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(Information)

COURT OF JUSTICE

COURT OF JUSTICE

Judgment of the Court (First Chamber) of 13 July 2006 (reference for a preliminary ruling from the Oberlandesgericht Düsseldorf — Germany) — Gesellschaft für Antriebstechnik mbH & Co. KG (GAT) v Lamellen und Kupplungsbau Beteiligungs KG (LuK)

(Case C-4/03) ([1])

(Brussels Convention — Article 16(4) — Proceedings concerned with the registration or validity of patents — Exclusive jurisdiction of the court of the place of deposit or registration — Declaratory action to establish no infringement — Question of the patent's validity raised indirectly)

(2006/C 224/01)

Language of the case: German

Referring court

Oberlandesgericht Düsseldorf

Parties to the main proceedings

Applicant: Gesellschaft für Antriebstechnik mbH & Co. KG (GAT)

Defendant: Lamellen und Kupplungsbau Beteiligungs KG (LuK)

Re:

Reference for a preliminary ruling — Oberlandesgericht Düsseldorf — Interpretation of Article 16(4) of the Brussels Convention — Exclusive jurisdiction 'in proceedings concerned with the … validity of patents' — Whether that covers a declaratory action to establish that a patent has (or has not) been infringed, in the course of which one party pleads that the patent is invalid

Operative part of the judgment

The Court:

Article 16(4) of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as last amended by the Convention of 29 November 1996 on the Accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden, is to be interpreted as meaning that the rule of exclusive jurisdiction laid down therein concerns all proceedings relating to the registration or validity of a patent, irrespective of whether the issue is raised by way of an action or a plea in objection.

([1]) OJ C 55, 8.3.2003.

Judgment of the Court (First Chamber) of 13 July 2006 (reference for a preliminary ruling from the Hoge Raad der Nederlanden — Netherlands) — Roche Nederland BV, Roche Diagnostic Systems Inc., Roche NV, Hoffman-La Roche AG, Produits Roch SA, Roche Products Ltd, F. Hoffmann-La Roche AG, Hoffman-La Roche Wien GmbH, Roche AB v Frederick Primus, Milton Goldenberg

(Case C-539/03) ([1])

(Brussels Convention — Article 6(1) — More than one defendant — Jurisdiction of the courts of the place where one of the defendants is domiciled — Action for infringement of a European patent — Defendants established in different Contracting States — Patent infringements committed in a number of Contracting States)

(2006/C 224/02)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicants: Roche Nederland BV, Roche Diagnostic Systems Inc., Roche NV, Hoffman-La Roche AG, Produits Roche SA, Roche Products Ltd, F. Hoffmann-La Roche AG, Hoffmann-La Roche Wien GmbH, Roche AB

Defendants: Frederick Primus, Milton Goldenberg

Re:

Reference for a preliminary ruling — Hoge Raad der Nederlanden — Interpretation of Article 6(1) of the Brussels Convention — More than one defendant — Actions for infringement of a European patent brought against companies established in various European States — Jurisdiction of the Courts of the principal place of business of one of the companies.

Operative part of the judgment

Article 6(1) of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended most recently by the Convention of 29 November 1996 on the Accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden, must be interpreted as meaning that it does not apply in European patent infringement proceedings involving a number of companies established in various Contracting States in respect of acts committed in one or more of those States even where those companies, which belong to the same group, may have acted in an identical or similar manner in accordance with a common policy elaborated by one of them.

([1]) OJ C 59, 6.3.2004.

Judgment of the Court (Third Chamber) of 13 July 2006 — Commission of the European Communities v Volkswagen AG

(Case C-74/04 P) ([1])

(Appeal — Competition — Article 81(1) EC — Distribution of motor vehicles — Meaning of 'agreements between undertakings' — Proof of the existence of an agreement)

(2006/C 224/03)

Language of the case: German

Parties

Appellant: Commission of the European Communities (represented by: W. Mölls, Agent, H.-J. Freund, Rechtsanwalt)

Other party to the proceedings: Volkswagen AG (represented by: R. Bechtold and S. Hirsbrunner, Rechtsanwälte)

Re:

Appeal against the judgment of the Court of First Instance (Fourth Chamber) of 3 December 2003 in Case T-208/01 *Volkswagen AG* v *Commission*, annulling Commission Decision 2001/711/EC of 29 June 2001 relating to a proceeding under Article 81 of the EC Treaty (Case COM P/F-2/36.693 — Volkswagen) (OJ 2001 L 262, p. 14) — Conduct of Volkswagen vis-à-vis its German dealers in connection with the marketing of the new 'Volkswagen Passat Variant' model

Operative part of the judgment

The Court hereby:

1. *Dismisses the appeal;*

2. *Orders the Commission of the European Communities to pay the costs.*

([1]) OJ C 94, 17.4.2004.

Judgment of the Court (Grand Chamber) of 18 July 2006 — Commission of the European Communities v Italian Republic

(Case C-119/04) ([1])

(Failure of a Member State to fulfil obligations — Judgment of the Court establishing failure — Non-compliance — Article 228 EC — Financial penalties — Recognition of acquired rights of former foreign-language assistants)

(2006/C 224/04)

Language of the case: Italian

Parties

Applicant: Commission of the European Communities (represented by: E. Traversa and L. Pignataro, Agents)

Defendant: Italian Republic (represented by: I. M. Braguglia, Agent, and M. Fiorilli, Avvocato)

Re:

Failure of a Member State to fulfil obligations — Article 228 EC — Failure to comply with the judgment of 26 June 2001 in Case C-212/99 — Infringement of Article 48 EC (now, after amendment, Article 39 EC) — Recognition of the acquired rights of former foreign-language assistants — Application for the imposition of a penalty payment

Operative part of the judgment

1. *The Court declares that by not ensuring, at the date of expiry of the period prescribed in the reasoned opinion, recognition of the rights acquired by former assistants who have become associates and linguistic experts, even though such recognition is guaranteed to all national workers, the Italian Republic has failed to take all the measures necessary to comply with the judgment of 26 June 2001 in Case C-212/99 Commission v Italy and has therefore failed to fulfil its obligations under Article 228 EC.*

2. *Dismisses the action as to the remainder;*

3. *Orders the Italian Republic to pay the costs.*

([1]) OJ C 106, 30.4.2004.

Judgment of the Court (Third Chamber) of 13 July 2006 (references for a preliminary ruling from the Giudice di Pace di Bitonto — Italy) — Vincenzo Manfredi v Lloyd Adriatico Assicurazioni SpA (C-295/04), Antonio Cannito v Fondiaria Sai SpA (C-296/04), Nicolò Tricarico v Assitalia SpA (C-297/04) and Pasqualina Murgolo v Assitalia SpA (C-298/04)

(Joined Cases C-295/04 to C-298/04) [1]

(Article 81 EC — Competition — Agreements, decisions and concerted practices — Accidents caused by motor vehicles, vessels and mopeds — Compulsory civil liability insurance — Increase in premiums — Effect on trade between Member States — Right of third parties to claim compensation for harm suffered — National courts and tribunals having jurisdiction — Limitation period — Punitive damages)

(2006/C 224/05)

Language of the case: Italian

Referring court

Giudice di Pace di Bitonto

Parties to the main proceedings

Applicants: Vincenzo Manfredi (C-295/04), Antonio Cannito (C-296/04), Nicolò Tricarico (C-297/04), Pasqualina Murgolo (C-298/04)

Defendants: Lloyd Adriatico Assicurazioni SpA, Fondiaria Sai SpA, Assitalia SpA

Re:

Interpretation of Article 81 EC — Concerted practice between Italian and foreign insurance companies established in Italy covering car and motorcycle insurance contracts — Exchange of information which makes it possible to increase civil liability insurance premiums not justified by market conditions

Operative part of the judgment

1. *An agreement or concerted practice, such as that at issue in the main proceedings, between insurance companies, consisting of a mutual exchange of information that makes possible an increase in premiums for compulsory civil liability insurance relating to accidents caused by motor vehicles, vessels and mopeds, not justified by market conditions, which infringes national rules on the protection of competition, may also constitute an infringement of Article 81 EC if, in the light of the characteristics of the national market at issue, there is a sufficient degree of probability that the agreement or concerted practice at issue may have an influence, direct or indirect, actual or potential, on the sale of those insurance policies in the relevant Member State by operators established in other Member States and that that influence is not insignificant.*

2. *Article 81 EC must be interpreted as meaning that any individual can rely on the invalidity of an agreement or practice prohibited under that article and, where there is a causal relationship between the latter and the harm suffered, claim compensation for that harm.*

   In the absence of Community rules governing the matter, it is for the domestic legal system of each Member State to prescribe the detailed rules governing the exercise of that right, including those on the application of the concept of 'causal relationship', provided that the principles of equivalence and effectiveness are observed.

3. *In the absence of Community rules governing the matter, it is for the domestic legal system of each Member State to designate the courts and tribunals having jurisdiction to hear actions for damages based on an infringement of the Community competition rules and to prescribe the detailed procedural rules governing those actions, provided that the provisions concerned are not less favourable than those governing actions for damages based on an infringement of national competition rules and that those national provisions do not render practically impossible or excessively difficult the exercise of the right to seek compensation for the harm caused by an agreement or practice prohibited under Article 81 EC.*

4. *In the absence of Community rules governing the matter, it is for the domestic legal system of each Member State to prescribe the limitation period for seeking compensation for harm caused by an agreement or practice prohibited under Article 81 EC, provided that the principles of equivalence and effectiveness are observed.*

   In that regard, it is for the national court to determine whether a national rule which provides that the limitation period for seeking compensation for harm caused by an agreement or practice prohibited under Article 81 EC begins to run from the day on which that prohibited agreement or practice was adopted, particularly where it also imposes a short limitation period that cannot be suspended, renders it practically impossible or excessively difficult to exercise the right to seek compensation for the harm suffered.

5. *In the absence of Community rules governing that field, it is for the domestic legal system of each Member State to set the criteria for determining the extent of the damages for harm caused by an agreement or practice prohibited under Article 81 EC, provided that the principles of equivalence and effectiveness are observed.*

   Therefore, first, in accordance with the principle of equivalence, if it is possible to award particular damages, such as exemplary or punitive damages, in domestic actions similar to actions founded on the Community competition rules, it must also be possible to award such damages in actions founded on Community rules. However, Community law does not prevent national courts from taking steps to ensure that the protection of the rights guaranteed by Community law does not entail the unjust enrichment of those who enjoy them.

Secondly, it follows from the principle of effectiveness and the right of individuals to seek compensation for loss caused by a contract or by conduct liable to restrict or distort competition that injured persons must be able to seek compensation not only for actual loss (damnum emergens) but also for loss of profit (lucrum cessans) plus interest.

([1]) OJ C 251, 9.10.2004.

Judgment of the Court (Second Chamber) of 29 June 2006 — Commission of the European Communities v SGL Carbon AG, Tokai Carbon Co. Ltd, Nippon Carbon Co. Ltd, Showa Denko KK, GrafTech International Ltd, formerly UCAR International Inc., SEC Corp., The Carbide/Graphite Group Inc.

(Case C-301/04 P) ([1])

(Appeals — Competition — Agreements, decisions and concerted practices — Graphite electrodes — Article 81(1) EC — Fines — Guidelines on the method of setting fines — Leniency Notice — Production of documents in a Commission investigation)

(2006/C 224/06)

Language of the case: German

Parties

Appellant: Commission of the European Communities (represented by: W. Mölls, W. Wils and H. Gading, Agents)

Other parties to the proceedings: SGL Carbon AG (represented by: M. Klusmann, Rechtsanwalt), Tokai Carbon Co. Ltd, established in Tokyo (Japan), Nippon Carbon Co. Ltd, established in Tokyo, Showa Denko KK, established in Tokyo, GrafTech International Ltd, formerly UCAR International Inc., established in Wilmington (United States), SEC Corp., established in Amagasaki (Japan), The Carbide/Graphite Group Inc.

Re:

Appeal brought against the judgment of 29 April 2004 of the Court of First Instance (Second Chamber) in Joined Cases T-236/01, T-239/01, T-244/01 to T-246/01, T-251/01 and T-252/01 *Tokai Carbon and Others* v *Commission* in so far as the Court of First Instance reduced the amount of the fine which had been imposed on SGL Carbon (Case T-239/01) by Commission Decision 2002/271/EC of 18 July 2001 relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement — Case COMP/E-1/36.490 — Graphite electrodes (OJ 2002 L 100, p. 1)

Operative part of the judgment

The Court:

1. *Sets aside the first indent of paragraph 2 of the operative part of the judgment of the Court of First Instance of the European Communities of 29 April 2004 in Joined Cases T-236/01, T-239/01, T-244/01 to T-246/01, T-251/01 and T-252/01 Tokai Carbon and Others v Commission;*

2. *Sets at EUR 75.7 million the amount of the fine imposed on SGL Carbon AG by Article 3 of Commission Decision 2002/271/EC of 18 July 2001 relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement — Case COMP/E-1/36.490 — Graphite electrodes;*

3. *Orders SGL Carbon AG to pay the costs.*

([1]) OJ C 262, 23.10.2004.

Judgment of the Court (Grand Chamber) of 11 July 2006 (reference for a preliminary ruling from the Verwaltungsgericht Frankfurt am Main, Germany) — Franz Egenberger GmbH Molkerei und Trockenwerk v Bundesanstalt für Landwirtschaft und Ernährung

(Case C-313/04) ([1])

(Milk and milk products — Regulation (EC) No 2535/2001 — New Zealand butter — Import licence procedures — Inward Monitoring Arrangement (IMA 1) certificate)

(2006/C 224/07)

Language of the case: German

Referring court

Verwaltungsgericht Frankfurt am Main

Parties to the main proceedings

Applicant: Franz Egenberger GmbH Molkerei und Trockenwerk

Defendant: Bundesanstalt für Landwirtschaft und Ernährung

Intervening party: Fonterra (Logistics) Ltd

Re:

Reference for a preliminary ruling — Verwaltungsgericht Frankfurt am Main — Validity of Arts. 25(1) and 35(2) of Commission Regulation (EC) No 2535/2001 of 14 December 2001 laying down detailed rules for applying Council Regulation (EC) No 1255/1999 as regards the import arrangements for milk and milk products and opening tariff quotas (OJ 2001 L 341, p. 29) — Issue of an import certificate, for which an application may be submitted only in the United Kingdom, for New Zealand butter subject to the requirement of presentation of an Inward Monitoring Arrangement (IMA 1) certificate — Infringement of Arts. 28, 34(2) and 82, first paragraph, EC and of Arts 26(2) and 29(2) of Council Regulation (EC) No 1255/1999 of 17 May 1999 (OJ 1999 L 160, p. 48) — Infringement of Art. XVII 1(a) of the GATT agreement — Infringement of Art. 1(3) of the Agreement on Import Licensing Procedures (OJ 1994 L 336, p. 151)

Operative part of the judgment

1. *Article 35(2) of Commission Regulation (EC) No 2535/2001 of 14 December 2001 laying down detailed rules for applying Council Regulation (EC) No 1255/1999 as regards the import arrangements for milk and milk products and opening tariff quotas is invalid inasmuch as it provides that applications for import licences for New Zealand butter at reduced duty may be lodged solely with the competent authorities of the United Kingdom.*

2. *Articles 25 and 32 of Regulation No 2535/2001, read in conjunction with Annexes III, IV and XII to that regulation, are invalid since they permit discrimination in the issue of import licences for New Zealand butter at reduced duty.*

([1]) OJ C 239, 25.9.2004.

Judgment of the Court (Third Chamber) of 18 July 2006 (reference for a preliminary ruling from the Consiglio di Stato — Italy) — Nuova società di telecomunicazioni SpA v Ministero delle Comunicazioni, ENI SpA,

(Case C-339/04) ([1])

(Telecommunication services — Directive 97/13/EC — Fees and charges applicable to individual licences)

(2006/C 224/08)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicant: Nuova società di telecomunicazioni SpA

Defendants: Ministero delle Comunicazioni, ENI SpA,

Re:

Reference for a preliminary ruling — Consiglio Di Stato (Italy) — Interpretation of Articles 6 and 11 of Directive 97/13/EC of the European Parliament and of the Council of 10 April 1997 on a common framework for general authorisations and individual licences in the field of telecommunications services (OJ 1997 L 117, p. 15) — Compatibility with Community law of a national provision requiring companies providing a public service and having created telecommunications networks to create a separate company for the exercise of any activity in the field of telecommunications

Operative part of the judgment

Article 11 of Directive 97/13/EC of the European Parliament and of the Council of 10 April 1997 on a common framework for general authorisations and individual licences in the field of telecommunications services precludes a national provision, such as that at issue in the main proceedings, which requires the holder of an individual licence for the provision of a public telecommunications network, for which it has paid a fee as provided for in that article, to pay an additional fee in respect of the private use of that network calculated in accordance with criteria which do not correspond to those laid down in that article.

([1]) OJ C 251, 9.10.2004.

Judgment of the Court (Third Chamber) of 6 July 2006 (reference for a preliminary ruling from the Bundesfinanzhof (Germany) — Robert Hans Conijn v Finanzamt Hamburg-Nord

(Case C-346/04) ([1])

(Freedom of establishment — Income tax — Tax return — Tax advice — Right to deduct costs)

(2006/C 224/09)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Robert Hans Conijn

Defendant: Finanzamt Hamburg-Nord

Re:

Reference for a preliminary ruling — Bundesfinanzhof — Interpretation of Article 52 of the EC Treaty (now, after amendment, Article 43 EC) — National income-tax law — Non-residents precluded from exercising the right to deduct the costs incurred in obtaining tax advice for the purpose of preparing their income-tax return.

Operative part of the judgment

Article 52 of the EC Treaty (now, after amendment, Article 43 EC) precludes national legislation which does not allow a person with restricted tax liability to deduct from his taxable income, as special expenditure, the costs incurred by him in obtaining tax advice for the purpose of preparing his tax return, in the same way as a person with unrestricted tax liability.

([1]) OJ C 251, 9.10.2004.

Judgment of the Court (Grand Chamber) of 18 July 2006 (Reference for a preliminary ruling from the Tribunal du travail de Bruxelles — Belgium) — Gérald De Cuyper v Office national de l'emploi

(Case C-406/04) ([1])

(Freedom to move and reside within the territory of the European Union — Unemployment allowances — Requirement actually to reside in national territory)

(2006/C 224/10)

Language of the case: French

Referring court

Tribunal du travail de Bruxelles

Parties to the main proceedings

Applicant: Gérald De Cuyper

Defendant: Office national de l'emploi

Re:

Reference for a preliminary ruling — Tribunal du travail de Bruxelles — Interpretation of Articles 17 and 18 EC establishing European citizenship — Provision of national law that makes the granting of unemployment benefits conditional on actual residence in the national territory

Operative part of the judgment

Freedom of movement and residence, conferred on every citizen of the Union by Article 18 EC, does not preclude a residence clause, such as that applied in the case in the main proceedings, which is imposed on an unemployed person over 50 years of age who is exempt from the requirement of proving that he is available for work, as a condition for the retention of his entitlement to unemployment benefit.

([1]) OJ C 284, 20.11.2004.

