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I

(Information)

COURT OF JUSTICE

COURT OF JUSTICE

Judgment of the Court (First Chamber) of 5 October 2006 — Commission of the European Communities v Republic of Germany

(Case C-105/02) [1]

(Failure of a Member State to fulfil obligations — Communities' own resources — Undischarged TIR carnets — Failure to forward the corresponding own resources)

(2006/C 294/01)

Language of the case: German

Parties

Applicant: Commission of the European Communities (represented by: G. Wilms and C. Giolito, Agents)

Defendant: Republic of Germany (represented by: W.-D. Plessing and R. Stüwe, Agents, D. Sellner, Lawyer)

Intervener in support of the defendant: Kingdom of Belgium (represented by: M. Wimmer and A. Snoecx, acting as Agents, assisted by B. van de Walle de Ghelcke, avocat)

Re:

Failure by a State to comply with its obligations — Council Regulation (EEC, Euratom) No 1552/89 implementing Decision 88/376/EEC, Euratom on the system of the Communities' own resources — Failure to recover custom duties guaranteed by certain TIR carnets and to transfer the corresponding own resources — Import duties for which 'no security has been provided' or which 'have been contested' — Carnets in respect of which the reinsurer has disputed his obligations.

Operative part of the judgment

1. *Declares that:*

   — *by failing properly to process certain transit documents (TIR carnets), with the result that the own resources arising therefrom were not correctly entered in the accounts or made available to the Commission of the European Communities within the prescribed periods,*

   — *by failing to inform the Commission of the European Communities of all the other uncontested customs duties treated in the same way (entry in the B accounts instead of entry in the A accounts) in respect of the non-discharge of TIR carnets by the German customs authorities from 1994 until the amendment of the Decree of the Federal Minister for Finance of 11 September 1996,*

   the Federal Republic of Germany has failed to fulfil its obligations under Council Regulation (EEC, Euratom) No 1552/89 of 29 May 1989 implementing Decision 88/376/EEC, Euratom on the system of the Communities' own resources, replaced, with effect from 31 May 2000, by Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources;

2. *Dismisses the remainder of the action;*

3. *Orders the Federal Republic of Germany to pay the costs;*

4. *Orders the Kingdom of Belgium to bear its own costs.*

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[1] OJ C 131, 01.06.2002.

Judgment of the Court (Grand Chamber) of 12 September 2006 — R.J. Reynolds Tobacco Holdings, Inc., RJR Acquisition Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International, Inc., Japan Tobacco, Inc. v Philip Morris International Inc., Commission of the European Communities, European Parliament, Kingdom of Spain, French Republic, Italian Republic, Portuguese Republic, Republic of Finland, Republic of Germany, Hellenic Republic, Kingdom of the Netherlands

(Case C-131/03 P) ([1])

(Appeal — Commission's decision to bring proceedings before a court of a non-Member State — Action for annulment — Inadmissible)

(2006/C 294/02)

Language of the case: English

Parties

Appellants: R.J. Reynolds Tobacco Holdings, Inc., RJR Acquisition Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International, Inc., Japan Tobacco, Inc. (represented by: P. Lomas, Solicitor, and O.W. Brouwer, Lawyer)

Other parties to the proceedings: Philip Morris International Inc., Commission of the European Communities (represented by: C. Docksey, X. Lewis and C. Ladenburger, Agents), European Parliament (represented by: H. Duintjer Tebbens and A. Baas), Kingdom of Spain (represented by: N. Díaz Abad, Agent), French Republic (represented by: G. de Bergues, Agent), Italian Republic (represented by: I. Braguglia, Agent, and M. Fiorilli, Lawyer), Portuguese Republic (represented by: L. Fernandes et A. Seiça Neves, Agents), Republic of Finland (represented by: T. Pynnä and A. Guimaraes-Purokoski, Agents), Republic of Germany (represented by: M. Lumma and W.-D. Plessing, Agents), Hellenic Republic, Kingdom of the Netherlands (represented by: J.G.M. van Bakel, Agent)

Intervener in support of the Commission: Council of the European Union (represented by: M. Bishop and T. Blanchet, Agents)

Re:

Appeal brought against the judgment of the Court of First Instance (Second Chamber, Extended Composition) of 15 January 2003 in Joined Cases T-377/00, T-379/00, T-380/00, T-260/01 and T-272/01 *Philip Morris International and Others* v *Commission*, by which it declared inadmissible the actions for annulment of the Commission's decision to bring a civil action against the appellants before a United States court following their alleged involvement in smuggling cigarettes into the European Union, in order to obtain compensation for the financial loss suffered by the Union and a court order that the smuggling is to cease — Interpretation of Article 230 EC and the case-law of the Court — Legal effects of the Commission's decision to bring a civil action before a court of a non-Member State

Operative part of the judgment

1. *The appeal is dismissed.*

2. *R.J. Reynolds Tobacco Holdings, Inc., RJR Acquisition Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International, Inc., and Japan Tobacco, Inc., are ordered to pay the costs.*

3. *The Federal Republic of Germany, the Kingdom of Spain, the French Republic, the Italian Republic, the Kingdom of the Netherlands, the Portuguese Republic, the Republic of Finland, the European Parliament and the Council of the European Union are to bear their own costs.*

([1]) OJ C 146, 21.06.2003.

