal products for human use — Similar biological medicinal products from biotechnical processes — National marketing authorisation granted before accession)*

(2010/C 346/07)

Language of the case: Lithuanian

**Parties**

*Applicant:* European Commission (represented by: A. Steiblytė and M. Šimerdová, acting as Agents)

*Defendant:* Republic of Lithuania (represented by: D. Kriauciūnas and R. Mackevičienė, acting as Agents)

**Re:**

Failure of a Member State to fulfil obligations — Breach of Article 6(1) of and Section 4 of Part II of Annex I to Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ 2001 L 311, p. 67), as amended by Directive 2003/63/EC, and of Article 3(1) of Council Regulation (EEC) No 2309/93 of 22 July 1993 laying

down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Agency for the Evaluation of Medicinal Products (OJ 1993 L 214, p. 1) and Article 3(1) of Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency (OJ 2004 L 136, p. 1) — Maintenance of the national marketing authorisation for the similar biological medicinal product 'Grasalva'

**Operative part of the judgment**

The Court:

1. Declares that, by maintaining in force the national marketing authorisation for the medicinal product *Grasalva*, the Republic of Lithuania has failed to fulfil its obligations under Article 6(1) of Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use, as amended by Commission Directive 2003/63/EC of 25 June 2003, under Article 3(1) of Council Regulation (EEC) No 2309/93 of 22 July 1993 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Agency for the Evaluation of Medicinal Products, and under Article 3(1) of Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency;
2. Orders the Republic of Lithuania to pay the costs.

(<sup>1</sup>) OJ C 247, 27.9.2008.

**Judgment of the Court (Third Chamber) of 21 October 2010** (reference for a preliminary ruling from the *Audiencia Provincial de Barcelona — Spain*) — *PADAWAN SL v Sociedad General de Autores y Editores (SGAE)*

(Case C-467/08) (<sup>1</sup>)

*(Approximation of laws — Copyright and related rights — Directive 2001/29/EC — Reproduction right — Exceptions and limitations — Private copying exception — Definition of 'fair compensation' — Uniform interpretation — Implementation by the Member States — Criteria — Limits — Private copying levy applied to digital reproduction equipment, devices and media)*

(2010/C 346/08)

Language of the case: Spanish

**Referring court**

Audiencia Provincial de Barcelona

**Parties to the main proceedings**

Applicant: PADAWAN SL

Defendant: Sociedad General de Autores y Editores (SGAE)

In the presence of: Entidad de Gestión de Derechos de los Productores Audiovisuales (EGEDA), Asociación de Artistas Intérpretes o Ejecutantes — Sociedad de Gestión de España (AIE), Asociación de Gestión de Derechos Intelectuales (AGEDI), Centro Español de Derechos Reprográficos (CEDRO),

**Re:**

Reference for a preliminary ruling — Audiencia Provincial de Barcelona — Interpretation of Article 5(2)(b) of Directive 2001/29/EC of the European Parliament and the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ 2009 L 167, p. 10) — Reproduction right — Exceptions and limitations — Fair compensation — Private copying levy system applied to digital equipment, devices and media

**Operative part of the judgment**

1. The concept of 'fair compensation', within the meaning of Article 5(2)(b) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, is an autonomous concept of European Union law which must be interpreted uniformly in all the Member States that have introduced a private copying exception, irrespective of the power conferred on the Member States to determine, within the limits imposed by European Union law in particular by that directive, the form, detailed arrangements for financing and collection, and the level of that fair compensation.
2. Article 5(2)(b) of Directive 2001/29 must be interpreted as meaning that the 'fair balance' between the persons concerned means that fair compensation must be calculated on the basis of the criterion of the harm caused to authors of protected works by the introduction of the private copying exception. It is consistent with the requirements of that 'fair balance' to provide that persons who have digital reproduction equipment, devices and media and who on that basis, in law or in fact, make that equipment available to private users or provide them with copying services are the persons liable to finance the fair compensation, inasmuch as they are able to pass on to private users the actual burden of financing it.
3. Article 5(2)(b) of Directive 2001/29 must be interpreted as meaning that a link is necessary between the application of the levy intended to finance fair compensation with respect to digital reproduction equipment, devices and media and the deemed use of them for the purposes of private copying. Consequently, the indis-

criminate application of the private copying levy, in particular with respect to digital reproduction equipment, devices and media not made available to private users and clearly reserved for uses other than private copying, is incompatible with Directive 2001/29.

(<sup>1</sup>) OJ C 19, 24.1.2009, p. 12.

**Judgment of the Court (Grand Chamber) of 26 October 2010 — United Kingdom of Great Britain and Northern Ireland v Council of the European Union**

(Case C-482/08) (<sup>1</sup>)

*(Action for annulment — Decision 2008/633/JHA — Access for consultation of the Visa Information System (VIS) by designated authorities of Member States and by the European Police Office (Europol) for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences — Development of provisions of the Schengen acquis — Exclusion of the United Kingdom from the procedure for adopting the decision — Validity)*

(2010/C 346/09)

Language of the case: English

**Parties**

Applicant: United Kingdom of Great Britain and Northern Ireland (represented by: V. Jackson and I. Rao, Agents and by T. Ward, barrister)

Defendant: Council of the European Union (represented by: J. Schutte and R. Szostak, Agents)

Interveners in support of the defendant: Kingdom of Spain (represented by J.M. Rodríguez Cárcamo, Agent), European Commission (represented by M. Wilderspin and B.D. Simon, Agents)

**Re:**

Article 35(6) EU — Annulment of Council Decision 2008/633/JHA of 23 June 2008 concerning access for consultation of the Visa Information System (VIS) by designated authorities of Member States and by Europol for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences (OJ 2008 L 218, p. 129) — Exclusion of the United Kingdom from the procedure for adopting that decision — Infringement of essential procedural requirement

**Operative part of the judgment**

The Court:

1. Dismisses the action;