Judgment of the Court (Full Court) of 11 July 2006 — Commission of the European Communities v Edith Cresson

(Case C-432/04) ([1])

(Article 213(2) EC — Article 126(2) EA — Breach of the obligations arising from the office of Member of the Commission — Deprivation of the right to a pension)

(2006/C 224/11)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: H. P. Hartvig and J. Currall, Agents)

Defendant: Edith Cresson (represented by: G. Vandersanden, L. Levi and M. Hirsch, avocats)

Intervener in support of the defendant: French Republic (represented by: E. Belliard, C. Jurgensen and G. de Bergues, Agents)

Re:

Action under the third subparagraph of Article 231(2) EC and the third subparagraph of Article 126(2) of the Euratom Treaty — Forfeiture of pension rights of a former Commissioner — Breach of the obligations arising from the office of Commissioner

Operative part of the judgment

The Court:

1. *Declares that Mrs Édith Cresson acted in breach of the obligations arising from her office as a Member of the Commission of the European Communities, for the purposes of Article 213(2) EC and Article 126(2) EA, in relation to the appointment of Mr René Berthelot and as regards the terms under which he worked;*

2. *As to the remainder, dismisses the action;*

3. *Orders the Commission of the European Communities, Mrs Édith Cresson and the French Republic to bear their own costs.*

([1]) OJ C 300, 4.12.2004.

Judgment of the Court (Second Chamber) of 13 July 2006 (reference for a preliminary ruling from the Cour d'appel de Bruxelles — Belgium) — Mobistar SA v Institut belge des services postaux et des télécommunications (IBPT)

(Case C-438/04) ([1])

(Telecommunications sector — Universal service and users' rights — Telephone number portability — Set-up costs for the provision of number portability for mobile phones — Article 30(2) of Directive 2002/22/EC (Universal Service Directive) — Pricing for interconnection related to the provision of number portability — Price orientation by reference to costs — Regulatory power of national regulatory authorities — Article 4(1) of Directive 2002/21/EC (Framework Directive) — Effective legal protection — Protection of confidential information)

(2006/C 224/12)

Language of the case: French

Referring court

Cour d'appel de Bruxelles

Parties to the main proceedings

Applicant: Mobistar SA

Defendant: Institut belge des services postaux et des télécommunications (IBPT)

Intervening parties: Belgacom Mobile SA, Base SA,

Re:

Request for a preliminary ruling — Cour d'appel de Bruxelles (Court of Appeal, Brussels) — Interpretation of Article 30 of Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) (OJ 2002 L 108, p. 51) — Portability of telephone numbers — Cost-oriented pricing for interconnection related to the provision of number portability and the allocation of the costs between operators — Interpretation of Article 4 of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (OJ 2002 L 108, p. 33) — Right of appeal against a decision of the national regulatory authority — Inclusion of confidential information in the information to be at the disposal of the body hearing the appeal

Operative part of the judgment

1. *Pricing for interconnection related to the provision of number portability, as referred to in Article 30(2) of Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive), concerns the traffic costs of numbers ported and the set-up costs incurred by mobile telephone operators to implement requests for number porting.*

2. *Article 30(2) of Directive 2002/22 does not preclude the adoption of a national measure laying down the specific method to be used in calculating costs and which fixes in advance and on the basis of an abstract model of the costs maximum prices which may be charged by the donor operator to the recipient operator as set-up costs, provided that the prices are fixed on the basis of the costs in such a way that consumers are not dissuaded from making use of the facility of portability.*

3. *Article 4 of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) must be interpreted as meaning that the body responsible for hearing an appeal against a decision of the national regulatory authority must have at its disposal all the information necessary in order to decide on the merits of the appeal, including, if necessary, confidential information which that authority has taken into account in reaching the decision which is the subject of the appeal. However, that body must guarantee the confidentiality of the information in question whilst complying with the requirements of effective legal protection and ensuring protection of the rights of defence of the parties to the dispute.*

([1]) OJ C 6, 8.1.2005.

Judgment of the Court (Second Chamber) of 13 July 2006 (reference for a preliminary ruling from the Gerechtshof te Amsterdam — Netherlands) — Uroplasty BV v Inspecteur van de Belastingdienst — Douanedistrict Rotterdam

(Case C-514/04) ([1])

(Tariff classification — Sterile flakes of polydimethilsiloxane — Silicone elastomer — Meaning of 'primary form' — Medicament — Packaging — Meaning of 'appliance implanted in the body')

(2006/C 224/13)

Language of the case: Dutch

Referring court

Gerechtshof te Amsterdam

Parties to the main proceedings

Applicant: Uroplasty BV

Defendant: Inspecteur van de Belastingdienst — Douanedistrict Rotterdam

Re:

Preliminary ruling — Gerechtshof te Amsterdam — Tariff classification of the product Macroplastic implant — Injectable sterile suspension of solid particles of silicone elastomer for the treatment of vesicoureteral (or vesicorenal) reflux

Operative part of the judgment

Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended by Commission Regulation (EC) No 2388/2000 of 13 October 2000, is to be interpreted as meaning that a product, such as the polydimethilsiloxane, made up of sterile flakes, specially developed and intended only to be implanted in the body for the treatment of a condition and which is packaged at the time of its presentation to customs in 1 kg bags, is to be regarded as an appliance to be implanted in the body which must be classified under heading 9021 of the Combined Nomenclature. Since the purpose of such a product is not to replace an organ but to enable a defective muscle to create connective tissues, it must be classified under subheading 9021 90 90 of the Combined Nomenclature.

([1]) OJ C 57, 5.3.2005.

Judgment of the Court (Third Chamber) of 18 July 2006 — David Meca-Medina, Igor Majcen v Commission of the European Communities, Republic of Finland

(Case C-519/04 P) ([1])

(Appeal — Rules adopted by the International Olympic Committee concerning doping control — Incompatibility with the Community rules on competition and freedom to provide services — Complaint — Rejection)

(2006/C 224/14)

Language of the case: French

Parties

Appellants: David Meca-Medina, Igor Majcen (represented by: J.-L. Dupont and M.-A. Lucas, avocats)

Other party to the proceedings: Commission of the European Communities (represented by: O. Beynet and A. Bouquet, Agents)

Intervener in support of the defendants: Republic of Finland (represented by: T Pynnä, Agent)

Re:

Appeal against the judgment of the Court of First Instance (Fourth Chamber) of 30 September 2004 in Case T-313/02 *Meca-Medina and Majcen* v *Commission*, dismissing as unfounded an application for annulment of a decision rejecting a complaint following a proceeding pursuant to Articles 81 EC and 82 of the EC Treaty — Anti-doping rules

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the Court of First Instance of the European Communities of 30 September 2004 in Case T-313/02 Meca-Medina and Majcen v Commission;*

2. *Dismisses the action under No T-313/02 brought before the Court of First Instance for annulment of the Commission's decision of 1 August 2002 rejecting the complaint lodged by Mr Meca-Medina and Mr Majcen;*

3. *Orders Mr Meca-Medina and Mr Majcen to pay the costs relating both to the present proceedings and to the proceedings brought before the Court of First Instance;*

4. *Orders the Republic of Finland to bear its own costs.*

([1]) OJ C 57, 5.3.2005.

Judgment of the Court (Grand Chamber) of 11 July 2006 (reference for a preliminary ruling from the Juzgado de lo Social No 33 de Madrid — Spain) — Sonia Chacón Navas v Eurest Colectividades SA

(Case C-13/05) [1]

(Directive 2000/78/EC — Equal treatment in employment and occupation — Concept of disability)

(2006/C 224/15)

Language of the case: Spanish

Referring court

Juzgado de lo Social No 33 de Madrid

Parties to the main proceedings

Applicant: Sonia Chacón Navas

Defendant: Eurest Colectividades SA

Re:

Interpretation of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ L 303, p. 16) — Scope — Dismissal on grounds of sickness — Sickness and disability.

Operative part of the judgment

1. *A person who has been dismissed by his employer solely on account of sickness does not fall within the general framework laid down for combating discrimination on grounds of disability by Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.*

2. *The prohibition, as regards dismissal, of discrimination on grounds of disability contained in Articles 2(1) and 3(1)(c) of Directive 2000/78 precludes dismissal on grounds of disability which, in the light of the obligation to provide reasonable accommodation for people with disabilities, is not justified by the fact that the person concerned is not competent, capable and available to perform the essential functions of his post.*

3. *Sickness cannot as such be regarded as a ground in addition to those in relation to which Directive 2000/78 prohibits discrimination.*

[1] OJ C 69, 19.3.2005.

Judgment of the Court (Sixth Chamber) of 13 July 2006 (reference for a preliminary ruling from the Gerechtshof te Amsterdam — Netherlands) — Anagram International Inc. v Inspecteur van de Belastingdienst — Douanedistrict Rotterdam

(Case C-14/05) [1]

(Common Customs Tariff — Combined Nomenclature — Tariff classification — Gas-filled balloons)

(2006/C 224/16)

Language of the case: Dutch

Referring court

Gerechtshof te Amsterdam

Parties to the main proceedings

Applicant: Anagram International Inc.

Defendant: Inspecteur van de Belastingdienst — Douanedistrict Rotterdam

Re:

Reference for a preliminary ruling — Gerechtshof te Amsterdam — Interpretation of the Annex to Commission Regulation (EC) No 442/2000 of 25 February 2000 concerning the classification of certain goods in the Combined Nomenclature (OJ 2000 L 54, p. 33) — Validity — Tariff classification of balloons — General Rules 1 and 6 for the interpretation of the Combined Nomenclature — Heading 9505 90 00 and heading 9503 90 32

Operative part of the judgment

1. *Consideration of the second question has disclosed nothing capable of affecting the validity of Commission Regulation (EC) No 442/2000 of 25 February 2000 concerning the classification of certain goods in the Combined Nomenclature in so far as the products referred to in point 3 of the table set out in the Annex thereto are classified under subheading 9503 90 32 of the Combined Nomenclature of the Common Customs Tariff, set out in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended by Commission Regulation (EC) No 1832/2002 of 1 August 2002.*

2. *The classification decided upon by the Commission of the European Communities in Regulation No 442/2000, as regards the product described in point 3 of the table set out in the Annex thereto, is applicable by analogy to gas-filled balloons made of aluminised, bonded plastic foil, the plastic foil forming the inside of the balloon.*

[1] OJ C 82 of 2.4.2005.

Judgment of the Court (Third Chamber) of 18 July 2006 (reference for a preliminary ruling from the Korkein hallinto-oikeus — Finland) — Maija T.I. Nikula

(Case C-50/05) ([1])

(Social security — Sickness and maternity benefits — Calculation of contributions — Regulation No 1408/71 — Right of a Member State to include, in the basis for calculating contributions, the pensions or annuities paid by an institution of another Member State — Pensioner entitled to pensions and annuities payable under the legislation of two Member States)

(2006/C 224/17)

Language of the case: Finnish

Referring court

Korkein hallinto-oikeus

Parties to the main proceedings

Applicant: Maija T.I. Nikula

Re:

Reference for a preliminary ruling — Korkein hallinto-oikeus — Interpretation of Article 33(1) of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996 (OJ 1997 L 28, p. 1) — Contributions for sickness and maternity benefits payable by a recipient of pensions received under the legislation of two Member States who resides in one of those Member States and is entitled to benefits solely from the institution of that Member State — Whether pensions or annuities received from the other Member State are to be taken into account when calculating contributions

Operative part of the judgment

1) *Article 33(1) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, does not preclude, when the basis is determined for calculating sickness insurance contributions applied in the Member State of residence of the recipient of pensions paid by the institutions of that Member State responsible for the payment of benefits under Article 27 of that regulation, the inclusion in that basis of calculation, in addition to the pensions paid in the Member State of residence, also of pensions paid by the institutions of another Member State, provided that the sickness insurance contributions do not exceed the amount of pensions paid in the State of residence.*

2) *However, Article 39 EC precludes the amount of pensions received from institutions of another Member State from being taken into account if contributions have already been paid in that other State out of the income from work received in that State. It is for the persons concerned to prove that the earlier contributions were in fact paid.*

([1]) OJ C 93, 16.4.2005.

Judgment of the Court (Third Chamber) of 13 July 2006 — Commission of the European Communities v Portuguese Republic

(Case C-61/05) ([1])

(Failure of a Member State to fulfil obligations — Directive 92/100/EEC — Copyright — Exclusive right to authorise or prohibit rental and lending — Incorrect transposition)

(2006/C 224/18)

Language of the case: Portuguese

Parties

Applicant: Commission of the European Communities (represented by: P. Guerra e Andrade and W. Wils, Agents)

Defendant: Portuguese Republic (represented by: L. Fernandes and N. Gonçalves, Agents)

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 2 and 4 of Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (OJ 1992 L 346, p. 61)

Operative part of the judgment

The Court hereby:

1. *Declares that:*

— *by creating in national law a rental right also in favour of producers of videograms, the Portuguese Republic has failed to fulfil its obligations under Article 2(1) of Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property, as last amended by 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;*

— *by creating in national legislation some doubt as to who is responsible for paying the remuneration owed to perfomers on assignment of the rental right, the Portuguese Republic has failed to comply with Article 4 of Directive 92/100, as amended by Directive 2001/29/EC, in conjunction with Article 2(5) and (7) thereof;*

2. *Orders the Portuguese Republic to pay the costs.*

([1]) OJ C 82, 2.4.2005.

Judgment of the Court (Sixth Chamber) of 13 July 2006 (reference for a preliminary ruling from the Amtsgericht Freiburg — Germany) — Bernd Voigt

(Case C-83/05) ([1])

(Completion of the internal market — Approximation of laws — Motor vehicles — Community type-approval procedure — Directive 70/156/EEC — Scope — Classification according to the technical characteristics of vehicle types — Effect on vehicle classification of a national regulation governing road traffic)

(2006/C 224/19)

Language of the case: German

Referring court

Amtsgericht Freiburg

Parties to the main proceedings

Applicant: Bernd Voigt

Re:

Reference for a preliminary ruling — Amtsgericht Freiburg — Interpretation of Council Directive 70/156/EEC of 6 February 1970 on the approximation of the laws of the Member States relating to the type-approval of motor vehicles and their trailers (OJ, English Special Edition 1970 (I), p. 96), as amended by Council Directive 92/53/EEC of 18 June 1992 (OJ 1992 L 225 p. 1) — Registration by a Member State of a category M1 vehicle (passenger car) covered by Community type-approval — Whether the national authorities may penalise the driver of such a vehicle for road traffic offences which relate to goods vehicles — Motorway speed limits applicable solely to goods vehicles

Operative part of the judgment

Council Directive 70/156/EEC of 6 February 1970 on the approximation of the laws of the Member States relating to the type-approval of motor vehicles and their trailers, as amended by Council Directive 92/53/EEC of 18 June 1992, is to be interpreted as meaning that it does not preclude national rules which provide that a vehicle such as the one in question in the main proceedings is not subject to the national speed limits for passenger cars, even where that vehicle has been registered as a passenger car on the basis of a Community type-approval granted pursuant to that directive.

([1]) OJ C 82 of 2.4.2005.

Judgment of the Court (Second Chamber) of 13 July 2006 (reference for a preliminary ruling from the House of Lords — United Kingdom) — United Utilities plc v Commissioners of Customs & Excise

(Case C-89/05) ([1])

(Sixth VAT Directive — Article 13B(f) — Exemption for games of chance — Scope — Activity of a call centre)

(2006/C 224/20)

Language of the case: English

Referring court

House of Lords

Parties to the main proceedings

Applicant: United Utilities plc

Defendant: Commissioners of Customs & Excise

Re:

Reference for a preliminary ruling — House of Lords — Interpretation of Article 13B(f) of Directive 77/388/EEC: Sixth Council Directive of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax : uniform basis of assessment (OJ 1977 L 145, p. 1) — Exemption of betting, lotteries and other forms of gambling — Applicability to supplies of services by a third company which accepts bets made by telephone on behalf of another company

Operative part of the judgment

Article 13B(f) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, must be interpreted as meaning that the provision of call centre services to a telephone bookmaking organiser, which entails the staff of the supplier of those services accepting bets on behalf of the organiser, does not constitute a betting transaction within the meaning of that provision and cannot, therefore, qualify for the exemption from VAT laid down by that provision.

([1]) OJ C 106, 30.4.2005.

Judgment of the Court (Second Chamber) of 13 July 2006 (reference for a preliminary ruling from the Oberster Gerichtshof (Austria)) — Reisch Montage AG v Kiesel Baumaschinen Handels GmbH

(Case C-103/05) ([1])

(Regulation (EC) No 44/2001 — Article 6(1) — Cases where there is more than one defendant — Action brought in a Member State against a person domiciled in that State who is the subject of bankruptcy proceedings and a co-defendant domiciled in another Member State — Inadmissibility of the action against the person who is the subject of bankruptcy proceedings — Jurisdiction of the court seised in relation to the co-defendant)

(2006/C 224/21)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: Reisch Montage AG

Defendant: Kiesel Baumaschinen Handels GmbH

Re:

Reference for a preliminary ruling — Oberster Gerichtshof — Interpretation of Article 6(1) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1) — Multiple defendants — Action brought in a Contracting State against a first defendant domiciled in that State and a co-defendant domiciled in another Contracting State — Inadmissibility of the action against that first defendant, the subject of bankruptcy proceedings — Jurisdiction of the court seised in relation to the co-defendant

Operative part of the judgment

Article 6(1) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that, in a situation such as that in the main proceedings, that provision may be relied on in the context of an action brought in a Member State against a defendant domiciled in that State and a co-defendant domiciled in another Member State even when that action is regarded under a national provision as inadmissible from the time it is brought in relation to the first defendant.

([1]) OJ C 132, 28.5.2005.

Judgment of the Court (Second Chamber) of 13 July 2006 — Commission of the European Communities v Portuguese Republic

(Case C-191/05) ([1])

(Failure of a Member State to fulfil obligations — Directive 79/409/EEC — Conservation of wild birds — Special protection area — Alteration without scientific basis)

(2006/C 224/22)

Language of the case: Portuguese

Parties

Applicant: Commission of the European Communities (represented by: M. van Beek and A. Caeiros, Agents)

Defendant: Portuguese Republic (represented by: L. Fernandes, Agent)

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 4(1) of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (OJ 1979 L 103, p. 1) — Special protection area — Alteration without scientific basis

Operative part of the judgment

The Court hereby:

1. *Declares that, by altering the demarcation of the 'Moura, Mourão, Barrancos' Special Protection Area, thereby excluding from it areas providing a habitat for species of wild birds for whose protection that area was designated, the Portuguese Republic has failed to fulfil its obligations under Article 4(1) of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds;*

2. **Orders the Portuguese Republic to pay the costs**.

(1) OJ C 155, 25.6.2005.

Judgment of the Court (Third Chamber) of 18 July 2006 — Sergio Rossi SpA v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), Sissi Rossi Srl

(Case C-214/05 P) (1)

(Appeals — Community trade mark — Article 8(1)(b) of Regulation (EC) No 40/94 — Likelihood of confusion — Word mark SISSI ROSSI — Opposition by the holder of the earlier word mark MISS ROSSI — Arguments presented for the first time at the hearing — Offers of evidence)

(2006/C 224/23)

Language of the case: Italian

Parties

Appellant: Sergio Rossi SpA (represented by: A. Ruo, avvocato)

Other party to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (represented by: O. Montalto and P. Bullock, Agents)

Intervener in support of the defendant: Sissi Rossi Srl, established in Castenaso di Villanova (Italy) (represented by: S. Verea, avvocato)

Re:

Appeal against the judgment of the Court of First Instance (Second Chamber) of 1 March 2005 in Case T-169/03 *Sergio Rossi SpA* v *Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* — Dismissal of an action for annulment brought by the proprietor of a national and international word mark 'MISS ROSSI' for goods within Class 25, against Decision R 569/2002-1 of the First Board of Appeal of the Office for Harmonisation in the Internal Market (OHIM) of 28 February 2003 setting aside the decision of the Opposition Division refusing to register as a Community word mark 'SISSI ROSSI' in respect of goods in classes 14, 15, 5 and 26

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Sergio Rossi SpA to pay the costs.*

(1) OJ C 182, 23.7.2005.