Judgment of the Court (First Chamber) of 5 October 2006 — Commission of the European Communities v Kingdom of Belgium

(Case C-377/03) ([1])

(Failure of a Member State to fulfil obligations — Communities' own resources — Undischarged TIR carnets — Failure or delay in paying the corresponding own resources)

(2006/C 294/03)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: C. Giolito and G. Wilms, Agents)

Defendant: Kingdom of Belgium (represented by: E. Dominkovits, A. Goldman and M. Wimmer, Agents, B. van de Walle de Ghelcke, Lawyer)

Re:

Failure of a Member State to fulfil obligations — Articles 6, 9, 10 and 11 of Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources (OJ 2000 L 130, p. 1) — Default or delay in the payment of the own resources to the Commission — Failure to comply with accounting rules — Irregular release of certain transit documents (TIR carnets) by the Belgian customs authority

Operative part of the judgment

The Court:

1. *Declares that by failing to enter in the accounts, or by making a late entry in the accounts of, the own resources arising from the TIR carnets which had not been discharged properly, by placing them in the B accounts instead of entering them in the A accounts, with the result that the relevant own resources were not made available to the Commission of the European Communities within the time-limits,*

   — *by refusing to pay default interest on the amounts owing to the Commission of the European Communities,*

   — *the Kingdom of Belgium has failed to fulfil its obligations under Articles 6, 9, 10 and 11 of Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources, which, with effect from 31 May 2000, repealed and replaced Council Regulation (EEC, Euratom) No 1552/89 of 29 May 1989 implementing Decision 88/376/EEC, Euratom on the system of the Communities' own resources, which had identical subject-matter;*

2. *Dismisses the remainder of the action;*

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

([1]) OJ C 264, 01.11.2003.

Judgment of the Court (First Chamber) of 5 October 2006 — Commission of the European Communities v Kingdom of Belgium

(Case C-378/03) ([1])

(Failure of a Member State to fulfil obligations — Communities' own resources — Payment in instalments by the debtor — Recovery)

(2006/C 294/04)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: G. Wilms and C. Giolito, Agents)

Defendant: Kingdom of Belgium (represented by: E. Dominkovits and A. Goldman, Agents and B. van de Walle de Ghelcke, avocat,)

Re:

Failure of a Member State to fulfil obligations — Articles 6, 10 and 11 of Council Regulation (EC, Eurotom) No 1150/2000 of 22 May 2000 implementing Decision 94/728/EC, Eurotom on the system of the Communities' own resources (OJ 2000 L 130, p. 1) — Late payment of the own resources where the debtor pays in stages — Import duties

Operative part of the judgment

The Court:

1) *Declares that, because of the late payment of own resources in the case of receipt of payments in instalments from a debtor, the Kingdom of Belgium has failed to fulfil its obligations under Articles 10 and 11 of Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources, which, with effect from 31 May 2000, repealed and replaced Council Regulation (EEC, Euratom) No 1552/89 of 29 May 1989 implementing Decision 88/376/EEC, Euratom on the system of the Communities' own resources, which was identical in subject-matter;*

2) *Dismisses the remainder of the application;*

3) *Orders the Kingdom of Belgium to pay the costs.*

([1]) OJ C 264, 01.11.2003.

Judgment of the Court (Grand Chamber) of 3 October 2006 (reference for a preliminary ruling from the Commissione tributaria provinciale di Cremona — Italy) — Banca popolare di Cremona Soc. coop. arl v Agenzia Entrate Ufficio Cremona

(Case C-475/03) ([1])

(Sixth VAT Directive — Article 33(1) — Prohibition on the levying of other domestic taxes which can be characterised as turnover taxes — Definition of 'turnover taxes' — Italian regional tax on productive activities)

(2006/C 294/05)

Language of the case: Italian

Referring court

Commissione tributaria provinciale di Cremona

Parties to the main proceedings

Applicant: Banca popolare di Cremona Soc. coop. arl

Defendant: Agenzia Entrate Ufficio Cremona

Re:

Reference for a preliminary ruling — Commissione tributaria provinciale di Cremona — Interpretation of Article 33 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), as amended by Council Directive 91/680/EEC of 16 December 1991 (OJ 1991 L 376, p. 1) — Compatibility of national legislation introducing a regional tax on production activities

Operative part of the judgment

Article 33 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, as amended by Council Directive 91/680/CEE of 16 December 1991, must be interpreted as meaning that it does not preclude the maintenance of a charge to tax with the characteristics of the tax at issue in the main proceedings.

([1]) OJ C 21, 24.01.2004.

Judgment of the Court (Second Chamber) of 5 October 2006 — Commission of the European Communities v Portuguese Republic

(Case C-84/04) ([1])

(Failure of a Member State to fulfil obligations — Regulation (EEC) No 4253/88 and Article 10 EC — Structural funds — Coordination between activities of the Structural Funds and operations of the EIB — Systematic reduction of amounts paid by way of aid from the Guidance Section of the EAGGF — Charges levied by IFADAP during the programming period 1994-99)

(2006/C 294/06)

Language of the case: Portuguese

Parties

Applicant: Commission of the European Communities (represented by: A. Alves Vieira and G. Braun, acting as Agents, and by N. Castro Marques and F. Costa Leite, advogados)

Defendant: Portuguese Republic (represented by: L. Fernandes, acting as Agent, and by C. Botelho Moniz and E. Maia Cadete, advogados)

Re:

Failure of a Member State to fulfil obligations — Article 10 EC and Council Regulation (EEC) No 4253/88 of 19 December 1988 laying down provisions for implementing Regulation (EEC) No 2052/88 as regards coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments (OJ 1988 L 374, p. 1) — Systematic reduction of amounts paid by way of aid from the Guidance Section of the EAGGF — Compulsory charges levied by IFADAP during the programming period 1994-99

Operative part of the judgment

The Court:

1. *Declares that, by permitting the Instituto de Financiamento e Apoio ao Desenvolvimento da Agricultura e Pescas (Financing and Supporting Institute for the Development of Agriculture and Fisheries) to introduce, and by allowing to remain in force, a procedure for granting financial assistance from the Community Structural Funds that includes essential requirements involving the payment of charges which are neither voluntary nor optional and which do not constitute remuneration for services rendered, but rather serve to finance tasks for which the Portuguese State is responsible, particularly under Community law, the Portuguese Republic has failed to fulfil its obligations under Council Regulation (EEC) No 4253/88 of 19 December 1988 laying down provisions for implementing Regulation (EEC) No 2052/88 as regards coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments, as amended by Council Regulation (EEC) No 2082/93 of 20 July 1993;*

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

([1]) OJ C 94, 17.04.2004.

Judgment of the Court (First Chamber) of 21 September 2006 — Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied v Technische Unie BV, Commission of the European Communities, CEF City Electrical Factors BV, CEF Holdings Ltd

(Case C-105/04 P) ([1])

(Appeal — Cartels — Market in electrotechnical fittings in the Netherlands — National wholesalers' association — Agreements and concerted practices having as their object a collective exclusive dealing arrangement and price-fixing — Fines)

(2006/C 294/07)

Language of the case: Dutch

Parties

Appellant: Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied (represented by: E. Pijnacker Hordijk and M. De Grave, lawyer)

Other parties to the proceedings: Technische Unie BV(represented by: P. Bos and C. Hubert, lawyers), Commission of the European Communities (represented by: W. Wils, Agent and H. Gilliams, lawyer), CEF City Electrical Factors BV, CEF Holdings Ltd (represented by J. Stuyck, C. Vinken Geijselaers and M. Poelman, lawyers)

Re:

Appeal against the judgment of the Court of First Instance (First Chamber) of 16 December 2003 in Joined Cases T-5/00 and T-6/00 Nederlandse Federatieve *Vereniging voor de Groothandel op Elektrotechnisch Gebied and Technische Unie BV* v *Commission*, by which the Court of First Instance dismissed the application seeking annulment of Commission Decision 2000/117/EC of 26 October 1999 concerning a proceeding pursuant to Article 81 of the EC Treaty (Case IV/33.884 — Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied and Technische Unie) (OJ 2000 L 39, p. 1)

Operative part of the judgment

The Court:

1) *Sets aside the judgment of the Court of First Instance of the European Communities of 16 December 2003 in Joined Cases T-5/00 and T-6/00 Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied and Technische Unie v Commission solely in so far as the Court of First Instance, in examining the plea alleging breach of the 'reasonable time' principle, omitted to ascertain whether the excessive duration, imputable to the Commission of the European Communities, of the entire administrative procedure, including the phase preceding the notification of the statement of objections, was capable of affecting the future possibilities of the Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied to defend its interests;*

2) *Dismisses the remainder of the application;*

3) *Dismisses the action brought by the Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied before the Court of First Instance, in so far as it is based in part on the plea alleging breach of the 'reasonable time' principle;*

4) *Orders the Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied to pay the costs of these proceedings. The costs relating to the proceedings at first instance which gave rise to the judgment of 16 December 2003 in Joined Cases T-5/00 and T-6/00 Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied and Technische Unie v Commission remain payable by the Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied, in accordance with the procedure laid down in paragraph 2 of the operative part of that judgment.*

([1]) OJ C 106, 30.04.04.

Judgment of the Court (First Chamber) of 2\1 September 2006 — Technische Unie BV v Commission of the European Communities, CEF City Electrical Factors BV, CEF Holdings Ltd, Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied

(Case C-113/04 P) ([1])

(Appeal — Agreements, decisions and concerted practices — Market in electrotechical fittings in the Netherlands — National wholesalers' association — Agreements and concerted practices having as their object a collective exclusive dealing arrangement and price-fixing — Fines)

(2006/C 294/08)

Language of the case: Dutch

Parties

Appellant: Technische Unie BV (represented by: P. Bos and C. Hubert, Lawyers)

Other parties to the proceedings: Commission of the European Communities, (represented by: W. Wils, Agent, H. Gilliams, Lawyer), CEF City Electrical Factors BV, CEF Holdings Ltd, Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied (represented by: E. Pijnacker Hordijk, Lawyer)

Re:

Appeal against the judgment of the Court of First Instance (First Chamber) of 16 December 2003 in Joined Cases T-5/00 and T-6/00 Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied and Technische Unie BV v Commission, by which the Court of First Instance dismissed the application seeking annulment of Commission Decision 2000/117/EC of 26 October 1999 concerning a proceeding pursuant to Article 81 of the EC Treaty (Case IV/33.884 — Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied and Technische Unie) (OJ 2000 L 39, p. 1)

Operative part of the judgment

1. *Sets aside the judgment of the Court of First Instance of the European Communities of 16 December 2003 in Joined Cases T-5/00 and T-6/00 Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied and Technische Unie v Commission solely in so far as the Court of First Instance, in examining the plea alleging breach of the 'reasonable time' principle, omitted to ascertain whether the excessive duration, imputable to the Commission of the European Communities, of the entire administrative procedure, including the phase preceding the notification of the statement of objections, was capable of affecting the future possibilities of Technische Unie BV to defend its interests;*

2. *Dismisses the remainder of the application;*

3. *Dismisses the action brought by Technische Unie BV before the Court of First Instance, in so far as it is based in part on the plea alleging breach of the 'reasonable time' principle;*

4. *Orders Technische Unie BV to pay the costs of these proceedings. The costs relating to the proceedings at first instance which gave rise to the judgment of 16 December 2003 in Joined Cases T-5/00 and T-6/00 Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied and Technische Unie v Commission remain payable by Technische Unie BV, in accordance with the procedure laid down in paragraph 3 of the operative part of that judgment.*

([1]) OJ C 106, 30.04.2004.