Judgment of the Court (Third Chamber) of 13 July 2006 (reference for a preliminary ruling from the Supreme Court — Ireland) — Sam Mc Cauley Chemists (Blackpool) Ltd, Mark Sadja v Pharmaceutical Society of Ireland, Minister for Health and Children, Ireland, Attorney General

(Case C-221/05) (1)

(Directive 85/433/EEC — Mutual recognition of diplomas — Pharmacists — Recognition of diplomas held by pharmacists working in new pharmacies open to the public — Scope of the discretion enjoyed by Member States)

(2006/C 224/24)

Language of the case: English

Referring court

Supreme Court

Parties to the main proceedings

Applicants: Sam Mc Cauley Chemists (Blackpool) Ltd, Mark Sadja

Defendants: Pharmaceutical Society of Ireland, Minister for Health and Children, Ireland, Attorney General

Re:

Reference for a preliminary ruling — Supreme Court of Ireland — Interpretation of Article 2(1) and (2) of Council Directive 85/433/EEC of 16 September 1985 concerning the mutual recognition of diplomas, certificates and other evidence of formal qualifications in pharmacy, including measures to facilitate the effective exercise of the right of establishment relating to certain activities in the field of pharmacy (OJ 1985 L 253, p. 37) — Scope of the discretion enjoyed by Member States in regard to the recognition of diplomas held by pharmacists working in new pharmacies open to the public

Operative part of the judgment

Article 2 of Council Directive 85/433/EEC of 16 September 1985 concerning the mutual recognition of diplomas, certificates and other evidence of formal qualifications in pharmacy, including measures to facilitate the effective exercise of the right of establishment relating to certain activities in the field of pharmacy, must be interpreted as meaning that a Member State which complies merely with the minimal level of recognition of diplomas laid down by that directive is not exercising any discretion conferred by that directive.

([1]) OJ C 182, 23.07.2005.

Order of the Court (Second Chamber) of 11 May 2006 (reference for a preliminary ruling from the Tribunale Amministrativo Regionale del Lazio — Italy) — Confcooperative, Unione regionale della Cooperazione Fvg Federagricole, Friulvini Soc. coop. rl, Cantina Sociale di Ramuscello e S. Vito v Ministero delle Politiche Agricole e Forestali, Regione Veneto

(Case C-231/04) ([1])

(First subparagraph of Article 104(3) of the Rules of Procedure — External relations — Agreement between the EC and Hungary on the reciprocal protection and control of wine names — Protection in the Community of a name relating to certain wines originating in Hungary — Geographical indication 'Tokaj' — Exchange of letters — Possibility of using the word 'Tocai' in the term 'Tocai friulano' or 'Tocai italico' for the description and presentation of certain Italian wines, in particular quality wines produced in specified regions ('quality wines psr'), during a transitional period expiring on 31 March 2007 — Exclusion of that possibility at the end of the transitional period — Validity — Legal basis — Article 133 EC — Principles of international law relating to treaties — Articles 22 to 24 of the TRIPs Agreement — Protection of fundamental rights — Right to property)

(2006/C 224/25)

Language of the case: Italian

Referring Court

Tribunale Amministrativo Regionale del Lazio

Parties

Applicants: Confcooperative, Unione regionale della Cooperazione Fvg Federagricole, Friulvini Soc. coop. rl, Cantina Sociale di Ramuscello e S. Vito

Defendants: Ministero delle Politiche Agricole e Forestali, Regione Veneto

Re:

Reference for a preliminary ruling — Tribunale Amministrativo Regionale del Lazio — Validity of the EC-Hungary Agreement of 23 November 1993 on the reciprocal protection and control of wine names — Validity of an exchange of letters between the parties to the agreement establishing a ban on use of the name 'Tocai' in Italy from 2007 onwards

Operative part of the order

(1) *The Europe Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Republic of Hungary, of the other part, concluded and approved on behalf of the Community by Decision 93/742/Euratom, ECSC, EC of the Council and of the Commission of 13 December 1993 does not constitute the legal basis of Council Decision 93/724/EC of 23 November 1993 concerning the conclusion of an Agreement between the European Community and the Republic of Hungary on the reciprocal protection and control of wine names.*

(2) *Article 133 EC, as referred to in the preamble to Decision 93/724, constitutes an appropriate legal basis for the conclusion by the Community alone of the Agreement between the European Community and the Republic of Hungary on the reciprocal protection and control of wine names.*

(3) *The ban on the use of the name 'Tocai' in Italy after 31 March 2007, resulting from the exchange of letters concerning Article 4 of the Agreement between the European Community and the Republic of Hungary on the reciprocal protection and control of wine names, is not contrary to the regime governing homonymous geographical indications in Article 4(5) of that Agreement.*

(4) *The joint declaration regarding Article 4(5) of the Agreement between the European Community and the Republic of Hungary on the reciprocal protection and control of wine names, insofar as it outlines, in its first paragraph, that, as regards Article 4(5)(a) of the same Agreement, the contracting parties noted that, at the time of the negotiations, they did not know of any specific case where the provisions in question might apply, does not constitute a manifestly erroneous interpretation of reality.*

(5) *Articles 22 to 24 of the Agreement on Trade-Related Aspects of Intellectual Property Rights, found at Annex 1 C to the Agreement establishing the World Trade Organisation, concluded on behalf of the European Community, as regards matters within its competence, by Council Decision 94/800/EC of 22 December 1994, must be interpreted as meaning that, in a case such as the present one concerning homonymy between a geographical indication of a non-member country and a vine name used for the description and presentation of certain Community wines produced from those vines, these provisions do not require that both the names can continue to be used in the future, notwithstanding the twofold fact 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 and that each name indicates clearly the country or region or area of origin of the protected wine to which it refers in such a way as not to mislead consumers.*

(6) *The right to property does not preclude the ban imposed on the producers of the Friuli-Venezia Giulio region (Italy) concerning use of the term 'Tocai' in the names 'Tocai friulano' or 'Tocai italico' for the description and presentation of certain quality Italian wines produced in a specified region after the transitional period ending on 31 March 2007, as provided for in the exchange of letters concerning Article 4 of the Agreement between the European Community and the Republic of Hungary on the reciprocal protection and control of wine names, annexed to that Agreement but not forming part of it.*

([1]) OJ C 201 of 07.08.2004.

Order of the Court (Fifth Chamber) of 6 July 2006 (references for a preliminary ruling by the Commissione tributaria provinciale di Napoli, Commissione tributaria regionale di Firenze — Italy) — Casa di cura privata Salus SpA v Agenzia Entrate Ufficio Napoli 4

(Joined Cases C-18/05 and C-155/05) ([1])

(Second subparagraph of Article 104(3) of the Rules of Procedure — Sixth VAT Directive — Article 13.B(c) — Exemptions — Supplies of goods destined wholly for an exempted activity without being deductible)

(2006/C 224/26)

Language of the cases: Italian

Referring Courts

Commissione tributaria provinciale di Napoli, Commissione tributaria regionale di Firenze

Parties

Applicants: Casa di cura privata Salus SpA (C-18/05), Agenzia delle Entrate — Ufficio di Firenze 1 (C-155/05)

Defendants: Agenzia Entrate Ufficio Napoli 4 (C-18/05), Villa Maria Beatrice Hospital Srl (C-155/05)

Re:

Reference for a preliminary ruling — Commissione tributaria provinciale di Napoli — Interpretation of Article 13.B(c) of the Sixth VAT Directive — Exemptions within the territory of the country — Exemptions for supplies of goods used wholly for an exempted activity or which are not deductible — Direct applicability

Operative part of the order

The first part of Article 13.B(c) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, must be interpreted as meaning that the exemption for which it provides applies only to the resale of goods previously acquired by a taxable person for an exempted activity under that article, in so far as the value added tax paid upon initial acquisition of the goods in question was not deductible.

([1]) OJ C 93 of 16.4.2005.
OJ C 155 of 25.6.2005.

Order of the Court of 13 June 2006 — Ornella Mancini v Commission of the European Communities

(Case C-172/05 P) ([1])

(Appeal — Officials — Post of medical officer — Notice of vacancy — Comparative examination of merits — Composition of the selection board — Appeal in part manifestly inadmissible and in part manifestly unfounded)

(2006/C 224/27)

Language of the case: French

Parties

Appellant: Ornella Mancini (represented by: E. Boigelot, avocat)

Other party to the proceedings: Commission of the European Communities (represented by: C. Berardis-Kayser and G. Berscheid, Agents, and B. Wägenbaur, avocat)

Re

Appeal brought against the judgment of the Court of First Instance (Fourth Chamber) of 3 February 2005 in Case T-137/03 *Mancini* v *Commission* in which the Court of First Instance dismissed an application, firstly, for annulment of the Commission's decision not to appoint the applicant to the post of medical officer at the 'Medical Service — Brusells' unit and of the decision to appoint another candidate to that post and, secondly, for damages.

Operative part of the order

1. *The appeal is dismissed.*

2. *The appellant is ordered to pay the costs.*

([1]) OJ C 132, 28.5.2005.

Order of the Court of 1 June 2006 (reference for a preliminary ruling of Gerechtshof te 's-Hertogenbosch (Netherlands)) — V.O.F. Dressuurstal Jespers v Inspecteur van de Belastingdienst/Zuidwest/kantoor Breda van de rijksbelastingdienst

(Case C-233/05) ([1])

(Sixth VAT Directive — Supplies under a contract to make up work — Concept of 'good produced' — Training of a horse — Whether or not tax is chargeable)

(2006/C 224/28)

Language of the case: Dutch

National court

Gerechtshof te 's-Hertogenbosch

Parties

Applicant: V.O.F. Dressuurstal Jespers

Defendant: Inspecteur van de Belastingdienst/Zuidwest/kantoor Breda van de rijksbelastingdienst

Re:

Reference for a preliminary ruling — Gerechtshof te 's-Hertogenbosch — Interpretation of Article 5(7)(a) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member State relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) — Horse that has not been broken trained to make it suitable for a specific use — Horse trained for use as a riding horse capable, following training, of participating in competitions at a higher level — In both cases: new good produced? — Importance of a change which can be measured objectively in the horse and the attainment or non-attainment of the objective — Tax paid according to periodic declarations

Operative part of the order

1. *Article 5(5)(a) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member State relating to turnover taxes — Common system of value added tax: uniform basis of assessment, as amended by Council Directive 94/76/EC of 22 December 1994 by the introduction of transitional measures applicable, in the context of the enlargement of the European Union on 1 January 1995, as regards value added tax, is to be interpreted as meaning that there is no supply under a contract to make up work when a horse is trained to make it suitable for use as a riding horse or trained so as to make it capable of participating in (dressage) competitions and that a horse, in such circumstances, cannot be regarded as being a good produced.*

2. *Whether or not value added tax is to be charged on amounts collected periodically as payment for the provision of services comprising the training of horses is to be determined according to the conditions laid down in Article 10(2) of the Sixth Directive.*

([1]) OJ C 205 of 20.8.2005.

Order of the Court of 3 June 2005 (Fourth Chamber) (reference for a preliminary ruling from the Gerechtshof te 's-Hertogenbosch — Netherlands) — G.M. van de Coevering v Hoofd van het District Douane Roermond van de rijksbelastingdienst

(Case C-242/05) ([1])

(First subparagraph of Article 104(3) of the Rules of Procedure — Freedom to provide services — Leasing of a motor vehicle in a Member State other than the State of residence — Tax on non-registered vehicles which are made available to residents — Detailed rules for charging tax)

(2006/C 224/29)

Language of the case: Dutch

Referring court

Gerechtshof te 's-Hertogenbosch

Parties

Applicant: G.M. van de Coevering

Defendant: Hoofd van het District Douane Roermond van de rijksbelastingdienst

Re:

Reference for a preliminary ruling — Gerechtshof te 's-Hertogenbosch — Interpretation of Articles 49 EC to 55 EC — National legislation providing for the levy of a tax on vehicles registered in the territory and on vehicles not registered but made available to persons residing in that Member State — Motor vehicle hired in another State by a person residing in the State in which the tax is levied — Full tax levied with no account taken of the duration of the hire or use of the vehicle on the territory of that State

Operative part of the order

Articles 49 EC to 55 EC preclude national legislation of a Member State, such as that at issue in the main proceedings, which requires a natural person established in that Member State who hires a vehicle registered in another Member State to pay the full amount of registration tax on commencement of use of the highway in the first Member State by that vehicle, irrespective of the duration of the use of that highway, and denying the person in question any right to an exemption or a refund when it is neither intended that the vehicle essentially be used in the first Member State on a permanent basis nor is the vehicle in fact used in that manner.

([1]) OJ C 205, 20.8.2005.

Order of the Court (Fourth Chamber) of 1 June 2006 — Plus Warenhandelsgesellschaft mbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-324/05 P) ([1])

(Appeal — Community trade mark — Article 8(1)(b) of Regulation (EC) No 40/94 — Likelihood of confusion — Application for mixed word and figurative mark containing the verbal element 'Turkish Power' — Opposition by the holder of the earlier word mark POWER — Rejection of the opposition — Appeal manifestly inadmissible or manifestly unfounded)

(2006/C 224/30)

Language of the case: German

Parties

Appellant: Plus Warenhandelsgesellschaft mbH (represented by: B. Piepenbrink, avocat)

Other party to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: G. Schneider, Agent)

Re:

Appeal brought against the judgment of the Court of First Instance (Fourth Chamber) of 22 June 2005 in Case T-34/04 *Plus Warenhandelsgesellschaft mbH* v *OHIM* by which the Court of First Instance rejected the application for annulment of the decision of the Second Board of Appeal of OHIM rejecting the appeal brought by the appellant, proprietor of the trade mark 'POWER', against the decision of the Opposition Division rejecting the opposition filed against the application for registration of the figurative mark 'TURKISH POWER' — Likelihood of confusion between trade marks

Operative part of the order

1. *The appeal is dismissed.*

2. *Plus Warenhandelsgesellschaft mbH is ordered to pay the costs.*

([1]) OJ C 296, 26.11.2005.

Order of the Court (Fifth Chamber) of 13 June 2006 (reference for a preliminary ruling from the Tribunal départemental des pensions militaires du Morbihan – France) — Ameur Echouikh v Secrétaire d'État aux Anciens Combattants

(Case C-336/05) ([1])

(Article 104(3), first subparagraph, of the Rules of Procedure — Euro-Mediterranean Agreement EC-Morocco — Article 65 — Principle of non-discrimination in matters of social security — Armed services invalidity pension)

(2006/C 224/31)

Language of the case: French

Referring court

Tribunal départemental des pensions militaires du Morbihan

Parties

Applicant: Ameur Echouikh

Defendant: Secrétaire d'État aux anciens combattants

Re:

Reference for a preliminary ruling — Tribunal départemental des pensions militaires du Morbihan — Interpretation of Articles 64 and 65 of the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part, signed in Brussels on 26 February 1996 (OJ 2000 L 70, p. 2), of Articles 40 to 42 of the Cooperation Agreement between the European Economic Community and the Kingdom of Morocco, signed in Rabat on 27 April 1976 (OJ 1978 L 264, p. 1) and of the general principle of non-discrimination based on nationality as enshrined in Article 12 of the EC Treaty and Article 14 of the ECHR — Direct effect — Meaning of 'worker', 'remuneration' and 'social security benefit' — National legislation refusing an armed services invalidity pension to a Moroccan national who has served in the Member State's armed forces

Operative part of the order

The first subparagraph of Article 65(1) of the Euro-Mediterranean establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part, signed in Brussels on 26 February 1996 and approved on behalf of the Communities by Decision 2000/204/EC, ECSC of the Council and Commission of 24 January 2000 is to be interpreted as meaning that it precludes the host Member State from refusing to grant an armed services invalidity pension to a Moroccan national who has served in that State's army and resides in its territory on the sole ground that the person concerned is of Moroccan nationality.

([1]) OJ C 296, 26.11.2005.

Order of the Court of 13 July 2006 — Front National and Others v European Parliament and Council of the European Union

(Case C-338/05 P) ([1])

(Appeal — Regulation (EC) No 2004/2003 — Regulation and funding of political parties at European level — Action for annulment — Objection of inadmissibility — Act open to challenge — Standing to bring proceedings — Inadmissibility — Appeal manifestly inadmissible)

(2006/C 224/32)

Language of the case: French

Parties

Appellants: Front National, Marie-France Stirbois, Bruno Gollnisch, Carl Lang, Jean-Claude Martinez, Philip Claeys, Koen Dillen and Mario Borghezio (represented by: W. de Saint Just, avocat)

Respondents: European Parliament (represented by: H. Krück, N. Lorenz and D. Moore, acting as Agents) and Council of the European Union (represented by: I. Díez Parra and M. Sims-Robertson, Agents)

Re:

Appeal against the judgment delivered on 11 July 2005 by the Court of First Instance (Second Chamber) in Case T-17/04 *Front National and Others* v *European Parliament and Council*, by which it dismissed as inadmissible an action for annulment of Regulation (EC) No 2004/2003 of the European Parliament and of the Council of 4 November 2003 on the regulations governing political parties at European level and the rules regarding their funding (OJ 2003 L 297, p. 1).

Operative part of the order

The Court hereby:

1. *Dismisses the appeal;*

2. *Orders the appellants to pay the costs.*

([1]) OJ C 315 of 10.12.2005

Reference for a preliminary ruling from the Finanzgericht Düsseldorf (Germany) lodged on 8 May 2006 — Medion AG v Hauptzollamt Duisburg

(Case C-208/06)

(2006/C 224/33)

Language of the case: German

Referring court

Finanzgericht Düsseldorf (Germany)

Parties to the main proceedings

Applicant: Medion AG

Defendant: Hauptzollamt Duisburg

Question referred

Should a camcorder, which at the time of importation ([1]) is unable to record video signals from an external source, be classified under subheading 8525 4099 of the Combined Nomenclature, if its video interface can subsequently be reconfigured as a video input by means of activating certain switches, even though the manufacturer and the seller neither have mentioned nor support this possibility?

([1]) Interpretation of Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1987 L 256, p. 1).

Reference for a preliminary ruling from the Finanzgericht Düsseldorf (Germany) lodged on 8 May 2006 — Canon Deutschland GmbH v Hauptzollamt Krefeld

(Case C-209/06)

(2006/C 224/34)

Language of the case: German

Referring court

Finanzgericht Düsseldorf

Parties to the main proceedings

Applicant: Canon Deutschland GmbH

Defendant: Hauptzollamt Krefeld

Question referred

Should a camcorder, which at the time of importation is unable to record video signals from an external source, be classified under subheading 8525 4099 of the Combined Nomenclature, if its video interface can subsequently be reconfigured as a video input by using certain software, even though the manufacturer and the seller neither have mentioned nor support this possibility? ([1])

([1]) Interpretation of Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and of the Common Customs Tariff (OJ 1987 L 256, p. 1).

Reference for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 8 June 2006 — Theodor Jäger v Finanzamt Kusel-Landstuhl

(Case C-256/06)

(2006/C 224/35)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Theodor Jäger

Defendant: Finanzamt Kusel-Landstuhl

Questions referred

Is it compatible with Article 73b(1) of the Treaty establishing the European Community (now Article 56(1) EC) that for inheritance tax purposes:

a) assets (held abroad) consisting of agricultural land and forestry situated in another Member State are valued in accordance with their fair market value (current market value), whereas a special valuation procedure exists for domestic assets consisting of agricultural land and forestry, the results of which amount on average to only 10 % of their fair market value, and

b) assessment of the acquisition of domestic assets consisting of agricultural land and forestry is excluded up to a special tax-free amount and the remaining value is assessed merely at 60 %,

if, in the case on an heir inheriting an estate made up of both domestic assets and foreign assets consisting of agricultural land and forestry, this results in a situation whereby, as a result of the fact that the assets consisting of agricultural land and forestry are situated abroad, the acquisition of the domestic assets is subject to higher inheritance tax than would be applicable if the assets consisting of agricultural land and forestry were also domestic assets?