Judgment of the Court (First Chamber) of 5 October 2006 — Commission of the European Communities v Kingdom of Belgium

(Case C-275/04) ([1])

(Failure of a Member State to fulfil obligations — External Community transit — Regulations (EEC) No 2913/92 and No 2454/93 — Communities' own resources — Making available — Time-limits — Default interest — Failure to keep and communicate supporting documents relating to the establishment and making available of own resources)

(2006/C 294/09)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: C. Giolito and G. Wilms, Agents)

Defendant: Kingdom of Belgium (represented by: E. Dominkovits and M. Wimmer, Agents)

Intervener in support of the defendant: United Kingdom of Great Britain and Northern Ireland (represented by C. Jackson, Agent, and M. Angiolini and R. Anderson, Barristers

Re:

Failure of a Member State to fulfil obligations — Articles 6, 9, 10 and 11 of Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources (OJ 2000 L 130, p. 1), which, as from 31 May 2000, repealed and replaced Council Regulation (EEC, Euratom) No 1552/89 of 29 May 1989 implementing Decision 88/376/EEC, Euratom on the system of the Communities' own resources (OJ 1989 L 155, p. 1) — Anomalies and delays found in the accounting entries of own resources.

Operative part of the judgment

The Court:

1. *Declares that by failing to enter in the accounts referred to in Article 6(3)(a) of Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources the entitlements established within the prescribed periods,*

   by failing to verify whether, since 1 January 1995, other delays in making own resources available occurred following a late entry in the accounts referred to in Article 6(3)(a) of Regulation No 1150/2000, by destroying the records covering that period and by failing to inform the Commission of those delays in order to enable it to calculate the default interest owing in terms of Article 11 of that regulation due to a delay in making own resources available,

   the Kingdom of Belgium has failed to fulfil its obligations under Articles 3, 6, 9, 10 and 11 of Regulation No 1150/2000 which, with effect from 31 May 2000, repealed and replaced Council Regulation (EEC, Euratom) No 1552/89 of 29 May 1989 implementing Decision 88/376/EEC, Euratom on the system of the Communities' own resources, the purpose of which is the same, and Article 10 EC;

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

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

([1]) OJ C 217, 28.08.2004.

Judgment of the Court (First Chamber) of 28 September 2006 — Commission of the European Communities v Kingdom of the Netherlands

(Joined Cases C-282/04 and C-283/04) ([1])

(Failure by a Member State to fulfil obligations — Articles 56(1) EC and 43 EC — Special shares ('golden shares') of the Netherlands State in the companies KPN and TPG — Distinction between 'controlling holding', 'direct investment' and 'portfolio investment' in the context of fundamental freedoms — 'State measure' for the purposes of fundamental freedoms — Guarantee of universal postal service)

(2006/C 294/10)

Language of the case: Dutch

Parties

Applicant: Commission of the European Communities (represented by: H. Støvlbæk, A Nijenhuis and S. Noë, acting as Agents)

Defendant: Kingdom of the Netherlands (represented by: H.G. Sevenster, J.G.M. van Bakel and M. De Grave, acting as Agents)

Re:

Failure by a Member State to fulfil obligations — Articles 43 and 56 EC — Rights attached to the Netherlands State's special share in the company Koninklijke KPN NV

Operative part of the judgment

1. *By maintaining in the statutes of KPN NV and TPG NV certain provisions, providing that the capital of those companies is to include a special share held by the Netherlands State, which confers on the latter special rights to approve certain management decisions of the organs of those companies, which are not limited to cases where the intervention of that State is necessary for overriding reasons in the general interest recognised by the Court and, in the case of TPG NV in particular for ensuring the maintenance of universal postal service, the Kingdom of the Netherlands has failed to fulfil its obligations under Article 56(1) EC.*

2. *The Kingdom of the Netherlands is ordered to pay the costs.*

([1]) OJ C 217 of 28.08.2004

Judgment of the Court (Grand Chamber) of 3 October 2006 (reference for a preliminary ruling from the Bundesfinanzhof (Germany)) — FKP Scorpio Konzertproduktionen GmbH v Finanzamt Hamburg-Eimsbüttel

(Case C-290/04) ([1])

(Article 59 of the EEC Treaty (later Article 59 of the EC Treaty, now, after amendment, Article 49 EC) and Article 60 of the EEC Treaty (later Article 60 of the EC Treaty, now Article 50 EC) — Tax legislation — Income tax — Provision of services by a non-resident in the context of artistic performances — Principle of retention of tax at source — Provider of services not possessing the nationality of a Member State)

(2006/C 294/11)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: FKP Scorpio Konzertproduktionen GmbH

Defendant: Finanzamt Hamburg-Eimsbüttel

Re:

Reference for a preliminary ruling — Bundesfinanzhof — Interpretation of Article 59 of the EC Treaty (now, after amendment, Article 49 EC) and Article 60 of the EC Treaty (now Article 50 EC) — National income tax legislation under which a resident recipient of a service is obliged to deduct tax on remuneration paid to a non-resident provider of services

Operative part of the judgment

1) *Articles 59 and 60 of the EEC Treaty must be interpreted as not precluding*

— *national legislation under which a procedure of retention of tax at source is applied to payments made to providers of services not resident in the Member State in which the services are provided, whereas payments made to providers of services resident in that Member State are not subject to such a retention;*