Reference for a preliminary ruling from the Corte Suprema di Cassazione (Italy) lodged on 16 June 2006 — Carboni e Derivati s.r.l. v Ministero dell'Economia e delle Finanze, Riunione Adriatica di Sicurtà s.p.a.

(Case C-263/06)

(2006/C 224/36)

Language of the case: Italian

Referring court

Corte Suprema di Cassazione

Parties to the main proceedings

Appellant: Carboni e Derivati s.r.l.

Respondents: Ministero dell'Economia e delle Finanze, Riunione Adriatica di Sicurtà s.p.a.

Question referred

According to the principles of Community customs law and for the purposes of application of an anti-dumping duty such as that laid down by Commission Decision No 67/94/ECSC [1], may the customs authority refer to the price indicated in a sale of the same goods which took place prior to that on the basis of which the customs declaration was made, where the buyer is a Community subject or, in any case, the sale took place for import into the Community?

[1] OJ 1994 L 32, p. 44.

Reference for a preliminary ruling from the Bayerisches Verwaltungsgericht München (Germany) lodged on 20 June 2006 — Tadao Maruko v Versorgungsanstalt der deutschen Bühnen

(Case C-267/06)

(2006/C 224/37)

Language of the case: German

Referring court

Bayerisches Verwaltungsgericht München

Parties to the main proceedings

Applicant: Tadao Maruko

Defendant: Versorgungsanstalt der deutschen Bühnen

Questions referred

1. Is a compulsory professional pension scheme, such as the scheme at issue in this case administered by the Versorgungsanstalt der deutschen Bühnen, a scheme similar to state schemes as referred to in Article 3(3) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation [1]?

2. Are benefits paid by a compulsory professional pension institution to survivors in the form of widow's/widower's allowance to be construed as pay within the meaning of Article 3(1)(c) of Directive 2000/78/EC?

3. Does Article 1 in conjunction with Article 2(2)(a) of Directive 2000/78/EC preclude regulations governing a supplementary pension scheme of the kind at issue here under which a registered partner does not receive a survivor's pension after the death of the partner like spouses do, even though he also lives in a caring and committed union formally entered into for life like spouses?

4. If the preceding questions are answered in the affirmative: Is discrimination on the grounds of sexual orientation permissible by virtue of recital 22 in the preamble to Directive 2000/78/EC?

5. Would entitlement to the survivor's pension be restricted to periods from 17 May 1990 in the light of the case-law in *Barber* (Case C-262/88)?

[1] OJ 2000 L 303, p. 16

Reference for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 22 June 2006 — Netto Supermarkt GmbH & Co. OHG v Finanzamt Malchin

(Case C-271/06)

(2006/C 224/38)

Language of the case: German

Referring court

Bundesfinanzhof, München

Parties to the main proceedings

Applicant: Netto Supermarkt GmbH & Co. OHG

Defendant: Finanzamt Malchin

Question referred

Do the provisions of Community law on exemption from tax for exports to a third country preclude the granting of exemption from tax by the Member State on the grounds of fairness where the conditions for exemption are not satisfied but the taxable person was unable, even by exercising due commercial care, to recognise that they were not met? [1]

[1] Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ L 145, 13.6.1977, p. 1).

Reference for a preliminary ruling from the Tribunal du travail de Verviers (Belgium) lodged on 26 June 2006 — Mamate El Youssfi v Office National des Pensions

(Case C-276/06)

(2006/C 224/39)

Language of the case: French

Referring court

Tribunal du travail de Verviers

Parties to the main proceedings

Applicant: Mamate El Youssfi

Defendant: Office National des Pensions

Question referred

Is a refusal to grant statutory Guaranteed Income to Elderly Persons on the ground that:

— (a) Regulation (EEC) No 1408/71 of the Council of the European Communities of 14 June 1971 does not apply to the applicant ([1]);

— (b) the applicant is not a recognised stateless person or a refugee;

— (c) the applicant is not a national of a country with which Belgium has concluded a reciprocal convention on guaranteed income or in relation to which it has recognised that de facto reciprocity exists; or that

— (d) the applicant is not entitled to any retirement or survivor's pension under a Belgian scheme,

the result of:

— (1) too restrictive an interpretation of Regulation (EC) No 883/2004 of 29 April 2004 ([2]) (replacing Regulation (EEC) No 1408/71 of 14 June 1971), in particular in the light of Article 14 of the ECHR, Article 1 of the First Protocol thereto and Regulation (EC) No 859/2003 of 14 May 2003 ([3]);

or, if that is not the case,

— (2) an interpretation of Regulation (EC) No 883/2004 that is incompatible with the Cooperation Agreement between the European Economic Community and the Kingdom of Morocco, signed at Rabat on 27 April 1976 and approved on behalf of the Community by Council Regulation (EEC) No 2211/78 of 26 September 1978 (OJ 1978 L 264, p. 1) ([4]), as supplemented by the EC-Morocco Agreement of 26 February 1996 (OJ L 70 of 18 March 2000)?

([1]) Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (OJ 1971 L 149, p. 2).

([2]) Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ 2004 L 166, p. 1).

([3]) Council Regulation (EC) No 859/2003 of 14 May 2003 extending the provisions of Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 to nationals of third countries who are not already covered by those provisions solely on the ground of their nationality (OJ 2003 L 124, p. 1).

([4]) Council Regulation (EEC) No 2211/78 of 26 September 1978 concerning the conclusion of the Cooperation Agreement between the European Economic Community and the Kingdom of Morocco (OJ 1978 L 264, p. 1).

Reference for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 27 June 2006 — Autorità Garante della Concorrenza e del Mercato v Ente Tabacchi Italiani — ETI SpA, Philip Morris Products SA, Philip Morris Holland BV, Philip Morris GmbH, Philip Morris Products Inc. Philip Morris International Management SA

(Case C-280/06)

(2006/C 224/40)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicant: Autorità Garante della Concorrenza e del Mercato

Defendants: Autorità Garante della Concorrenza e del Mercato v Ente Tabacchi Italiani — ETI SpA, Philip Morris Products SA, Philip Morris Holland BV, Philip Morris GmbH, Philip Morris Products Inc. Philip Morris International Management SA

Questions referred

1. What, in accordance with Article 87 et seq. of the Treaty and with the general principles of Community law, is the criterion to be adopted in determining the undertaking on which a penalty is to be imposed for contravention of the rules in the sphere of competition when, in connection with conduct penalised as a whole, the last part of those actions was carried out by an undertaking having succeeded the original undertaking in the economic sphere concerned whenever the original body, while still in existence, no longer operates as a commercial undertaking, or at least not in the economic sector affected by the penalty?

2. Does it fall to the national authority responsible for the application of 'anti-trust' rules, when determining the person to be penalised, to assess at its own discretion whether circumstances exist which warrant the attribution to the economic successor of responsibility for contraventions of the competition rules committed by the legal person which it has succeeded, even when that latter has not ceased to exist at the date of the decision, so that the effectiveness of the competition rules is not compromised by alterations made to the legal form of the undertakings?

Reference for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 28 June 2006 — Hans-Dieter and Hedwig Jundt v Finanzamt Offenburg

(Case C-281/06)

(2006/C 224/41)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Hans-Dieter and Hedwig Jundt

Defendant: Finanzamt Offenburg

Questions referred

1. Is Article 59 of the EC Treaty (now Article 49 EC) to be interpreted as including within its scope also spare-time teaching activity for or on behalf of a public law legal person (a university) where only an expense allowance is paid for that activity, as being an activity in a quasi-honorary capacity?

2. If the first question is answered in the affirmative, is the restriction on freedom to provide services whereby allowances are taxed favourably only if they are paid by national public law legal persons (here, Paragraph 3(26) of the Einkommensteuergesetz (Income Tax Law)) justified by the fact that the State tax concession applies only where the activity is for the benefit of a national public law legal person?

3. If the second question is answered in the negative, is Article 126 of the EC Treaty (now Article 149 EC) to be interpreted as meaning that a provision of tax law designed to help supplement the organisation of the education system (such as Paragraph 3(26) of the Einkommensteuergesetz, here) is lawful in the light of the fact that the Member States continue to have responsibility in that regard?

Reference for a preliminary ruling from the Tribunale Amministrativo Regionale del Lazio (Italy) lodged on 3 July 2006 — Telecom Italia SpA v Ministero dell'Economia e delle Finanze, Ministero delle Comunicazioni

(Case C-296/06)

(2006/C 224/42)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale del Lazio

Parties to the main proceedings

Applicant: Telecom Italia SpA

Defendants: Ministero dell'Economia e delle Finanze, Ministero delle Comunicazioni

Question referred

Is Article 20(3) of Law No 448/1998 in conjunction with Article 4(9) of Law No 249/1997 compatible with Articles 11, 22 and 25 of Directive 97/13/EC? ([1])

([1]) OJ 1997 L 117, p. 15.

Appeal brought on 13 July 2006 by Eurohypo AG against the judgment delivered on 3 May 2006 in Case T-439/04 Eurohypo AG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-304/06 P)

(2006/C 224/43)

Language of the case: German

Parties

Appellant: Eurohypo AG (represented by C. Rohnke and M. Kloth, Rechtsanwälte)

Other party to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Form of order sought

— set aside the judgment of the Court of First Instance of 3 May 2006 in Case T-439/04;

— annul Decision R 829/2002-4 of the Board of Appeal of 6 August 2004;

— order the respondent to pay the costs.

Pleas in law and main arguments

The appellant argues as follows in support of its appeal against the above judgment of the Court of First Instance:

The Court of First Instance misinterpreted the requirements of the Office's duty to examine of its own motion under the first sentence of Article 74(1) of Regulation No 40/94. According to the case-law, the examination by the competent authority for trade marks must be stringent and full, in order to prevent, for reasons of legal certainty and good administration, both unjustified registrations of marks and unjustified objections to marks eligible for registration. The Office's examination must be thorough enough for the Office to be able to ascertain with certainty, on the basis of that examination, whether there are grounds for refusing registration under Article 7 of Regulation No 40/94. However, neither the judgment nor the preceding decisions of the respondent contained findings of fact as to the allegedly descriptive character of 'EUROHYPO'. Instead, the findings were confined to possible descriptive meanings of the individual components 'EURO' and 'HYPO'. No other findings of fact were made on the descriptive character of the designation 'EUROHYPO' as a whole.

The Court of First Instance misinterpreted the requirement of distinctive character under Article 7(1)(b) of Regulation No 40/94 and wrongly refused to register the mark applied for. In the case of a mark composed of words, possible distinctive character can indeed be examined partially for each concept or component separately, but must in every case depend on an examination of the totality they form. Even if it is the case that none of the components has distinctive character on its own, that does not exclude the possibility that the combination of them may have distinctive character. In the present case, however, the respondent confined itself, in the contested appeal decision, to finding that the components 'EURO' and 'HYPO' were descriptive and the overall concept did not convey an overall impression that went beyond the sum of its parts, without explaining why the compound word EUROHYPO as a whole could not distinguish the services of the appellant from those of other undertakings.

The judgment of the Court of First Instance was also based on the use of a criterion according to which a mark made up of descriptive components may be capable of registration if the compound word has entered general linguistic use and has acquired a meaning of its own, it then being necessary to examine whether that word is not itself descriptive. That criterion is relevant in the context of Article 7(1)(c) of Regulation No 40/94 for the question of a possible need to leave the mark free, but it is not the criterion that applies to the interpretation of Article 7(1)(b) on ascertaining distinctive character. By the use of that criterion, relevant in the context of Article 7(1)(c) of Regulation No 40/94, as a basis of its decision to dismiss the action, the Court of First Instance erred in law in its interpretation of Article 7(1)(b) of Regulation No 40/94.

Action brought on 13 July 2006 — Commission of the European Communities v Hellenic Republic

(Case C-305/06)

(2006/C 224/44)

Language of the case: Greek

Parties

Applicant: Commission of the European Communities (represented by: G. Zavvos and K. Simonsson, acting as Agents)

Defendant: Hellenic Republic

Form of order sought

The applicant asks the Court to:

— declare that, by preventing a haulier from using the nearest suitable rail unloading station in order to complete, in the context of combined transport operations between Member States, the final road haulage legs forming an integral part of combined transport operations, the Hellenic Republic has failed to fulfil its obligations under Articles 2 and 4 of Council Directive 92/106/EEC [1] on the establishment of common rules for certain types of combined transport of goods between Member States;

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

The actions of the Greek authorities which are characterised by protectionism in favour of a branch of the national economy, specifically in favour of the hauliers of Northern Greece, do not justify in any circumstances interference with the exercise of an economic activity safeguarded by legislation such as combined transport within the meaning of Directive 92/106/EEC, which, pursuant to Article 2 thereof, should have been applied from 1 July 1993.

([1]) OJ L 368 of 17.12.1992, p. 38.

Action brought on 14 July 2006 — Commission of the European Communities v Federal Republic of Germany

(Case C-307/06)

(2006/C 224/45)

Language of the case: German

Parties

Applicant: Commission of the European Communities (represented by V. Kreuschitz and I. Kaufmann-Bühler, acting as Agents)

Defendant: Federal Republic of Germany

Form of order sought

— declare that, by granting Erziehungsgeld (child-raising allowance), on the basis of the national provisions of the Bundeserziehungsgeldgesetz, to workers resident in another Member State only if they are in an employment relationship involving non-minor employment, with that condition having to be satisfied by frontier workers only, the Federal Republic of Germany has failed to fulfil its obligations under Article 39 EC and Article 7(2) of Regulation (EEC) No 1612/68 ([1]);

— order the Federal Republic of Germany to pay the costs.

Pleas in law and main arguments

Under Article 7(2) of Regulation (EEC) No 1612/68, a worker who is a national of a Member State is to enjoy, in the territory of another Member State, the same social and tax advantages as national workers.

Erziehungsgeld (child-raising allowance) is granted in Germany to workers resident in another Member State, in accordance with Paragraph 1(7) of the Bundeserziehungsgeldgesetz, only if they are in an employment relationship involving non-minor employment. That condition has to be satisfied by frontier workers only, workers resident in Germany not being affected by the rule: the latter are entitled to child-raising allowance irrespective of the number of weekly hours of work performed or the amount of pay. The German legislature thus assumes that, in the case of persons living in Germany, the minor nature of their employment does not preclude classifying them as workers.

That requirement is incompatible with Article 39 EC and Article 7(2) of Regulation (EEC) No 1612/68 of the Council.

Even if workers in minor employment do not fall within the personal scope of Regulation (EEC) No 1408/71 if the conditions stated for Germany in Annex I C (now D) are not satisfied in their case, that does not allow the conclusion that Regulation (EEC) No 1612/68 is not material. The Court of Justice has emphasised in its case-law that the exclusion of benefits from the scope of Regulation (EEC) No 1408/71 does not free the Member States from the obligation to make sure that no other provision of Community law, in particular of Regulation (EEC) No 1612/68, precludes the imposition of a residence condition. With respect to child-raising allowance, the Court of Justice has even expressly held that it constitutes a social advantage within the meaning of Article 7(2) of Regulation (EEC) No 1612/68.

A person in minor employment can fall within the concept of worker within the meaning of Article 39 EC. According to settled case-law of the Court of Justice, the concept of worker in Article 39 EC and Regulation (EEC) No 1612/68 has a Community law meaning and must not be interpreted narrowly. The objective characteristic of an employment relationship is that for a certain period of time a person performs services for and under the direction of another person in return for which he receives remuneration. The Court of Justice concludes that part-time employment is not excluded from the scope of the provisions on freedom of movement for workers.

A rule of national law which is not objectively justified and proportionate to the aim pursued constitutes indirect discrimination if by its nature it is liable to affect migrant workers rather than national workers and there is therefore a risk that migrant workers will be particularly disadvantaged by it. In the Commission's view, a requirement making payment of German child-raising allowance to workers in minor employment dependent on their being resident in Germany is not objectively justified and not proportionate, and thus infringes Article 39 EC and Article 7(2) of Regulation (EEC) No 1612/68.

([1]) OJ, English Special Edition 1968 (II), p. 475.

Reference for a preliminary ruling from the Gerechtshof te Amsterdam (Netherlands) lodged on 14 July 2006 — F.T.S. International BV v Inspecteur van de Belastingdienst/Douane West

(Case C-310/06)

(2006/C 224/46)

Language of the case: Dutch

Referring court

Gerechtshof te Amsterdam

Parties to the main proceedings

Applicant: F.T.S. International BV,

Defendant: Inspecteur van de Belastingdienst/Douane West

Question referred

Is Commission Regulation (EC) No 1223/2002 [1] of 8 July 2002 concerning the classification of certain goods in the Combined Nomenclature valid?

[1] Commission Regulation (EC) No 1223/2002 of 8 July 2002 concerning the classification of certain goods in the Combined Nomenclature (OJ 2002 L 179, p.8).

Reference for a preliminary ruling from the Cour de Cassation (France) lodged on 20 July 2006 — Société Pipeline Méditerranée et Rhône v Administration des Douanes et Droits indirects, Direction nationale du renseignement et des enquêtes douanières (DNRED)

(Case C-314/06)

(2006/C 224/47)

Language of the case: French

Referring court

Cour de Cassation

Parties to the main proceedings

Applicant: Société Pipeline Méditerranée and Rhône

Defendant: Administration des douanes et droits indirects, Direction nationale du renseignement et des enquêtes douanières (DNRED)

Questions referred

1. Must the concept of force majeure giving rise to losses of products under duty suspension arrangements, within the meaning of Article 14(1) of Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise and on the holding, movement and monitoring of such products [1], be interpreted as meaning unforeseeable and unavoidable circumstances beyond the control of the approved warehousekeeper who seeks to rely on those circumstances in support of its application for exemption from duty, or is it sufficient that the approved warehousekeeper could not have avoided those circumstances?

2. Can losses of part of products which have leaked from a pipeline due to their liquid nature and to the characteristics of the ground on which they spilled, which hindered their recovery and led to the levying of duty on them, be regarded as inherent in the nature of the products within the meaning of Article 14(1) of Directive 92/12?

[1] OJ L 76, p.l

Reference for a preliminary ruling from the Monomeles Protodikio Verias (Greece) by decision of that court of 7 June 2006 — Georgios Diamantis and Others v Fanco AE

(Case C-315/06)

(2006/C 224/48)

Language of the case: Greek

Referring court

Monomeles Protodikio Verias

Parties to the main proceedings

Claimants: Georgios Diamantis and Others

Defendant: Fanco AE

Question referred

Given that Greek (national) law does not provide for a prior judicial decision where an undertaking or establishment is closed down definitively on the sole initiative of the employer, under Article 1(2)(d) of Council Directive 75/129/EEC [1] does that directive apply to collective redundancies caused by the definitive termination of the operation of an undertaking or establishment which has been decided on voluntarily by the employer without a prior judicial decision on the matter?

[1] OJ No L 48, 22.2.1975, p. 29.

Action brought on 20 July 2006 — Commission of the European Communities v Ireland

(Case C-316/06)

(2006/C 224/49)

Language of the case: English

Parties

Applican: Commission of the European Communities (represented by: S. Pardo Quintillán, D. Lawunmi, Agents)

Defendant: Ireland

The applicant claims that the Court should:

— declare that, by failing, in respect of discharges from the agglomerations known as IE22, Bray, IE31, Howth, IE34, Letterkenny, IE40, Shanaganagh, IE41, Sligo, and IE45, Tramore County Waterford, to ensure that, before discharge, waste water entering collecting systems was made subject to secondary treatment or an equivalent treatment at the latest by 31 December 2000 and by failing to ensure that the said discharges satisfied the relevant requirements of Annex I.B of Council Directive 91/271/EEC [1] of 30 May 1991 concerning urban waste water treatment by the said deadline, Ireland has failed to fulfil its obligations under Article 4(1) and 4(3) of the said Directive.

— order Ireland to pay the costs.

Pleas in law and main arguments

The Commission submits that the Irish authorities are in breach of their obligations to ensure that waste waters from the agglomerations in questions are subject to secondary treatment (or equivalent), as set out in Article 4 of the directive.

Although Ireland has offered explanations as to the delays encountered in these agglomerations and has provided some indications of the state of progress in meeting the directive's requirements, it is the Commission's view that these explanations and indications cannot be considered as excusing a failure to meet the deadline fixed in Article 4(1), first indent, of the directive. Moreover, the Commission submits that the information provided by the Irish authorities is insufficient to allow it to conclude that the installation of secondary waste-water treatment plants in these agglomerations is imminent. In most cases, it appears that several further stages need to be completed before the treatment plants will be installed.

[1] *OJ L 135 , P.40 - 52*

Action brought on 20 July 2006 — Commission of the European Communities v Grand Duchy of Luxembourg

(Case C-319/06)

(2006/C 224/50)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: J. Enegren and G. Rozet, Agents)

Defendant: Grand Duchy of Luxembourg

Form of order sought

— Declare that,

(1) by declaring that subparagraphs 1, 2, 8 and 11 of Article 1(1) of the Law of 20 December 2002 constitute public policy provisions falling within 'national public policy';

(2) by failing fully to transpose Article 3(1)(a) of Directive 96/71/EC [1] in Article 1(1)(3) of that Law;

(3) by setting out, in Article 7(1) of that Law, conditions which are not sufficiently clear to guarantee legal certainty;

(4) by requiring, in Article 8 of that Law, that documents necessary for controls be kept in Luxembourg in the hands of an ad hoc agent resident there,

the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 3(1) and (10) of Directive 96/71/EC, and Articles 49 EC and 50 EC;

— Order the Grand Duchy of Luxembourg to pay the costs.

Pleas in law and main arguments

By its first ground for complaint, the Commission complains, essentially, that the Grand Duchy of Luxembourg interprets too widely the term 'public policy provisions' in the first indent of Article 3(10) of Directive 96/71/EC. That complaint regards, in particular: (1) the obligation imposed by the national legislature to employ only employees with whom undertakings posting workers to the Grand Duchy have concluded a written contract of employment or prepared a document deemed to be similar under Directive 91/533/EEC [2]; (2) the national limitation period in respect of the automatic adjustment of pay to changes in the cost of living; (3) the limitation period in respect of rules governing part-time and fixed-term employment, and (4) the limitation period in respect of collective labour agreements .

By its second complaint, the Commission complains that the Grand Duchy of Luxembourg failed fully to transpose Article 3(1)(a) of Directive 96/71/EC in as much as the national legislation restricts the concept of 'minimum rest periods' to weekly rest, excluding other rest periods such as daily rest or breaks.

By its third and fourth complaints, the Commission finally pleads infringement of Articles 49 EC and 50 EC attributable to the obligation imposed on undertakings whose workers carry on permanent or temporary activity in Luxembourg (1) to make available to the Inspection du Travail et des Mines 'before the start of the works', 'at the mere request' and 'as quickly as possible' the particulars necessary for a control, and (2) to designate an 'ad hoc' agent resident in Luxembourg responsible for keeping the documents necessary for monitoring the obligations on those undertakings.

(1) Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJ L 18 of 21.1.1997, p. 1).

(2) Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship (OJ 1991 L 288, p. 32).

Appeal brought on 21 July 2006 by Theodoros Kallianos against the judgment delivered by the Court of First Instance (Third Chamber) on 17 May 2006 in Case T-93/04 *Kallianos* v *Commission*

(Case C-323/06 P)

(2006/C 224/51)

Language of the case: French

Parties

Appellant: Theodoros Kallianos (represented by: G. Archambeau, avocat)

Other party to the proceedings: Commission of the European Communities

Form of order sought

— declare the appeal admissible and well founded;

— set aside the judgment of the Court of First Instance of the European Communities of 17 May 2006 in Case T-93/04 *Kallianos* v *Commission of the European Communities* in all material respects and, by doing what the Court of First Instance of the E. C. ought to have done:

(a) annul the decision of the Appointing Authority of 28 November 2003 replying to the complaint brought by Mr Kallianos under No R/335/03 of 2 July 2003;

(b) call upon the Commission to repay to the appellant the whole of the payments and amounts it unjustifiably withheld in respect of the remuneration payable to the appellant from the date on which he was granted a divorce by judgment of the Court of First Instance, Athens, on 8 March 1999, including indexation of the amount overpaid by way of maintenance pursuant to the unilateral decision of 18 September 2002 adopted by the Commission, together with interest at the statutory rate from the date when amounts were first withheld from the appellant's monthly salary;

(c) order the Commission to pay the costs of effecting service, including the costs of translating the Greek judgments into French, documents which were in any event made available to the Commission in good time, amounting to EUR 1 500, together with the costs incurred by the appellant as a result of being obliged to deal repeatedly with the Commission's arguments, assessed at 20 % of the sum ordered to be paid in the order for costs or other such sum as the Court deems equitable;

(d) order the Commission of the European Communities to pay all of the costs incurred in the proceedings before the Court of Justice and the Court of First Instance.

Pleas in law and main arguments

By his appeal, the appellant maintains, firstly, that the Community institutions lack competence to act in the place of the Member States or to interpret their national law in the context of divorce proceedings.

Secondly, the appellant challenges the argument that the effect of a divorce decree is not automatically to terminate interim measures ordered by a court in interlocutory proceedings and that such a decree must be served by writ by a court officer on the Commission in order that the latter may, in particular, consider itself released from its obligation to make deductions from the salary of one spouse (an official) for the benefit of the other spouse. In that regard, the appellant submits, in essence, that the Commission is not a third party seised of the matter or an ordinary employer, given that, under the Staff Regulations, all officials are under an obligation to provide information and to be transparent with regard to their personal circumstances. He also argues that an order awarding maintenance to a spouse in the course of divorce proceedings is automatically terminated on pronouncement of decree absolute and that it is therefore sufficient that the Commission is simply aware of that decree for the maintenance obligations to cease without there being any need for such a decree to be served by writ by a court officer.

Action brought on 24 July 2006 — Commission of the European Communities v Republic of Portugal

(Case C-324/06)

(2006/C 224/52)

Language of the case: Portuguese

Parties

Applicant: Commission of the European Communities (represented by: A. Szmytkowska and P. Andrade, acting as Agents)

Defendant: Republic of Portugal

Form of order sought

— Declare that by failing to adopt the laws, regulations and administrative provisions necessary to comply with Commission Directive 2004/116/EC [1] of 23 December 2004 amending the Annex to Council Directive 82/471/EEC as regards the inclusion of *Candida guilliermondii* or, in any event, by failing to notify the Commission of such measures, the Republic of Portugal has failed to fulfil its obligations under that directive;

— order the Republic of Portugal to pay the costs.

Pleas in law and main arguments

The period for implementing the directive expired on 30 June 2005.

[1] OJ 2004 L 379, p. 81.

Appeal brought on 25 July 2006 by Galileo International Technology LLC, Galileo International LLC, Galileo Belgium SA, Galileo Danmark A/S, Galileo Deutschland GmbH, Galileo España, SA, Galileo France SARL, Galileo Nederland BV, Galileo Nordiska AB, Galileo Portugal Ltd, Galileo Sigma Srl, Galileo International Ltd, The Galileo Company, Timas Ltd (trading as Galileo Ireland) against the judgment delivered on 10 May 2006 in Case T-279/03 *Galileo International Technology LLC and Others* v *Commission of the European Communities*

(Case C-325/06 PP)

(2006/C 224/53)

Language of the case: French

Parties

Appellants: Galileo International Technology LLC, Galileo International LLC, Galileo Belgium SA, Galileo Danmark A/S, Galileo Deutschland GmbH, Galileo España, SA, Galileo France SARL, Galileo Nederland BV, Galileo Nordiska AB, Galileo Portugal Ltd, Galileo Sigma Srl, Galileo International Ltd, The Galileo Company, Timas Ltd (trading as Galileo Ireland) (represented by: J.-N. Louis and C. Delcorde, avocats)

Other party to the proceedings: Commission of the European Communities

Form of order sought

— Set aside in its entirety the judgment of the Court of First Instance (Second Chamber, Extended Composition) of 10 May 2006 in Case T-279/03 *Galileo and Others* v *Commission of the European Communities*.

— Adjudicate on the basis of new provisions, and

I. (a) Prohibit the Commission from making any use of the word Galileo in connection with the satellite radio navigation system project and order it to cease to induce, directly or indirectly, any third parties whomsoever to use that word in connection with that project and, last, prohibit it from participating in any way whatsoever in the use of that word by a third party.

(b) Order the Commission to pay the applicants, jointly and severally, the sum of EUR 50 million by way of compensation for the material harm sustained.

II. In the alternative,

In the event that the Commission should persist in using the word Galileo, order it to pay the applicants the sum of EUR 240 million.

III. Order the Commission to pay the applicants, with effect from the date of introduction of the present application, default interest calculated by reference to the reference rate of the ECB plus 2 percentage points from the date on which the formal letter of 30 April 2001 was sent.

IV. Order the defendant to pay the costs.

Pleas in law and main arguments

By their appeal, the appellants rely on the error which, in their submission, the Court of First Instance made in making the supply of goods or services on the market by the owner of the trade mark a condition of recognition of the breach of its rights within the meaning of Article 9(1) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark [1] and Article 5(1) of Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks [2].

They then challenge the restrictive interpretation of the concept of 'us[e] in the course of a trade', in that that concept necessarily envisages an activity of a commercial nature. In the applicants submission, the judgment of the Court of First Instance is also vitiated by contradictions on a number of points, in particular as regards the commercial or non-commercial purpose of the 'Galileo' project and the certain or foreseeable nature of the harm.

The appellants also criticise the Court of First Instance for having failed to adjudicate in a satisfactory manner on the arguments alleging harm to their trade and company names and for having ignored the fact that Article 8 of the Paris Convention for the Protection of Industrial Property of 20 March 1883, last revised at Stockholm on 14 July 1967 and amended on 28 September 1979 ([3]), constitutes a binding minimum basis.

Last, the appellants criticise the Court of First Instance for having disregarded the rules applicable to the liability of the Commission for an unlawful act. They maintain that a trade mark right is a right of appropriation and not a right of creation.

([1]) OJ 1994 L 11, p. 1.
([2]) OJ 1989 L 40, p. 1.
([3]) United Nations Treaty Series, Vol. 828, No 11847, p. 108.

Action brought on 25 July 2006 — Commission of the European Communities v Kingdom of Spain

(Case C-326/06)

(2006/C 224/54)

Language of the case: Spanish

Parties

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

Defendant: Kingdom of Spain

Form of order sought

— Declare that, by not adopting the provisions necessary to comply with Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees ([1]) and, in any event, by not communicating those provisions to the Commission, the Kingdom of Spain has failed to fulfil its obligations under that directive;

— order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

The period prescribed for adapting domestic law to Directive 2001/86/EC expired on 8 October 2004.

([1]) OJ 2001 L 294, p. 22.

Action brought on 26 July 2006 — Commission of the European Communities v Italian Republic

(Case C-327/06)

(2006/C 224/55)

Language of the case: Italian

Parties

Applicant: Commission of the European Communities (represented by: J. Enegren and L. Pignataro, Agents)

Defendant: Italian Republic

Form of order sought

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2002/14/EC ([1]) establishing a general framework for informing and consulting employees in the European Community or, in any event, by failing to communicate them to the Commission, 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 for transposition of the directive expired on 23 March 2005.

([1]) OJ L 80, 23.3.2002, p. 29.

Action brought on 27 July 2006 — Commission of the European Communities v Ireland

(Case C-330/06)

(2006/C 224/56)

Language of the case: English

Parties

Applicant: Commission of the European Communities (represented by: J. Enegren, Agent)

Defendant: Ireland

The applicant claims that the Court should:

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 2001/86/EC [1] of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees, or in any event by failing to communicate them to the Commission, Ireland has failed to fulfil its obligations under the Directive;

— order Ireland to pay the costs.

Pleas in law and main arguments

The period within which the directive had to be transposed expired on 8 October 2004.

[1] OJ L 294, P. 22

Appeal brought on 1 August 2006 by the Hellenic Republic against the judgment delivered by the Court of First Instance (Second Chamber) on 20 June 2006 in Case T-251/04 Hellenic Republic v Commission of the European Communities

(Case C-332/06 P)

(2006/C 224/57)

Language of the case: Greek

Parties

Appellant: Hellenic Republic (represented by: V. Kontolaimos, State Legal Adviser, and I. Khalkias, Member of the State Legal Service)

Other party to the proceedings: Commission of the European Communities

Form of order sought

— Hold the appeal admissible;

— Set aside or alter the judgment of the Court of First Instance;

— Grant the appeal, in accordance with the form of order sought;

— Order the Commission to pay the costs.

Grounds of appeal and main arguments

1st ground of appeal: The Court of First Instance misinterpreted the fifth subparagraph of Article 5(2)(c) of Regulation No 729/70 and subparagraph (a) of the fifth subparagraph of Article 7(4) of Regulation No 1258/1999, in conjunction with Article 8(1) of Regulation No 1663/95 as amended by Article 1(3) of Regulation No 2245/99, because:

(a) the Commission's communication did not satisfy the requirements of Article 8 of Regulation No 1663/95 and therefore could not constitute the written communication for the purposes of that article or the starting point for determining the 24-month period prescribed by Regulations Nos 729/70 and 1258/1999. Thus, on the basis of the foregoing provisions, the Commission lacked temporal competence to impose financial corrections because it did not comply with the procedure, laid down in the regulations, which requires bilateral discussion including with regard to the amount of the impending correction, the assessment of which must be included in the letter under Article 8 of Regulation No 1663/95 which sets off the 24-month period. In any event the Commission rejected expenditure referable to a time preceding the 24-month period;

(b) the Court of First Instance made the application of Regulation No 2245/1999 retroactive in accepting that it covers expenditure not only of the financial year 2000 but also of earlier financial years.

2nd ground of appeal: The Court of First Instance misinterpreted and applied incorrectly the principles of proportionality (force majeure) and of the protection of legitimate expectations with regard to the delay in bringing rice into intervention storage because:

(a) the exceeding by nine days of the time-limit for bringing the entire quantity of rice into storage, which was due to a strike without notice by drivers of lorries for public use, amounts to a classic case of force majeure, responsibility for which cannot be attributed to Greece, whose competent authorities did everything possible to bring in the entire quantity of rice despite the unnotified strike;

(b) the fact that the Commission was informed immediately and timeously, before the time-limit expired, that the bringing of rice into storage was delayed because of the strike and the fact that Commission did not reply immediately created justified expectations that the Commission had no objection to the delay of a few days.

Action brought on 28 July 2006 — Commission of the European Communities v Kingdom of Sweden

(Case C-333/06)

(2006/C 224/58)

Language of the case: Swedish

Parties

Applicant: Commission of the European Communities (represented by: J.R. Vidal Puig and K. Simonsson, acting as Agent)

Defendant: Kingdom of Sweden

Form of order sought

— Declare that, by failing to lay down the sanctions for infringements of the provisions of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delays of flights, and repealing Regulation (EEC) No 295/91 [1], the Kingdom of Sweden has failed to fulfil its obligations under Article 16 of the directive;

— order the Kingdom of Sweden to pay the costs.

Pleas in law and main arguments

Article 16(3) of Regulation No 261/2004 requires the Member States to lay down effective, proportionate and dissuasive sanctions for infringements of the provisions of the regulation.

According to the information available to the Commission, the Kingdom of Sweden — by failing to lay down sanctions for infringements of the provisions of Article 14 of the regulation and nearly one and a half years after its entry into force — has not yet introduced a complete system of sanctions for infringements of the regulation.

[1] OJ L 46, 17.2.2004, p. 1.

Action brought on 4 August 2006 — Commission of the European Communities v Italian Republic

(Case C-339/06)

(2006/C 224/59)

Language of the case: Italian

Parties

Applicant: Commission of the European Communities (represented by: C. Cattabriga, Agent)

Defendant: Italian Republic

Form of order sought

— Declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Commission Directive 2004/116/EC [1] of 23 December 2004 amending the Annex to Council Directive 82/471/EEC as regards the inclusion of *Candida guilliermondii* or, in any event, by failing to communicate those provisions to the Commission, the Italian Republic has failed to fulfil its obligations under Article 2(1) of that directive;

— Order the Italian Republic to pay the costs.

Pleas in law and main arguments

The period for transposition of the directive expired on 30 June 2005.

[1] OJ L 379, 24.12.2004, p. 81.

Order of the President of the Court of 20 June 2006 — Kingdom of Spain v Council of the European Union

(Case C-133/04) [1]

(2006/C 224/60)

Language of the case: Spanish

The President of the Court has ordered that the case be removed from the register.

[1] OJ C 106, 30.4.2004.

Order of the President of the Court of 14 June 2006 (reference for a preliminary ruling from the Tribunale di Livorno — Italy) — Umberto Gentilini v Dal Colle Industria Dolciaria SpA

(Case C-78/05) ([1])

(2006/C 224/61)

Language of the case: Italian

The President of the Court has ordered that the case be removed from the register.

([1]) OJ C 93, 16.04.2005.

Order of the President of the Court of 20 June 2006 — Kingdom of Spain v Council of the European Union

(Case C-139/05) ([1])

(2006/C 224/62)

Language of the case: Spanish

The President of the Court has ordered that the case be removed from the register.

([1]) OJ C 115, 14.5.2005.

Order of the President of the Court of 29 June 2006 — Commission of the European Communities v Republic of Austria

(Case C-209/05) ([1])

(2006/C 224/63)

Language of the case: German

The President of the Court has ordered that the case be removed from the register.

([1]) OJ C 171, 9.7.2005.

Order of the President of the First Chamber of the Court of 19 May 2006 — Commission of the European Communities v Kingdom of the Netherlands

(Case C-253/05) ([1])

(2006/C 224/64)

Language of the case: Dutch

The President of the First Chamber has ordered that the case be removed from the register.

([1]) OJ C 229, 17.09.2005.

Order of the President of the Court of 7 June 2006 (reference for a preliminary ruling from the Hof van Beroep te Antwerpen — Belgium) — Criminal proceedings against Werner Bouwens

(Case C-272/05) ([1])

(2006/C 224/65)

Language of the case: Dutch

The President of the Court has ordered that the case be removed from the register.

([1]) OJ C 217, 3.9.2005.

Order of the President of the Fourth Chamber of the Court of 19 May 2006 — Commission of the European Communities v Kingdom of the Netherlands

(Case C-308/05) ([1])

(2006/C 224/66)

Language of the case: Dutch

The President of the Fourth Chamber has ordered that the case be removed from the register.

([1]) OJ C 243, 1.10.2004.

Order of the President of the Court of 14 June 2006 (reference for a preliminary ruling from the Tribunale Civile di Bergamo — Italy) — D.I.A. Srl, in liquidation v Cartiere Paolo Pigna SpA

(Case C-309/05) ([1])

(2006/C 224/67)

Language of the case: Italian

The President of the Court has ordered that the case be removed from the register.