— *national legislation under which liability is incurred by a recipient of services who has failed to make the retention at source that he was required to make.*

2) *Articles 59 and 60 of the EEC Treaty must be interpreted as*

— *precluding national legislation which does not allow a recipient of services who is the debtor of the payment made to a non-resident provider of services to deduct, when making the retention of tax at source, the business expenses which that service provider has reported to him and which are directly linked to his activity in the Member State in which the services are provided, whereas a provider of services residing in that State is taxable only on his net income, that is, the income received after deduction of business expense;*

— *not precluding national legislation under which only the business expenses directly linked to the activity that generated the taxable income in the Member State in which the service is provided, which the service provider established in another Member State has reported to the payment debtor, are deducted in the procedure for retention at source, and expenses that are not directly linked to that economic activity can be taken into account if appropriate in a subsequent refund procedure;*

— *not precluding a rule that the tax exemption granted under the Convention of 16 June 1959 between the Federal Republic of Germany and the Kingdom of the Netherlands for the avoidance of double taxation in the area of income, capital, and various other taxes and for regulating other tax matters, to a non-resident provider of services who has carried on activity in Germany can be taken into account by the payment debtor in the procedure for retention of tax at source, or in a subsequent procedure for exemption or refund, or in proceedings for liability brought against him, only if a certificate of exemption stating that the conditions laid down to that end by that convention are satisfied is issued by the competent tax authority.*

3) *Article 59 of the EEC Treaty must be interpreted as not being applicable in favour of a provider of services who is a national of a non-member country.*

(1) OJ C 228, 11.09.2004.

Judgment of the Court (First Chamber) of 5 October 2006 — Commission of the European Communities v Kingdom of the Netherlands

(Case C-312/04) (1)

(Failure of a Member State to fulfil obligations — Communities' own resources — Undischarged TIR carnets — Procedures for collecting import duties — Non-compliance — Failure to transfer the related own resources and to pay default interest)

(2006/C 294/12)

Language of the case: Dutch

Parties

Applicant: Commission of the European Communities (represented by: G. Wilms and A. Weimar, Agents)

Defendant: Kingdom of the Netherlands (represented by: H.G. Sevenster and J.G.M. van Bakel, Agents)

Re:

Failure of a Member State to fulfil obligations — Articles 2(1), 6(2), 10(1) and 11 of Council Regulation (EEC, Euratom) No 1552/89 of 29 May 1989 implementing Decision 88/376/EEC, Euratom, on the system of the Communities' own resources (OJ 1989 L 155, p. 1) — Failure to initiate, within the period prescribed, procedures for the collection of customs duties further to irregularities in the transport of goods covered by TIR carnets — Failure to transmit, within the period prescribed, the related own resources and to pay the default interest

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

(1) OJ C 228, 11.09.2004.

Judgment of the Court (Third Chamber) of 5 October 2006 (reference for a preliminary ruling from the Verwaltungsgerichtshof — Austria) — Transalpine Ölleitung in Österreich GmbH, Planai-Hochwurzen-Bahnen GmbH, Gerlitzen-Kanzelbahn-Touristik GmbH & Co KG v Finanzlandesdirektion für Tirol, Finanzlandesdirektion für Steiermark, Finanzlandesdirektion für Kärnten

(Case C-368/04) (1)

(State aid — Last sentence of Article 88(3) EC — Partial rebate on energy taxes — Failure to give notice of the aid — Commission decision — Declaration of the compatibility of the aid with the common market in respect of a particular period in the past — Effect on rebate applications made by undertakings not benefiting from the aid — Powers of national courts and tribunals)

(2006/C 294/13)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Applicants: Transalpine Ölleitung in Österreich GmbH, Planai-Hochwurzen-Bahnen GmbH, Gerlitzen-Kanzelbahn-Touristik GmbH & Co KG

Defendants: Finanzlandesdirektion für Tirol, Finanzlandesdirektion für Steiermark, Finanzlandesdirektion für Kärnten

Re:

Reference for a preliminary ruling — Verwaltungsgerichtshof (Austria) — Interpretation of Article 88(3) EC — State aid granted in breach of the prohibition on implementing aid prior to the Commission's decision — Aid consisting in the partial reimbursement of energy tax solely to businesses manufacturing goods — Effects of the Commission's subsequent decision declaring the aid compatible with the common market

Operative part of the judgment

1. *The last sentence of Article 88(3) EC must be interpreted as meaning that it is for the national courts to safeguard the rights of individuals against possible disregard, by the national authorities, of the prohibition on putting aid into effect before the Commission of the European Communities has adopted a decision authorising that aid. In doing so, the national court must take the Community interest fully into consideration and must not adopt a measure which would have the sole effect of extending the circle of recipients of the aid.*

2. *Since a decision of the Commission of the European Communities declaring aid that has not been notified compatible with the common market does not have the effect of regularising ex post facto implementing measures which, at the time of their adoption, were invalid because they had been taken in disregard of the prohibition referred to in the last sentence of Article 88(3) EC, it is of little consequence whether an application is made before or after adoption of the decision declaring the aid compatible with the common market, since that application relates to the unlawful situation resulting from the lack of notification.*

(1) OJ C 273, 06.11.2004.

Judgment of the Court (Third Chamber) of 28 September 2006 (reference for a preliminary ruling from the Korkein oikeus — Finland) — Criminal proceedings against Jan-Erik Anders Ahokainen, Mati Leppik

(Case C-434/04) (1)

(Free movement of goods — Articles 28 EC and 30 EC — National legislation prohibiting, without prior authorisation, the importation of undenatured ethyl alcohol of an alcoholic strength of more than 80 % — Measure having equivalent effect to a quantitative restriction — Justification on the grounds of protection of public health and public order)

(2006/C 294/14)

Language of the case: Finnish

Referring court

Korkein oikeus

Parties in the main proceedings

Jan-Erik Anders Ahokainen, Mati Leppik

Re:

Reference for a preliminary ruling — Korkein oikeus — Interpretation of Articles 28 EC and 30 EC with respect to national legislation subjecting the importation of non-denatured ethyl alcohol of over 80 % to prior authorisation

Operative part of the judgment

Articles 28 EC and 30 EC do not preclude a system, such as that laid down by Law No 1143/1994 on alcohol (Alkoholilaki (1143/1994)), which makes the importation of undenatured ethyl alcohol of an alcoholic strength of more than 80 % subject to obtaining prior authorisation, unless it appears that, in the circumstances of law and of fact which characterise the situation in the Member State concerned, the protection of public health and public order against the harm caused by alcohol can be secured by measures having less effect on intra-Community trade.

(1) OJ C 300, 04.12.2004.

Judgment of the Court (Grand Chamber) of 3 October 2006 (reference for a preliminary ruling from the Verwaltungsgericht Frankfurt am Main — Germany) — Fidium Finanz AG v Bundesanstalt für Finanzdienstleistungsaufsicht

(Case C-452/04) (1)

(Freedom to provide services — Free movement of capital — Companies established in non-member countries — Activity entirely or principally directed towards the territory of a Member State — Grant of credit on a commercial basis — Requirement of prior authorisation in the Member State in which the service is provided)

(2006/C 294/15)

Language of the case: German

Referring court

Verwaltungsgericht Frankfurt am Main

Parties to the main proceedings

Applicant: Fidium Finanz AG

Defendant: Bundesanstalt für Finanzdienstleistungsaufsicht

Re:

Reference for a preliminary ruling — Verwaltungsgericht Frankfurt am Main — Interpretation of Arts 49, 56 and 58 EC — Undertaking established in a non-member country whose activities, consisting in the granting of loans, are directed entirely or principally at the territory of a Member State — Requirement of prior authorisation in the Member State in which the service is provided

Operative part of the judgment

National rules whereby a Member State makes the granting of credit on a commercial basis, on national territory, by a company established in a non-member country subject to prior authorisation, and which provide that such authorisation must be refused, in particular, if that company does not have its central administration or a branch in that territory, affect primarily the exercise of the freedom to provide services within the meaning of Article 49 EC et seq. A company established in a non-member country cannot rely on those provisions.

([1]) OJ C 6, 08.01.2005.

Judgment of the Court (First Chamber) of 28 September 2006 (reference for a preliminary ruling from the Audiencia Provincial de Málaga — Spain) — Criminal proceedings against G. Francesco Gasparini, José Mª L.A. Gasparini, G. Costa Bozzo, Juan de Lucchi Calcagno, Francesco Mario Gasparini, José A. Hormiga Marrero, Sindicatura Quiebra

(Case C-467/04) ([1])

(Convention implementing the Schengen Agreement — Article 54 — Ne bis in idem principle — Scope — Acquittal of the accused because their prosecution for the offence is time-barred)

(2006/C 294/16)

Language of the case: Spanish

Referring court

Audiencia Provincial de Málaga

Parties in the main proceedings

G. Francesco Gasparini, José Mª L.A. Gasparini, G. Costa Bozzo, Juan de Lucchi Calcagno, Francesco Mario Gasparini, José A. Hormiga Marrero, Sindicatura Quiebra

Re:

Reference for a preliminary ruling — Audiencia Provincial de Málaga — Interpretation of Article 54 of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (OJ 2000 L 239, p. 19) — *Ne bis in idem* principle — Scope — Interpretation of Article 24 EC — Scope

Operative part of the judgment

1. *The ne bis in idem principle, enshrined in Article 54 of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, signed in Schengen on 19 June 1990, applies in respect of a decision of a court of a Contracting State, made after criminal proceedings have been brought, by which the accused is acquitted finally because prosecution of the offence is time-barred.*

2. *That principle does not apply to persons other than those whose trial has been finally disposed of in a Contracting State.*

3. *A criminal court of a Contracting State cannot hold goods to be in free circulation in national territory solely because a criminal court of another Contracting State has found, in relation to the same goods, that prosecution for the offence of smuggling is time-barred.*

4. *The marketing of goods in another Member State, after their importation into the Member State where the accused was acquitted, constitutes conduct which may form part of the 'same acts' within the meaning of Article 54 of the Convention.*

([1]) OJ C 6, 08.01.2005.