([1]) OJ C 243, 1.10.2005.

Order of the President of the Court of 31 May 2006 — Commission of the European Communities v Republic of Estonia

(Case C-351/05) ([1])

(2006/C 224/68)

Language of the case: Estonian

The President of the Court has ordered that the case be removed from the register.

([1]) OJ C 281, 12.11.2005.

Order of the President of the Fifth Chamber of the Court of 16 May 2006 — Commission of the European Communities v Ireland

(Case C-355/05) ([1])

(2006/C 224/69)

Language of the case: English

The President of the Fifth Chamber has ordered that the case be removed from the register.

([1]) OJ C 296, 26.11.2005.

Order of the President of the Court of 6 June 2006 — Commission of the European Communities v Kingdom of the Netherlands

(Case C-463/05) ([1])

(2006/C 224/70)

Language of the case: Dutch

The President of the Court has ordered that the case be removed from the register.

([1]) OJ C 48, 25.02.2006.

Order of the President of the Court of 14 June 2006 (reference for a preliminary ruling from the Tribunale di Livorno — Italy) — Alberto Bianchi v De Robert Calzature Srl

(Case C-51/06) ([1])

(2006/C 224/71)

Language of the case: Italian

The President of the Court has ordered that the case be removed from the register.

([1]) OJ C 86, 08.04.2006.

Order of the President of the Court of 2 June 2006 — Commission of the European Communities v Portuguese Republic

(Case C-89/06) ([1])

(2006/C 224/72)

Language of the case: Portuguese

The President of the Court has ordered that the case be removed from the register.

([1]) OJ C 86, 08.04.2006.

COURT OF FIRST INSTANCE

Judgment of the Court of First Instance of 12 July 2006 — Chafiq Ayadi v Council

(Case T-253/02) [1]

(Common foreign and security policy — Restrictive measures taken against persons and entities associated with Usama bin Laden, the Al-Qaeda network and the Taliban — Competence of the Community — Freezing of funds — Fundamental rights — Jus cogens — Review by the Court — Action for annulment)

(2006/C 224/73)

Language of the case: English

Parties

Applicant: Chafiq Ayadi (Dublin, Ireland) (represented by: initially by A. Lyon, H. Miller and M. Willis-Stewart, Solicitors, and S. Cox, Barrister, and subsequently by A. Lyon, H. Miller and S. Cox)

Defendant: Council of the European Union (represented by: M. Vitsentzatos and M. Bishop, Agents)

Interveners in support of the defendant: United Kingdom of Great Britain and Northern Ireland (represented: initially by J. Collins, and subsequently by R. Caudwell, Agents, and by S. Moore, Barrister) and Commission of the European Communities (represented by: C. Brown and M. Wilderspin, Agents)

Re:

The partial annulment of Council Regulation No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, and repealing Council Regulation (EC) No 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan (OJ 2002 L 139, p. 9)

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the applicant to bear, in addition to his own costs, those of the Council;*

3. *Orders the United Kingdom of Great Britain and Northern Ireland and the Commission to bear their own costs.*

[1] OJ C 289, 23.11.2002.

Judgment of the Court of First Instance of 11 July 2006 — Torres v OHIM — Bodegas Muga (Torre Muga)

(Case T-247/03) [1]

(Community trade mark — Opposition proceedings — Application for figurative Community trade mark Torre Muga — Earlier national and international word marks TORRES — Likelihood of confusion — Breach of the rights of the defence)

(2006/C 224/74)

Language of the case: Spanish

Parties

Applicant: Miguel Torres (Vilafranca del Penedés, Spain) (represented by: E. Armijo Chávarri, M.A. Baz de San Ceferino and A. Castán Pérez-Gómez, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: I. de Medrano Caballero and S. Laitinen, acting as Agents)

Other party to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance: Bodegas Muga, SA (Haro, Spain) (represented by: L.M. Polo Flores and F. Porcuna de la Rosa, lawyers)

Re:

Action brought against the decision of the First Board of Appeal of Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 7 April 2003 (Case R 998/2001-1) concerning opposition proceedings between Miguel Torres, SA, and Bodegas Muga, SA

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the applicant to pay the costs incurred by the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM);*

3. *Orders the intervener to bear its own costs.*

[1] OJ C 213, 6.9.2003.

Judgment of the Court of First Instance of 10 July 2006 — La Baronia de Turis v OHIM — Baron Philippe de Rothschild (LA BARONNIE)

(Case T-323/03) ([1])

(Community trade mark — Opposition proceedings — Application for Community word mark LA BARONNIE — Previous national word mark BARONIA — Proof of use of earlier mark — Evidence produced for the first time before the Board of Appeal — Admissibility — Scope of the examination conducted by the Boards of Appeal — Articles 62 and 74 of Regulation (EC) No 40/94)

(2006/C 224/75)

Language of the case: French

Parties

Applicant: La Baronia de Turis, Cooperativa Valenciana (Turis, Spain) (represented by: J. Carreño Moreno, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: S. Petrequin and A. Folliard-Monguiral, Agents)

Other party to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance: Baron Philippe de Rothschild SA (Pauillac, France) (represented by: K. Manhaeve, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 9 July 2003 (R 57/2003-2) concerning the opposition proceedings between Baronia de Turis, Cooperativa Valenciana and Baron Philippe de Rothschild SA

Operative part of the judgment

The Court:

1. *Annuls the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 9 July 2003 (Case R 57/2003-2);*

2. *Dismisses as inadmissible the application of the applicant, La Baronia de Turis, Cooperativa Valenciana, seeking refusal to register the Community trade mark in question;*

3. *Dismisses the application of the intervener, Baron Philipe de Rothschild SA, that the opposition be declared inadmissible, in so far as it is based on Article 8(4) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark;*

4. *Dismisses the action as to the remainder.*

([1]) OJ C 275, 15.11.2003.

Judgment of the Court of First Instance of 13 July 2006 — Shandong Reipu Biochemicals v Council

(Case T-413/03) ([1])

(Dumping — Imports of para-cresol originating in China — Calculation of the constructed normal value — Taking into account of by-products — Obligation of the Commission and the Council to examine)

(2006/C 224/76)

Language of the case: English

Parties

Applicant: Shandong Reipu Biochemicals Co. Ltd (Shandong, China) (represented by: O. Prost, V. Avgoustidi and E. Berthelot, lawyers)

Defendant: Council of the European Union (represented by: M. Bishop, Agent)

Interveners in support of the defendant: Commission of the European Communities (represented by: T. Scharf and K. Talabér-Ricz, Agents) and Degussa Knottingley Ltd (London, United Kingdom) (represented by: F. Renard, lawyer)

Re:

Annulment of Council Regulation (EC) No 1656/2003 of 11 September 2003 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of para-cresol originating in the People's Republic of China (OJ 2003 L 234, p. 1)

Operative part of the judgment

1. *Council Regulation (EC) No 1656/2003 of 11 September 2003 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of para-cresol originating in the People's Republic of China is annulled in so far as it concerns the applicant.*

2. *The Council is ordered to bear its own costs and those incurred by the applicant.*

3. *The Commission and Degussa Knottingley Ltd are ordered to bear their own costs.*

([1]) OJ C 59, 6.3.2004.

Judgment of the Court of First Instance of 12 July 2006 — Hassan v Council and Commission

(Case T-49/04) ([1])

*((Common foreign and security policy — Restrictive measures taken against persons and entities associated with Usama bin Laden, the Al-Qaeda network and the Taliban — Competence of the Community — Freezing of funds — Fundamental rights — **Jus cogens** — Review by the Court — Action for annulment and damages))*

(2006/C 224/77)

Language of the case: English

Parties

Applicant: Faraj Hassan (Brixton, United Kingdom) (represented by: E. Grieves, Barrister, and H. Miller, Solicitor)

Defendants: Council of the European Union (represented by: S. Marquardt and E. Finnegan, Agents) and Commission of the European Communities (represented by: J. Enegren and C. Brown, Agents)

Re:

Application, first, for annulment of Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaeda network and the Taliban, and repealing Council Regulation (EC) No 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan (OJ 2002 L 139, p. 9), as amended by Commission Regulation (EC) No 2049/2003 of 20 November 2003 amending Regulation No 881/2002 for the 25th time (OJ 2003 L 303, p. 20), and, second, for damages

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the applicant to pay the costs.*

([1]) OJ C 94, 17.4.2004.

Judgment of the Court of First Instance of 13 July 2006 — Vounakis v Commission

(Case T-165/04) ([1])

(Officials — Career development review — 2001/2002 assessment exercise — Incompetence of the appeal assessor — Manifest error of assessment — Duty to state reasons)

(2006/C 224/78)

Language of the case: French

Parties

Applicant: Hippocrate Vounakis (Wezembeek-Oppem, Belgium) (represented by: S. Orlandi, A. Coolen, J.-N. Louis and É. Marchal, lawyers)

Defendant: Commission of the European Communities (represented by: G. Berscheid and V. Joris, Agents)

Re:

Action for annulment of the decision of 23 May 2003 establishing the applicant's career development review for the period from 1 July 2001 to 31 December 2002.

Operative part of the judgment

The Court:

1. *Annuls the decision of 23 May 2003 establishing the applicant's career development review for the period from 1 July 2001 to 31 December 2002 in so far as it concerns the section 'Conduct in the service';*

2. *Dismisses the remainder of the action;*

3. *Orders the Commission to bear its own costs and one third of those incurred by the applicant;*

4. *Orders the applicant to bear two thirds of his own costs.*

([1]) OJ C 179, 10.7.2004.

Judgment of the Court of First Instance of 25 July 2006 — Belgium v Commission

(Case T-221/04) [1]

(EAGGF — Clearance of accounts — Arable crops — Check on areas based on a system of aerial orthoimagery (GIS) — Difference between the area declared and the area resulting from the GIS system — Administrative check and inspection on site — Loss to EAGGF)

(2006/C 224/79)

Language of the case: French

Parties

Applicant: Kingdom of Belgium (represented by: initially, A. Goldman and E. Dominkovits, Agents, subsequently M. Wimmer, Agent, assisted by H. Gilliams, P. de Bandt and L. Goossens, lawyers)

Defendant: Commission of the European Communities (represented by: M. Nolin and L. Visaggio, Agents)

Re:

Application for partial annulment of Commission Decision 2004/136/EC of 4 February 2004 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ 2004 L 40, p. 31), in so far as it imposes a flat-rate correction of 2 % of the expenses declared by Belgium in respect of arable crops.

Operative part of the judgment

The Court:

1. *Dismisses the action.*

2. *Orders the Kingdom of Belgium to pay the costs.*

[1] OJ C 118, 30.4.2004 (Case C-176/04).

Judgment of the Court of First Instance of 13 July 2006 — Italy v Commission

(Case T-225/04) [1]

(Structural Funds — Financing of Community initiatives — Amendment of indicative allocations — Enforcement of the final judgment — Annulling judgment)

(2006/C 224/80)

Language of the case: Italian

Parties

Applicant: Italian Republic (represented by: A. Cingolo, P. Gentili and D. Del Gaizo, and subsequently by P. Gentili and D. Del Gaizo, avvocati dello Stato, acting as Agents)

Defendant: Commission of the European Communities (represented by: E. de March and J. Flynn, Agents, and A. Dal Ferro, lawyer)

Re:

Application for annulment of Commission Decision C (2003) 3971 final of 26 November 2003 establishing indicative allocations between the Member States of the commitment appropriations under Community initiatives for the period 1994-1999 and of all related prior measures

Operative part of the judgment

The Court:

1. *Dismisses the application;*

2. *Orders the applicant to bear its own costs and the costs of the defendant.*

[1] OJ C 106, 30.4.2004 (Case C-60/04).

Judgment of the Court of First Instance of 11 July 2006 — Caviar Anzali v OHIM — Novomarket (Asetra)

(Case T-252/04) ([1])

(Community trade mark — Opposition proceedings — Application for Community figurative trade mark ASETRA — Previous national and international figurative trade mark CAVIAR ASTARA — Relative grounds for refusal — Risk of confusion — Rejection of opposition for failure to produce documents within the prescribed periods — Evidence produced for the first time before the Board of Appeal — Admissibility — Scope of the examination conducted by the Boards of Appeal — Articles 62 and 74 of Regulation (EC) No 40/94)

(2006/C 224/81)

Language of the case: French

Parties

Applicant: Caviar Anzali SAS (Colombes, France) (represented by: J.-F. Jésus, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: M.A. Folliard-Monguiral, Agent)

Other party to the proceedings before the Board of Appeal of OHIM: Novomarket, SA (Madrid, Spain)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 19 April 2004 (Case R 479/2003-2) concerning the opposition proceedings between Caviar Anzali SAS and Novomarket, SA

Operative part of the judgment

The Court:

1. *Annuls the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 19 April 2004 (Case R 479/2003-2);*

2. *Orders OHIM to pay the costs.*

([1]) OJ C 217, 28.8.2004.

Judgment of the Court of First Instance of 12 July 2006 — Vitakraft-Werke Wührmann v OHIM — Johnson's Veterinary Products (VITACOAT)

(Case T-277/04) ([1])

(Community trade mark — Opposition proceedings — Application for the Community word mark VITACOAT — Earlier national word marks VITAKRAFT — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94)

(2006/C 224/82)

Language of the case: English

Parties

Applicant: Vitakraft-Werke Wührmann & Sohn GmbH & Co. KG (Bremen, Germany) (represented by: U. Sander, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: J. Novais Gonçalves, Agent)

Other party to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance: Johnson's Veterinary Products Ltd (Sutton Coldfield, United Kingdom) (represented by: M. Edenborough, Barrister)

Re:

Action brought against the decision of the First Board of Appeal of OHIM, of 27 April 2004 (Case R 560/2003-1) regarding opposition proceedings between Vitakraft-Werke Wührmann & Sohn GmbH & Co. KG and Johnson's Veterinary Products Ltd

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the applicant to bear its own costs, and pay the costs incurred by the Office for Harmonisation in the Internal Market (Trade Marks and Designs) and the intervener before the Court of First Instance.*

([1]) OJ C 300, 4.12.2004.

Judgment of the Court of First Instance of 13 July 2006 – Andrieu v Commission

(Case T-285/04) ([1])

(Officials — Action for annulment — Career development report — Rights of the defence — Action for damages — Inadmissibility)

(2006/C 224/83)

Language of the case: French

Parties

Applicant: Michel Andrieu (Brussels, Belgium) (represented by: S. Rodrigues and Y. Minatchy, lawyers)

Defendant: Commission of the European Communities (represented by: G. Berscheid and L. Lozano Palacios, acting as Agents, and M. Genton, lawyer)

Re:

Firstly, action for annulment of the applicant's career development report for 2001/2002 and, secondly, action for damages

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders each party to bear its own costs.*

([1]) OJ C 262, 23.10.2004.

Judgment of the Court of First Instance of 25 July 2006 — Fries Guggenheim v Cedefop

(Case T-373/04) ([1])

(European Centre for the Development of Vocational Training — Posts of heads of area — Filling of posts by reassignment — No provision for a selection procedure)

(2006/C 224/84)

Language of the case: French

Parties

Applicant: Éric Mathias Fries Guggenheim (Thessasoniki, Greece) (represented by: M.-A. Lucas, lawyer)

Defendant: European Centre for the Development of Vocational Training (Cedefop) (represented by: B. Wägenbaur, lawyer)

Re:

Application for annulment of the decisions of the director of Cedefop of 28 January 2004, appointing certain persons as Heads of Area.

Operative part of the Judgment

(1) *The decisions of the director of the European Centre for the Development of Vocational Training (Cedefop) of 28 January 2004 appointing certain persons as Heads of Areas A to D are annulled.*

(2) *Cedefop shall bear the costs*

([1]) OJ C 284 of 20.11.2004.

Judgment of the Court of First Instance of 13 July 2006 — IMPALA v Commission

(Case T-464/04) ([1])

(Competition — Regulation (EEC) No 4064/89 — Decision declaring a concentration compatible with the common market — Markets for recorded music and on-line music — Existence of a collective dominant position — Risk of creation of a collective dominant position — Conditions — Transparency of the market — Deterrence — Statement of reasons — Manifest error of assessment)

(2006/C 224/85)

Language of the case: English

Parties

Applicants: Independent Music Publishers and Labels Association (Impala, international association) (Brussels, Belgium) (represented by: S. Crosby and J. Golding, Solicitors, and I. Wekstein-Steg, lawyer)

Defendant: Commission of the European Communities (represented by: A. Whelan and K Mojzesowicz, Agents)

Interveners: Bertelsmann AG (Gütersloh, Germany) (represented by: J. Boyce, Solicitor, P. Chappatte and D. Loukas, lawyers), Sony BMG Music Entertainment BV (Vianen, Netherlands) and Sony Corporation of America (SCA) (New York, United States) (represented by: N. Levy, Barrister, R. Snelders and T. Graf, lawyers)

Re:

Annulment of Commission Decision C(2004) 2815 of 19 July 2004 declaring a concentration to be compatible with the common market and the functioning of the EEA Agreement (Case No COMP/M.3333 — Sony/BMG)

Operative part of the judgment

The Court:

1. *Annuls Commission Decision C(2004) 2815 of 19 July 2004 declaring a concentration to be compatible with the common market and the functioning of the EEA Agreement (Case No COMP/M.3333 — Sony/BMG);*

2. *Orders the Commission to bear its own costs and to pay three quarters of those incurred by the applicant;*

3. *Orders the applicant to bear one quarter of its costs;*

4. *Orders the interveners to bear their own costs.*

([1]) OJ C 6 of 8.1.2005

Judgment of the Court of First Instance of 12 July 2006 — Rossi v OHIM — Marcorossi (MARCOROSSI)

(Case T-97/05) ([1])

(Community trade mark — Opposition proceedings — Application for Community word mark MARCOROSSI — Earlier national and international word marks MISS ROSSI — Earlier Community word mark SERGIO ROSSI — Relative ground of refusal — Likelihood of confusion)

(2006/C 224/86)

Language of the case: Italian

Parties

Applicant: Sergio Rossi SpA (San Mauro Pascoli, Italy) (represented by: A Ruo, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: P. Bullock, acting as Agent)

Other party to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance: Marcorossi Srl (Bodio Lommago, Italy) (represented by: P. Roncaglia, G. Lazzeretti, M. Boleto and E. Gavuzzi, lawyers)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 17 December 2004 (Case R 226/2003-2) concerning opposition proceedings between Sergio Rossi SpA and Marcorossi Srl

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the applicant to pay the costs incurred by the intervener and to bear its own costs;*

3. *Orders the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) to bear its own costs.*

([1]) OJ C 115, 14.5.2005.

Judgment of the Court of First Instance of 14 July 2006 — Endesa v Commission

(Case T-417/05) ([1])

(Competition — Concentration — Regulation (EC) No 139/2004 — Electricity market — Decision declaring that a concentration has no Community dimension — Calculation of turnover — Accounting criteria — Adjustments — Burden of proof — Rights of the defence)

(2006/C 224/87)

Language of the case: Spanish

Parties

Applicant: Endesa SA (Madrid, Spain) (represented by: J. Flynn QC, S. Baxter, Solicitor, and M. Odriozola Alén, M. Muñoz de Juan, M. Merola, J. García de Enterría Lorenzo-Velázquez, J. Varcárcel Martínez, lawyers)

Defendant: Commission of the European Communities (represented by: F. Castillo de la Torre, É. Gippini Fournier, A. Whelan and M. Schneider, Agents)

Interveners in support of the defendant: Kingdom of Spain (represented by: N. Díaz Abad, abogado del Estado) and Gas Natural SDG SA (Barcelona, Spain) (represented by: F. González Díaz, J. Jiménez de la Iglesia and A. Leis García, lawyers)

Re:

Application for annulment of the Commission Decision of 15 November 2005 declaring that a concentration has no Community dimension (Case COMP/M.3986 — Gas Natural/Endesa)

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the applicant to bear its own costs and the costs of the Commission and Gas Natural SDG SA, including those relating to the interlocutory proceedings;*

3. *Orders the Kingdom of Spain to bear its own costs.*

([1]) OJ C 22 of 28.1.2006.