Judgment of the Court (Grand Chamber) of 3 October 2006 (reference for a preliminary ruling from the Court of Appeal (England and Wales) (Civil Division) (United Kingdom)) — B.F. Cadman v Health & Safety Executive

(Case C-17/05) ([1])

(Social policy — Article 141 EC — Principle of equal pay for men and women — Length of service as a determinant of pay — Objective justification — Burden of proof)

(2006/C 294/17)

Language of the case: English

Referring court

Court of Appeal (Civil Division)

Parties to the main proceedings

Appellant: B.F. Cadman

Respondent: Health & Safety Executive

Intervener: Equal Opportunities Commission

Re:

Reference for a preliminary ruling — Court of Appeal (Civil Division) — Interpretation of Article 141 EC — Equal pay for men and women — Duration of employment used as a criterion for determining pay and having a different effect according to the sex of the worker

Operative part of the judgment

Article 141 EC is to be interpreted as meaning that, where recourse to the criterion of length of service as a determinant of pay leads to disparities in pay, in respect of equal work or work of equal value, between the men and women to be included in the comparison:

— *since, as a general rule, recourse to the criterion of length of service is appropriate to attain the legitimate objective of rewarding experience acquired which enables the worker to perform his duties better, the employer does not have to establish specifically that recourse to that criterion is appropriate to attain that objective as regards a particular job, unless the worker provides evidence capable of raising serious doubts in that regard;*

— *where a job classification system based on an evaluation of the work to be carried out is used in determining pay, there is no need to show that an individual worker has acquired experience during the relevant period which has enabled him to perform his duties better.*

([1]) OJ C 69, 19.03.2005.

Judgment of the Court (Third Chamber) of 5 October 2006 (reference for a preliminary ruling from the Gerechtshof te Amsterdam — Netherlands) — ASM Lithography BV v Inspecteur van de Belastingdienst-Douane Zuid/kantoor Roermond

(Case C-100/05) ([1])

(Customs Code — Determination of the customs debt — Import duties on compensating products determined by the person concerned and confirmed by the customs authorities under Article 121 of the Customs Code — Duties which can be calculated in accordance with Article 122(c) of the Customs Code — Repayment of the amount levied in excess on the basis of Article 236 of the Customs Code)

(2006/C 294/18)

Language of the case: Dutch

Referring court

Gerechtshof te Amsterdam

Parties to the main proceedings

Applicant: ASM Lithography BV

Defendant: Inspecteur van de Belastingdienst-Douane Zuid/kantoor Roermond

Re:

Reference for a preliminary ruling — Gerechtshof te Amsterdam — Interpretation of Articles 121(1), 122(c), 214 and 236 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1) — Compensating products regarded as having been released for free circulation — Related customs debt established on the basis of the taxation rules set out in Article 122(c) of Regulation No 2913/92 — No prior and express request by the party concerned — Acceptance of a post-clearance request for a new calculation pursuant to Article 236 of Regulation No 2913/92

Operative part of the judgment

1. *Article 122(c) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code is to be interpreted as meaning that, at the time of determining the amount of the customs debt resulting from the release for free circulation of compensating products, unless the person concerned has expressly made a request to that effect, the national customs authorities are not bound to apply the rules of assessment relating to the procedure for processing under customs control where the import goods could have been placed under that procedure.*

2. *Article 236 of Regulation No 2913/92 is to be interpreted as meaning that the national customs authorities must allow a request for repayment of import duties where it transpires that, following an error by the person concerned and not through the exercise of a choice, the amount of the customs debt has been determined by applying Article 121 of that regulation and has already been the subject of a communication to the person concerned, even if that request entails a recalculation by those authorities of the amount of the debt by applying Article 122(c) of that regulation.*

([1]) OJ C 106, 30.04.2005.

Judgment of the Court (First Chamber) of 7 September 2006 (reference for a preliminary ruling from the Gerechtshof te 's Gravenhage, Netherlands) — Bovemij Verzekeringen NV v Benelux-Merkenbureau

(Case C-108/05) ([1])

(Trade Marks — Directive 89/104/EEC — Article 3(3) — Distinctive character — Acquisition through use — Taking into account all or a substantial part of the Benelux territory — Taking into account the linguistic regions of Benelux — Word mark EUROPOLIS)

(2006/C 294/19)

Language of the case: Dutch

Referring court

Gerechtshof te 's Gravenhage, Netherlands

Parties to the main proceedings

Applicant: Bovemij Verzekeringen NV

Defendant: Benelux-Merkenbureau

Re:

Reference for a preliminary ruling — Gerechtshof te 's-Gravenhage — Interpretation of Article 3(3) of Council Directive 89/104/EEC, of 21 December 1988, approximating the laws of the Member States relating to trade marks (OJ 1988 L 40, p. 1) — Assessment of the distinctive character of a mark — Use of the mark — Reputation of the mark throughout the Benelux territory or in a considerable part of it (e.g. the Netherlands) — Linguistic regions taken into account

Operative part of the judgment

1. *Article 3(3) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks must be interpreted as meaning that the registration of a trade mark can be allowed on the basis of that provision only if it is proven that that trade mark has acquired distinctive character through use throughout the territory of the Member State or, in the case of Benelux, throughout the part of the territory of Benelux in which there exists a ground for refusal.*

2. *As regards a mark consisting of one or more words of an official language of a Member State or of Benelux, if the ground for refusal exists only in one of the linguistic areas of the Member State or, in the case of Benelux, in one of its linguistic areas, it must be established that the mark has acquired distinctive character through use throughout that linguistic area. In the linguistic area thus defined, it must be assessed whether the relevant class of persons, or at least a significant proportion thereof, identifies the product or service in question as originating from a particular undertaking because of the trade mark.*

([1]) OJ C 115, 14.5.2005.