Order of the Court of First Instance of 22 June 2006 — Free Trade Foods v Commission

(Case T-108/01) ([1])

(Action for annulment — Action for damages — Sugar qualifying as EC/OCT originating products — Safeguard measure — Applicant's failure to proceed — No need to adjudicate)

(2006/C 224/88)

Language of the case: Dutch

Parties

Applicant: Free Trade Foods NV (Curaçao, Netherlands Antilles) (represented by: M. Slotboom and N. Helder, lawyers)

Defendant: Commission of the European Communities (represented by: T. van Rijn, Agent)

Parties intervening in support of the defendant: Kingdom of Spain (represented by: N. Díaz Abad, Agent) and French Republic (represented by: G. de Bergues and L. Bernheim, Agents)

Re:

First, an application for annulment of Commission Regulation (EC) No 396/2001 of 27 February 2001 providing for the continued application of safeguard measures for imports from the overseas countries and territories of sugar sector products with EC/OCT cumulation of origin for the period 1 March to 30 June 2001 (OJ 2001 L 58, p. 13), and, second, an application for compensation for the loss allegedly suffered by the applicant following the adoption of the contested regulation.

Operative part of the order

The Court hereby orders:

1. *There is need to adjudicate on this action.*

2. *The applicant shall bear its own costs and pay those of the defendant. The Kingdom of Spain and the French Republic must bear their own costs.*

([1]) OJ C 227, 11.8.2001.

Order of the Court of First Instance of 22 June 2006 — Free Trade Foods v Commission

(Case T-202/01) ([1])

(Action for annulment — Action for damages — Sugar qualifying as EC/OCT originating products — Safeguard measure — Applicant's failure to proceed — No need to adjudicate)

(2006/C 224/89)

Language of the case: Dutch

Parties

Applicant: Free Trade Foods NV (Curaçao, Netherlands Antilles) (represented by: M. Slotboom and N. Helder, lawyers, initially and then by M. Slotboom)

Defendant: Commission of the European Communities (represented by: T. van Rijn, Agent)

Party intervening in support of the defendant: Kingdom of Spain (represented by: N. Díaz Abad, Agent)

Re:

First, an application for annulment of Commission Regulation (EC) No 1325/2001 of 29 June 2001 providing for the continued application of safeguard measures with regard to imports of sugar sector products with EC/OCT originating status from the overseas countries and territories for the period 1 July to 1 December 2001 (OJ 2001 L 177, p. 57) and, second, an application for compensation for the loss allegedly suffered by the applicant following the adoption of the contested regulation.

Operative part of the order

The Court hereby orders:

1. *There is no need to adjudicate on this action.*

2. *The applicant shall bear its own costs and pay those of the defendant. The Kingdom of Spain must bear its own costs.*

([1]) OJ C 303, 27.10.2001.

Order of the Court of First Instance of 7 July 2006 — Établissements Toulorge v Parliament and Council

(Case T-167/02) [1]

(Action for damages — Non-contractual liability — Marketing of compound feedingstuffs for animals — Actual damage)

(2006/C 224/90)

Language of the case: French

Parties

Applicant: Établissements Toulorge (Bricquebec, France) (represented by: D. Waelbroeck and D. Brinckman, lawyers)

Defendants: European Parliament (represented by: C. Pennera and E. Waldherr) and Council of the European Union (represented by: initially I. Díez Parra and F. Ruggeri Laderchi, and subsequently I. Díez Parra and Z. Kupčová, Agents)

Intervening parties supporting the defendants: Federal Republic of Germany (represented by: W.-D. Plessing and M. Lumma, Agents) and Commission of the European Communities (represented by: A. Bordes, Agent)

Re:

Application for compensation for the damage allegedly suffered by the applicant owing to Directive 2002/2/EC of the European Parliament and of the Council of 28 January 2002 amending Council Directive 79/373/EEC on the circulation of compound feedingstuffs and repealing Commission Directive 91/357/EEC (OJ 2002 L 63, p. 23)

Operative part of the order

1. *The action is dismissed.*

2. *The applicant shall pay its own costs and those of the Parliament and the Council.*

3. *The Federal Republic of Germany and the Commission shall bear their own costs.*

[1] OJ C 180, 27.7.2002.

Order of the Court of First Instance of 29 June 2006 — Nürburgring v Parliament and Council

(Case T-311/03) [1]

(Action for annulment — Directive 2003/33/CE — Advertising and sponsorship of tobacco products — Ban on sponsorship of events or activities concerning more than one Member State — Locus standi — Inadmissibility)

(2006/C 224/91)

Language of the case: German

Parties

Applicant: Nürburgring GmbH (Nürburg/Eifel, Germany) (represented by : H. J. Rabe, lawyer, assisted by M. Dauses, Professor)

Defendants: European Parliament (represented by : E.Waldherr and U. Rösslein, Agents) and Council of the European Union (represented by E. Karlsson and J.-P. Hix, Agents)

Interveners in support of the applicant: Hockenheim-Ring GmbH (Hockenheim, Germany) and Exploitatie Circuit Park Zandvoort BV (Zandvoort, Netherlands) (represented by: M. Dauses, Professor)

Interveners in support of the defendants: Republic of Finland (represented by: T. Pynnä, A. Guimaraes-Purokoski and E. Bygglin, Agents), Commission of the European Communities (represented by: M.-J. Jonczy, L. Pignataro-Nolin and F. Hoffmeister, Agents) and Kingdom of Spain (Represented by: L. Fraguas Gadea, Agents)

Re:

Application for annulment of Directive 2003/33/CE of the European Parliament and of the Council of 26 May 2003, on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products (OJ 2003 L 152, p. 16), in particular Article 5(1) thereof.

Operative part of the order

(1) *The action is dismissed as being inadmissible.*

(2) *The applicant shall bear its own costs, as well as those of the Parliament and the Council.*

(3) *The Kingdom of Spain, the Republic of Finland and the Commission, as well as Hockenheim-Ring GmbH and Exploitatie Circuit Park Zandvoort BV, shall bear their own respective costs.*

[1] OJ C 275 of 15.11.2003.

Order of the Court of First Instance of 7 July 2006 — Juchem and Others v Parliament and Council

(Case T-321/03) [1]

(Action for damages — Non-contractual liability — Marketing of compound feedingstuffs for animals — Actual damage)

(2006/C 224/92)

Language of the case: French

Parties

Applicants: Juchem GmbH (Eppelborn, Germany) and the 223 other applicants whose names are listed in the annex to the order (represented by: D. Waelbroeck and N. Rampal, lawyers)

Defendants: European Parliament (represented by: E. Waldherr and M. Moore, Agents) and Council of the European Union (represented by: initially M. Balta and F. Ruggeri Laderchi, and subsequently M. Balta and Z. Kupčová, Agents)

Intervening parties supporting the defendants: Federal Republic of Germany (represented by: W.-D. Plessing and M. Lumma, Agents) and Commission of the European Communities (represented by: A. Bordes and B. Doherty, Agents)

Re:

Application for compensation for the damage allegedly suffered by the applicants owing to Directive 2002/2/EC of the European Parliament and of the Council of 28 January 2002 amending Council Directive 79/373/EEC on the circulation of compound feedingstuffs and repealing Commission Directive 91/357/EEC (OJ 2002 L 63, p. 23)

Operative part of the order

1. *The action is dismissed.*

2. *The applicants and the Parliament and the Council shall bear their own costs.*

3. *The Federal Republic of Germany and the Commission shall bear their own costs.*

[1] OJ C 275, 15.11.2003.

Order of the Court of First Instance of 22 June 2006 — Freiherr von Cramer-Klett and Rechtlerverband Pfronten v Commission

(Case T-136/04) [1]

(Council Directive 92/43/EEC — Conservation of natural habitats and wild fauna and flora — Commission Decision 2004/69/EC — List of sites of Community importance for the Alpine biogeographical region — Action for annulment — Inadmissible)

(2006/C 224/93)

Language of the case: German

Parties

Applicants: Freiherr von Cramer-Klett (Aschau im Chiemgau, Germany) and Rechtlerverband Pfronten (Pfronten, Germany) (represented by: T. Schönfeld and L. Thum, lawyers)

Defendant: Commission of the European Communities (represented by: M. van Beek and B. Schima, acting as Agents)

Intervener in support of the defendant: Republic of Finland (represented by: T. Pynnä and A. Guimaraes-Purokowski, acting as Agents)

Re:

Application for annulment of Commission Decision 2004/69/EC of 22 December 2003 adopting, pursuant to Council Directive 92/43/EEC, the list of sites of Community importance for the Alpine biogeographical region (OJ 2004 L 14, p. 21).

Operative part of the order

1. *The action is dismissed as inadmissible*

2. *The applicants are ordered to bear their own costs and pay the costs incurred by the Commission.*

3. *The Republic of Finland is ordered to bear its own costs.*

[1] OJ C 190 of 24.7.2004.

Order of the Court of First Instance of 22 June 2006 — Mayer and Others v Commission

(Case T-137/04) ([1])

(Council Directive 92/43/EEC — Conservation of natural habitats and of wild fauna and flora — Commission Decision 2004/69/EC — List of sites of Community importance for the Alpine biogeographical region — Action for annulment — Inadmissible)

(2006/C 224/94)

Language of the case: German

Parties

Applicants: Kurt Martin Mayer (Eisentratten, Austria), Tilly Forstbetriebe GmbH (Treibach, Austria), Anton Volpini de Maestri (Spittal/Drau, Austria) and Johannes Volpini de Maestri (Seeboden, Austria) (represented by: M. Schaffgotsch, lawyer)

Defendant: Commission of the European Communities (represented by: M. van Beek and B. Schima, acting as Agents)

Intervener in support of the defendant: Republic of Finland (represented by: T Pynnä and A. Guimaraes-Purokowski, acting as Agents)

Re:

Application for annulment of Commission Decision 2004/69/EC of 22 December 2003 adopting, pursuant to Council Directive 92/43/EEC, the list of sites of Community importance for the Alpine biogeographical region (OJ 2004 L 14, p. 21).

Operative part of the order

1. *The action is dismissed as inadmissible*

2. *The applicants are ordered to bear their own costs and pay those incurred by the Commission.*

3. *The Republic of Finland is ordered to bear its own costs.*

([1]) OJ C 146 of 29.5.2004.

Order of the Court of First Instance of 14 June 2006 — Italy v Commission

(Case T-110/05) ([1])

(Avian influenza — Exceptional support measures in the egg sector — Absence of exceptional support measures in the poultrymeat sector — Action for annulment — Inadmissible)

(2006/C 224/95)

Language of the case: Italian

Parties

Applicant: Italian Republic (represented by: G. Aiello, acting as Agent)

Defendant: Commission of the European Communities (represented by: C. Cattabriga and L. Visaggio, acting as Agents)

Re:

Annulment of Commission Regulation (EC) No 2102/2004 of 9 December 2004 on certain exceptional market support measures for eggs in Italy (OJ 2004 L 365, p. 10), in so far as it fails to provide exceptional market support measures in the poultrymeat sector in accordance with Article 14 of Regulation (EEC) No 2777/75 of the Council of 29 October 1975 on the common organisation of the market in poultrymeat (OJ 1975 L 282, p. 77).

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *The Italian Republic is ordered to pay the costs.*

([1]) OJ C 115 of 14. 5.2005.

Order of the Court of First Instance of 22 June 2006 — Sahlstedt and Others v Commission

(Case T-150/05) [1]

(Council Directive 92/43/EEC — Conservation of natural habitats and of wild fauna and flora — Commission Decision 2005/101/EC — List of sites of Community importance for the Boreal biogeographical region — Action for annulment — Inadmissibility)

(2006/C 224/96)

Language of the case: Finnish

Parties

Applicants: Markku Sahlstedt (Karkkila, Finland), Juha Kankkunen (Laukaa, Finland), Mikko Tanner (Vihti, Finland), Toini Tanner (Helsinki, Finland), Liisa Tanner (Helsinki), Eeva Jokinen (Helsinki), Aili Oksanen (Helsinki), Olli Tanner (Lohja, Finland), Leena Tanner (Helsinki), Aila Puttonen (Ristiina, Finland), Risto Tanner (Espoo, Finland), Tom Järvinen (Espoo), Runo K. Kurko (Espoo), Maa- ja metsätaloustuottajain keskusliitto MTK ry (Helsinki) and MTK:n säätiö (Helsinki) (represented by: K. Marttinen, lawyer)

Defendant: Commission of the European Communities (represented by: M. van Beek and M. Huttunen, acting as Agents)

Intervener in support of the defendant: Republic of Finland (represented by: A. Guimaraes-Purokoski and J. Himmanen, Agents)

Re:

Action for annulment of Commission Decision 2005/101/EC of 13 January 2005 adopting, pursuant to Council Directive 92/43/EEC, the list of sites of Community importance for the Boreal biogeographical region (OJ 2005 L 40, p. 1)

Operative part of the order

1. *The action is dismissed as inadmissible;*

2. *The applicants shall bear their own costs and the costs incurred by the Commission;*

3. *The Republic of Finland shall bear its own costs.*

[1] OJ C 143, 11.6.2005.

Order of the Court of First Instance of 5 July 2006 — Comunidad Autónoma de Valencia/Commission

(Case T-357/05) [1]

(Cohesion Fund — Representation by a lawyer — Manifest inadmissibility)

(2006/C 224/97)

Language of the case: Spanish

Parties

Applicant: Comunidad Autónoma de Valencia — Generalitat Valenciana (Spain) (represented by J.-V. Sánchez-Tarazaga Marcelino)

Defendant: Commission of the European Communities (represented by: L. Escobar Guerrero and A. Weimar, Agents)

Re:

Annulment of Commission Decision C (2005) 1867 final of 27 June 2005, concerning the reduction of the assistance initially granted from the Cohesion Fund to Project Group No 97/11/61/028, concerning the collection and treatment of waste waters on the Mediterranean coast of the Comunidad Autónoma de Valencia (Spain).

Operative part of the order

(1) *The action is dismissed as being manifestly inadmissible.*

(2) *There is no need to adjudicate on the application to intervene.*

(3) *The applicant shall bear its own costs, as well as those of the Commission, with the exception of the costs relating to the application to intervene.*

(4) *The applicant, the Commission and the Comunidad autónoma de Andalucia — Junta de Andalucia shall bear their own costs relating to their respective applications to intervene.*

[1] OJ C 281 of 12.11.2005.

Order of the President of the Court of First Instance of 26 June 2006 — Olympiakes Aerogrammes v Commission

(Case T-416/05 R)

(Interim measures — Application for a suspension of operation — State aid — Urgency)

(2006/C 224/98)

Language of the case: Greek

Parties

Applicant: Olympiakes Aerogrammes AE (Kallithea, Greece) (represented by: V. Christianos, lawyer)

Defendant: Commission of the European Communities (represented by: D. Triantafyllou and T. Scharf, acting as Agents)

Re:

Application for a suspension of operation of Article 2, combined with Article 1(1) of Commission Decision C 11/2004 on State aid (ex NN 4/2003) — Olympiaki Aeroporia — Restructuring and privatisation, of 14 September 2005

Operative part of the order

1. *The application for interim measures is dismissed;*

2. *Costs are reserved.*

Order of the President of the Court of First Instance of 7 July 2006 — Romana Tabacchi v Commission

(Case T-11/06 R)

(Application for interim measures — Application for suspension of operation — Competition — Payment of a fine — Bank guarantee — Prima facie cases — Urgency — Weighing up of interests — Partial and conditional suspension)

(2006/C 224/99)

Language of the case: Italian

Parties

Applicant: Romana Tabacchi (Rome, Italy) (represented by: M. Siragusa and G.C. Rizza, lawyers)

Defendant: Commission of the European Communities (represented by: E. Grippini Fournier and F. Amato, agents)

Re:

Application for suspension of the operation of the Commission Decision of 20 October 2005 relating to a proceeding under Article 81(1) EC (Case COMP/C.38.281/B.2 — Raw tobacco — Italy) in so far as it imposes a fine of EUR 2,05 million on the applicant, together with an application for an exemption from the obligation to provide a bank guarantee as a condition for that fine not being recovered immediately.

Operative part of the order

(1) *The obligation on Romana Tabacchi SpA to provide to the Commission a bank guarantee in order to avoid immediate recovery of the fine imposed on it by Article 2 of the Commission Decision of 20 October 2005 relating to a proceeding under Article 81(1) of the EC Treaty (Case COMP/C.38.281/B.2 — Raw tobacco — Italy) is suspended on the following terms:*

(a) *within a period of two weeks of notification of this order, the applicant shall:*

— *provide a bank guarantee of EUR 400 000;*

— *pay to the Commission the sum of EUR 200 000;*

(b) *within a period of three months of notification of this order, the applicant shall pay to the Commission the sum of EUR 330 000;*

(c) *with effect from 1 January 2007, the applicant shall pay to the Commission the sum of EUR 100 000 per month until the first of the following two events occurs:*

— *payment of the balance of the fine remaining due, together with the interest set out by the Commission in its letter of notification of the decision to impose the fine, dated 9 November 2005;*

— *judgment in the main proceedings.*

(2) *The costs are reserved.*

Action brought on 28 June 2006 — Bavaria v Council

(Case T-178/06)

(2006/C 224/100)

Language of the case: Dutch

Parties

Applicant: Bavaria N.V. (represented by: G. van der Wal, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant submits that the Court should:

— Hold that the invalidity of Regulation No 1347/2001 gives rise to non-contractual liability on the part of the Community pursuant to the second paragraph of Article 288 EC;

— Order the Council to compensate Bavaria in respect of the damage which it has suffered, and which it will suffer, and set such compensation at EUR 100 million, or at such amount as the Court may consider to be meet and proper, with payment of default interest as appropriate;

— Order the Council to pay the costs of the proceedings.

Pleas in law and main arguments

The applicant submits that the Council is liable in respect of the damage suffered, and to be suffered, by it as a result of the adoption of Council Regulation (EC) No 1347/2001 of 28 June 2001 ([1]), which registers the designation 'Bayerisches Bier' as a protected geographical indication. The applicant submits that Regulation No 1347/2001 is unlawful and cannot for that reason apply as against the applicant. The harm which the applicant has incurred through that illegality consists in, among other things, the costs of proceedings which have to be conducted, and which have been conducted, in various Member States, damage to the reputation of its marks containing the word 'Bavaria', and the future damage consequent on the infringement and loss of its trade mark rights.

The applicant submits that 'Bayerisches Bier' has been incorrectly designated as a geographical indication inasmuch as beer is not an agricultural product or a foodstuff within the terms of Annex I to the EC Treaty. According to the applicant, Regulation No 2081/92 ([2]) cannot constitute the legislative basis for the registration of 'Bayerisches Bier' as a protected geographical indication in view of the fact that that regulation is also unlawful.

The applicant goes on to contend that the Council wrongly proceeded from the premise that the indication 'Bayerisches Bier' meets the requirements of Articles 2 and 4 of Regulation No 2081/92.

That conclusion, the applicant argues, was not adequately reasoned, particularly in light of the fact that the application for registration was not uncontested.

The designation 'Bayerisches Bier' also fails to meet the requirements governing application of the simplified procedure under Articles 17 and 2 of Regulation No 2081/92 inasmuch as that designation did not, prior to the reference date of 25 July 1993, enjoy any legal protection in Germany and had not become current through usage.

The applicant goes on to state that Bavaria is one of the German *Länder* and that the name of a *Land* may only in exceptional cases be used for a protected indication.

'Bayerisches Bier' also does not, according to the applicant, have any regional qualitative renown or reputation as it covers a large assortment of products with very differing characteristics. It submits that Regulation No 2081/92 does not permit the status of a protected geographical indication to be attributed to a generic collective term for different types of beer.

The application for registration by Germany also did not, the applicant argues, satisfy the requirements of Article 4(2) of Regulation No 2081/92 and provided an inadequate basis for registration.

The applicant submits further that the Council breached Article 3 of Regulation No 2081/92 and Article 28 EC by registering 'Bayerisches Bier', as that designation is a generic name in several Member States.

The procedure under Article 17 of Regulation No 2081/92 is also, the applicant avers, invalid inasmuch as concerned parties did not have any opportunity to set out their views in a transparent and fair administrative procedure.

It claims further that the Council proceeded from an erroneous point of view concerning the existence of beer types containing the designation 'Bayerisches Bier', in that none of the applicant's marks contains the indication 'Bayerisches Bier'.

The applicant also alleges infringement of its exclusive trademark rights as set out in Article 16(1) of the Agreement of 15 April 1994 on Trade-Related Aspects of Intellectual Property Rights, including the trade in counterfeit goods ('the TRIPS Agreement'). The extent of the permitted use of a geographical indication is not defined in greater detail by Article 14(3) of Regulation No 2081/92 or by Regulation No 1347/2001. The fact that the applicant's exclusive right is not fully protected is at variance with Article 16(1) of the TRIPS Agreement. Article 14(3) of Regulation No 2081/92 also applies conditions which are different from, and more restrictive than, Article 16(1) of the TRIPS Agreement. The co-existence between the older Bavaria mark and the geographical indication 'Bayerisches Bier' is also, the applicant submits, incompatible with Article 16(1) of the TRIPS Agreement.

The fact that the Council merely took account of the 'Bavaria' trade mark and ignored the brand name 'Bavaria' is also, it claims, contrary to the TRIPS Agreement.

By way of conclusion, the applicant submits that, in adopting Regulation No 1347/2001, the Council has infringed its property rights and legitimate expectations. In particular, the applicant contends, one consequence of Regulation No 1347/2001 may be to prevent the applicant from making further use of its trade mark in one or more Member States.

([1]) Council Regulation (EC) No 1347/2001 of 28 June 2001 supplementing the Annex to Commission Regulation (EC) No 1107/96 on the registration of geographical indications and designations of origin under the procedure laid down in Article 17 of Council Regulation (EEC) No 2081/92 (OJ 2001 L 182, p. 3).

([2]) Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ 1992 L 208, p. 1).

Action brought on 7 July 2006 — Commission of the European Communities v Burie Onderzoek en Advies B.V.

(Case T-179/06)

(2006/C 224/101)

Language of the case: Dutch

Parties

Applicant: Commission of the European Communities (represented by: A. Weimar, as Agent, assisted by W.A.M. Rupert, lawyer)

Defendant: Burie Onderzoek en Advies B.V. (Nijeholtpade, Netherlands)

Form of order sought

— Order the defendant to pay to the Commission the sum of EUR 646 871,28, namely a principal sum of EUR 454 832,62 and EUR 192 039,66 default interest, plus interest at the statutory rate from the date of lodging this application until the date on which the debt has been paid in full;

— order the defendant to pay the costs of the judicial and extra-judicial proceedings.

Pleas in law and main arguments

The European Community, represented by the Commission, concluded two contracts with the defendant and other contractors relating to activities carried out in the framework of research and development in the field of advanced communication technologies in Europe (RACE II — project R2022 Barbara) and telematics applications of common interest (Telepromise program).

In accordance with the agreement, the Commission carried out an audit. Following the results of that audit, the Commission sent the defendant a debit note. The Commission submits that it follows from the general conditions of the contracts that the defendant is obliged to repay the difference between the agreed costs and the payments already made by the Commission and that this is a case of an undue payment under Article 203 of Book 6 of the Netherlands Civil Code, which applies to the contracts in question.

Action brought on 12 July 2006 — Télévision Française 1 v Commission

(Case T-193/06)

(2006/C 224/102)

Language of the case: French

Parties

Applicant: Télévision Française 1 (Boulogne, France) (represented by: J.-P. Hordies and C. Smits, lawyers)

Defendant: Commission of the European Communities

Form of order sought by the applicant

The applicant claims that the Court should:

— declare the application admissible and well founded;

— order the annulment of the decision given by the Commission on 22 March 2006 concerning aid schemes for the film and audiovisual industry;

— make an appropriate order as to costs.

Pleas in law and main arguments

On 3 October 2001 the applicant lodged with the Commission two complaints by which it applied for a finding that the changes to the aid schemes in the field of support for the film and audiovisual industry in France constituted illegal State aid, in so far as they conferred, in breach of Article 88(3) EC, and in any event, State aid incompatible with the common market.

By Decision C(2006)832 Final of 22 March 2006 (State Aid NN 84/2004 and N 95/2004 — France, aid schemes for the cinema and audiovisual industry), the Commission declared the support schemes for cinematographic and audiovisual production put in place in France to be compatible with the common market under Article 87(3)(c) and (d) EC. That is the decision contested in this action.

In support of its claims, the applicant relies on three pleas in law.

By its first plea in law, the applicant maintains that the Commission infringed essential procedural requirements in that the contested decision is insufficiently reasoned in respect of the nature of parafiscal charges, the nature of the investment obligations imposed on televised broadcasters and the compatibility with the common market of the other measures of State support challenged by the applicant.

By its second plea in law, the applicant claims that the Commission also made manifest errors of assessment of the concept of State resources by deciding that the system of compulsory orders does not involve the transfer of State resources within the meaning of Article 87(1) EC.

The third plea in law relied upon by the applicant alleges breach by the Commission of Article 87(3)(d) EC in that the contested decision contains a manifest error of assessment of the meaning of 'aid to promote culture'.

Action brought on 26 July 2006 — IBERDROLA v Commission of the European Communities

(Case T-200/06)

(2006/C 224/103)

Language of the case: Spanish

Parties

Applicant: IBERDROLA S.A. (Bilbao, Spain) (represented by: J. Alfaro Aguilar and P. Liñán Hernández, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Annul the contested decision;

— Order the Commission to pay all the costs of the proceedings.

Pleas in law and main arguments

The present action is directed against the Decision of the European Commission of 25 April 2006 (Case No COMP/M.4110 — E.ON/ENDESA) declaring compatible with the common market the concentration whereby E.ON AG proposes to acquire control of the whole of the shares in ENDESA SA.

The applicant claims in that regard that, in its opinion, the contested decision disregards the serious risks that coordinated effects will be produced in the relations of competition between the principal operators with a pan-European presence, which must be examined in a transaction of this magnitude and having these characteristics, that it affects the dominant undertakings in two of the main national energy markets.

In support of its claims, the applicant maintains that the defendant has:

— infringed the principle of sound administration by carrying out a biased and inadequate investigation of the operation of the affected markets and of the impact of the transaction in those markets;

— made an error of law by basing its examination of the transaction on a consideration of the national markets, contrary to the Merger Regulation and the Community case-law;

— failed to fulfil its obligation to ensure the coherent application of the rules on the control of concentrations and the abuse of a dominant position in examining the notified transaction, authorising it without having examined the origin of the funds which E.ON proposed to use for the acquisition of ENDESA, in order to determine whether such a concentration could be the result of an abuse of a dominant position;

— made a series of manifest errors of assessment and ignored certain relevant elements by concluding that the compatibility of the transaction does not raise serious doubts and adopting the decision authorising it in Phase 1. The applicant emphasises in that regard that, although it was adopted on the basis of the new Merger Regulation, which requires a more sophisticated and rigorous analysis, the contested decision:

  — wholly ignores the negative impact which the transaction will have on the process of the integration of the national wholesale markets, which will culminate in the completion of the single European market in gas and electricity,

  — did not sufficiently evaluate the impact of the proposed transaction on the emergent pan-European market for the supply of electricity to multinational undertakings,

  — considers that, in spite of its pan-European objective and its economic strength, E.ON was not a significant potential competitor of ENDESA in the Spanish markets for electricity generation and the supply of gas,

  — concludes that the transaction will not strengthen a dominant position in the German market and that the disappearance of a recent entrant, ENDESA, does not alter the competitive context.

Finally the applicant claims that there has been a breach of the duty to state the reasons on which measures are based.

Action brought on 1 August 2006 — Gerson v OHIM (Paint filter)

(Case T-201/06)

(2006/C 224/104)

Language of the case: English

Parties

Applicant: Louis M. Gerson Co., Inc (Middleboro, USA) (represented by: M. Edenborough, Barrister)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Form of order sought

— Annulment of the decision of 15 May 2006 (Case R 1387/2005-2) of the Board of Appeal in its entirety;

— order the Office to pay the applicant the costs incurred in connection with prosecuting this appeal before the Court of First Instance.

Pleas in law and main arguments

Community trade mark concerned: 3-dimensional mark consisting of 'the colour light yellow in the shade claimed, applied to the mesh in the tip of a paint filter' for goods and services in classes 16 and 21— application No 3 969 367.

Decision of the examiner: Refusal of the application.

Decision of the Board of Appeal: Dismissal of the appeal.

Pleas in law: Infringement of Article 7(1)(b) of Council Regulation 40/94. The applicant claims that the Board of Appeal made several factual errors of assessment and adopted at least one error made by the Examination Division. Moreover, in the appraisal of the available evidence the Board of Appeal allegedly failed to do the appropriate balancing reaching, thus, a wrong conclusion when considering Article 7(1)(b) of the above mentioned regulation.

The applicant finally contends that the application is distinctive of one trade source and therefore does not offend Article 7(1)(b) of the regulation. In fact, the applicant claims the use of colour would be noticed by the relevant public as being associated with only the single trade source.

Action brought on 31 July 2006 — Select Appointments v OHIM — Manpower (TELESELECT)

(Case T-202/06)

(2006/C 224/105)

Language in which the application was lodged: English

Parties

Applicant: Select Appointments (Holdings) Ltd. (St Albans, United Kingdom) (represented by: G.R. Fernando, Barrister, C.J. Leech, Solicitor)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Other party to the proceedings before the Board of Appeal: Manpower Inc. (Milwaukee, USA)

Form of order sought

— That the decision of the OHIM Board of Appeal dated 18 May 2006 permitting the registration of application No 1 030 980 and dismissing opposition No B 303 158 be set aside;

— that the application be refused; and

— that the appellant have its costs of the Appeal and below before OHIM.

Pleas in law and main arguments

Applicant for the Community trade mark: Manpower Inc.

Community trade mark concerned: The word mark 'TELESELECT' for services in classes 35 and 41 (Assessment and training services in the field of telephone call handling)

Proprietor of the mark or sign cited in the opposition proceedings: Select Appointments (Holdings)

Mark or sign cited: The Community word mark 'SELECT' for services in classes 35 and 41 — application No 2 111 367 (employment agency, consultancy, information on job opportunities, advertising and personnel management services)

Decision of the Opposition Division: Opposition upheld in its entirety

Decision of the Board of Appeal: Annulment of the Opposition Division's decision

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 40/94 as, according to the applicant, the likelihood of confusion even in parts of the European Community justified the refusal of registration of the contested mark. Considering the average consumers do not necessarily speak English, the word mark would not have any significant meaning to them, as regards the part 'SELECT'.

Moreover, the applicant claims that assessment services provided by the contested mark are encompassed by the wider employment agency services covered by its own Community trade mark.

Action brought on 1 August 2006 — Eurostrategies v Commission

(Case T-203/06)

(2006/C 224/106)

Language of the case: English

Parties

Applicant: Eurostrategies SPRL (Brussels, Belgium) (represented by: S. Crosby, Solicitor)

Defendant: Commission of the European Communities

Form of order sought

— Annulment of Commission Decision of 28 July 2006 refusing access to the listed documents below concerning the award procedure for project EuropeAid/113676/D/SV/PL, entitled 'Phare-Technical assistance for JHA projects, 2003/S 159-145155 (PL0103.08)', financed by the Country operational programme, PL0103-Justice and Home Affairs 2001:

  — 'Evaluation Report' of the Implementing Agency of 7 January 2004;

  — all the documents relating to the proposal of the Implementing Agency of 7 January 2004 to award the contract to Eurostrategies;

  — letter from the EC-Delegation in Warsaw to the Implementing Agency of 13 January 2004;

  — 'Revised Evaluation Report' of 15 January 2004;

  — internal file note of the EC-Delegation in Warsaw sent on 27 January 2004;

  — EC-Delegation letter to the Implementing Agency of 27 January 2004;

  — 'Negotiation Report' of 10 February 2004; and

  — letter of the EC-Delegation to the Implementing Agency of 12 February 2004;

— order the Commission to pay the applicant's costs.

Pleas in law and main arguments

The applicant, under Articles 230 and 231 EC, seeks annulment of the European Commission's Decision of 28 July 2006 rejecting his request for access to certain documents under Regulation (EC) No 1049/2001 on public access to European Parliament, Council and Commission documents. In support of its application, the applicant puts forward two pleas in law.

First, the applicant suggests that by refusing disclosure of the requested documents without stating reasons for such refusal, the Commission has infringed Article 8 of Regulation (EC) No 1049/2001.

Secondly, the applicant submits that the contested decision infringes the duty to state reasons which is required by Article 235 EC and therefore, claims, it is invalid.

Action brought on 3 August 2006 — Delta Protypos Viomichania Galaktos v OHIM — Kraft Foods Schweiz Holding (milko ΔΕΛΤΑ)

(Case T-204/06)

(2006/C 224/107)

Language in which the application was lodged: English

Parties

Applicant: Delta Protypos Viomichania Galaktos AE (Tavros, Greece) (represented by: P. Kanellopoulos, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Other party to the proceedings before the Board of Appeal: Kraft Foods Schweiz Holding AG (Zürich, Switzerland)

Form of order sought

— Annul the contested decision rendered by the Second Board of Appeal of the OHIM in its ruling No R0540/2005-2 dated June 8, 2006;

— dismiss the opposition No B 562 423 brought by Kraft Foods Schweiz Holding AG against the registration of the Community Trade mark 'MILKO ΔΕΛΤΑ with design' No 2 474 674;

— order that the Community Trade mark 'MILKO ΔΕΛΤΑ with design' No 2 474 674 of the applicant be accepted;

— order the OHIM to pay the costs.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The figurative mark 'milko ΔΕΛΤΑ' for goods in class 30 (milk with cocoa) — application No 2 474 674

Proprietor of the mark or sign cited in the opposition proceedings: Kraft Foods Schweiz Holding AG

Mark or sign cited: The Community, international and national figurative marks and word marks 'MILKA' for goods in classes 5, 29, 30 and 32

Decision of the Opposition Division: Opposition upheld in its entirety

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 40/94 as the obvious and large differences of the two marks are sufficient to exclude any likelihood of confusion. According to the applicant, the two conflicting trade marks create overall a very different visual, phonetic and conceptual impression, especially when taking the second word 'ΔΕΛΤΑ' into consideration.

Action brought on 8 August 2006 — Quinn Barlo and Others v Commission

(Case T-208/06)

(2006/C 224/108)

Language of the case: English

Parties

Applicants: Quinn Barlo Ltd (County Cavan, Ireland), Quinn Plastics NV (Geel, Belgium) and Quinn Plastics GmbH (Mainz, Germany) (represented by: W. Blau, F. Wijckmans and F. Tuytschaever, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— In main order, annul the decision insofar as it holds that the applicants have infringed Article 81 EC and Article 53 EEA Agreement (annulment of Articles 1 and 2 as they relate to the applicants);

— in subsidiary order, annul Article 2 of the decision insofar as it relates to the applicants;

— in further subsidiary order, annul Article 2 of the decision insofar as it imposes a fine on the applicants of EUR 9 million and to reduce the fine in line with the arguments of this application;

— order the Commission to pay the costs of the proceedings.

Pleas in law and main arguments

The applicants seek the partial annulment of the Commission's Decision C(2006) 2098 final of 31 May 2006 in Case COMP/F/38.645 — Methacrylates, by which the Commission found that the applicants had infringed Article 81 EC and Article 53 of the Agreement on the European Economic Area by participating in a cartel which consisted of discussing prices, agreeing, implementing and monitoring price agreements either in form of price increases, or at least stabilisation of existing price levels, discussing the passing on of additional service costs to customers, exchange of commercially important and confidential market and/or company relevant information and participating in regular meetings and other contacts to facilitate the infringement.

In support of their application, the applicants invoke two pleas in law.

Firstly, the applicants submit that the contested decision is erroneous as it does not establish to the requisite standard of proof that the applicants participated in a single and common anti-competitive scheme and in a continuous infringement. Furthermore, the role of the applicant's representatives at four specific meetings is assessed incorrectly and, apart from the applicants presence at these four meetings, the contested decision contains no evidence that the applicants have engaged in any conduct that is characterised as unlawful in the decision.

Secondly, the applicants invoke an infringement of Article 23(3) of Regulation No 1/2003 ([1]) due to an incorrect assessment of the duration of the alleged infringement, an incorrect assessment of the gravity of the alleged infringement and an incorrect assessment of the mitigating circumstances.

([1]) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1).

Order of the Court of First Instance of 13 July 2006 — Kotug International and Others v Commission

(Case T-326/02) [1]

(2006/C 224/109)

Language of the case: Dutch

The President of the Third Chamber Extended Composition has ordered that the case be removed from the register.

[1] OJ C 323, 21.12.2002.

Order of the Court of First Instance of 13 July 2006 — Muller Marine and Others v Commission

(Case T -327/02) [1]

(2006/C 224/110)

Language of the case: Dutch

The President of the Third Chamber Extended Composition has ordered that the case be removed from the register.

[1] OJ C 323, 21.12.2002.

Order of the Court of First Instance of 13 July 2006 — Smit Harbour Towage Rotterdam v Commission

(Case T-328/02) [1]

(2006/C 224/111)

Language of the case: Dutch

The President of the Third Chamber Extended Composition has ordered that the case be removed from the register.

[1] OJ C 323, 21.12.2002.

Order of the Court of First Instance of 13 July 2006 — URS Nederland v Commission

(Case T-329/02) [1]

(2006/C 224/112)

Language of the case: Dutch

The President of the Third Chamber Extended Composition has ordered that the case be removed from the register.

[1] OJ C 323, 21.12.2002.

Order of the Court of First Instance of 13 July 2006 — Wagenborg v Commission

(Case T -330/02) [1]

(2006/C 224/113)

Language of the case: Dutch

The President of the Third Chamber Extended Composition has ordered that the case be removed from the register.

[1] OJ C 323, 21.12.2002.

Order of the Court of First Instance of 13 July 2006 — Wijsmuller v Commission

(Case T -340/02) [1]

(2006/C 224/114)

Language of the case: Dutch

The President of the Third Chamber Extended Composition has ordered that the case be removed from the register.

[1] OJ C 19, 25.1.2003.

III

(Notices)

(2006/C 224/115)

Last publication of the Court of Justice in the *Official Journal of the European Union*

OJ C 212, 2.9.2006

Past publications

OJ C 190, 12.8.2006

OJ C 178, 29.7.2006

OJ C 165, 15.7.2006

OJ C 154, 1.7.2006

OJ C 143, 17.6.2006

OJ C 131, 3.6.2006

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