Judgment of the Court (Third Chamber) of 28 September 2006 — Commission of the European Communities v Republic of Austria

(Case C-128/05) ([1])

(Failure of a Member State to fulfil obligations — Sixth VAT Directive — International transport undertakings established in another Member State — Annual turnover in Austria of EUR 22000 or less — Simplified procedures for charging and collecting the VAT)

(2006/C 294/20)

Language of the case: German

Parties

Applicant: Commission of the European Communities (represented by: D. Triantafyllou, Agent)

Defendant: Republic of Austria (represented by: H. Dossi and M. Fruhmann, Agents)

Re:

Failure of a Member State to fulfil its obligations — Infringement of Articles 2, 6, 9(2)(b), 17, 18 and 22(3) to (5) of Council 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) — Specific rules for companies involved in international passenger transport established in another State and whose annual turnover in Austria does not exceed EUR 22 000 — No duty to submit periodic declarations and to pay the net amount of VAT

Operative part of the judgment

The Court:

1. *Declares that by allowing taxable persons not established in Austria who transport passengers there not to submit tax return forms and not to pay the net amount of VAT when their annual turnover in Austria is below EUR 22 000, in that case deeming the amount of VAT due to be equal to the amount of deductible VAT and making application of the simplified rules contingent on*

Austrian VAT not appearing on invoices or in other documents serving as invoices, the Republic of Austria has failed to fulfil its obligations under Articles 18(1)(a) and (2) and 22(3) to (5) 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 arrangement of value added tax: uniform basis of assessment;

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

3. *Orders the Republic of Austria to pay the costs.*

([1]) OJ C 182, 23.07.2005.

Judgment of the Court (Second Chamber) of 28 September 2006 (reference for a preliminary ruling from the College van Beroep voor het bedrijfsleven — the Netherlands) — NV Raverco (C-129/05), Coxon & Chatterton Ltd (C-130/05) v Minister van Landbouw, Natuur en Voedselkwaliteit

(Joined Cases C-129/05 and C-130/05) ([1])

(Directive 97/78/EC — Regulation (EEC) No 2377/90 — Veterinary checks — Products entering the Community from third countries — Redispatch of products that do not satisfy the import conditions — Seizure and destruction)

(2006/C 294/21)

Language of the case: Dutch

Referring court

College van Beroep voor het bedrijfsleven

Parties to the main proceedings

Applicants: NV Raverco, Coxon & Chatterton Ltd

Defendant: Minister van Landbouw, Natuur en Voedselkwaliteit

Re:

Reference for a preliminary ruling — College van Beroep voor het bedrijfsleven — Interpretation of Articles 17(2) and 22(2) of and Annex I to Council Directive 97/78/EC of 18 December 1997 laying down the principles governing the organisation of veterinary checks on products entering the Community from third countries (OJ 1998 L 24, p. 9) — Interpretation of Council Regulation No 2377/90 of 26 June 1990 laying down a Community procedure for the establishment of maximum residue limits of veterinary medicinal products in foodstuffs of animal origin (OJ 1990 L 224, p. 1) — Veterinary checks — Redispatch of products that do not satisfy the import conditions — Seizure and destruction — Protection of the interests of third countries even in the absence of Community interest

Operative part of the judgment

1. *Article 17(2)(a) of Council Directive 97/78/EC of 18 December 1997 laying down the principles governing the organisation of veterinary checks on products entering the Community from third countries is to be interpreted as meaning that objection to the redispatch of a consignment that does not satisfy the import conditions must be based on the failure to meet Community requirements.*

2. *Article 22(2) of Directive 97/78, read in conjunction with Article 5 of Council Regulation (EEC) No 2377/90 of 26 June 1990 laying down a Community procedure for the establishment of maximum residue limits of veterinary medicinal products in foodstuffs of animal origin, is to be interpreted as meaning that it imperatively requires the competent veterinary authorities to seize and destroy products which, following veterinary inspections carried out pursuant to that directive, are revealed to contain a substance listed in Annex IV to that regulation.*

([1]) OJ C 143, 11.06.2005.

Judgment of the Court (Second Chamber) of 5 October 2006 (reference for a preliminary ruling from the Unabhängiger Finanzsenat, Außenstelle Klagenfurt, Austria) — Amalia Valeško v Zollamt Klagenfurt

(Case C-140/05) ([1])

(Act of Accession to the European Union — Transitional measures — Annex XIII — Taxation — Cigarettes imported from Slovenia — Import into Austria in travellers' personal luggage — Exemption from excise duty limited to certain quantities — Possibility of maintaining until 31 December 2007 the quantitative limits applied to imports from third countries — Directive 69/169/EEC)

(2006/C 294/22)

Language of the case: German

Referring court

Unabhängiger Finanzsenat, Außenstelle Klagenfurt

Parties to the main proceedings

Applicant: Amalia Valeško

Defendant: Zollamt Klagenfurt

Re:

Reference for a preliminary ruling — Unabhängiger Finanzsenat, Außenstelle Klagenfurt (Austria) — Interpretation of Articles 23 EC, 25 EC and 26 EC and of Annex XIII: List referred to in Article 24 of the Act of Accession: Slovenia; Heading 6. Taxation, paragraph 2, of the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded (OJ 2003 L 236, p. 906) — Maintenance by the Member States during the transition period of the same quantitative limits, for cigarettes imported from Slovenia without payment of additional excise duty as those applied with regard to cigarette imports from third countries — Limitation of the quantity which may be imported by an individual who is resident on national territory that is stricter than that fixed for most third countries

Operative part of the judgment

1) *Section 6(2) of Annexe XIII to the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the treaties on which the European Union is founded is to be interpreted as meaning that it does not preclude the Republic of Austria from maintaining, on a transitional basis, its legislation containing an exemption from excise duty reduced to 25 cigarettes for cigarettes coming from Slovenia imported into the Republic of Austria in the personal luggage of travellers resident in that Member State and entering it directly via its land border or inland waters.*

2) *Articles 23 EC, 25 EC and 26 EC must be interpreted as meaning that they do not prohibit national legislation such as that at issue in the main proceedings, under which the exemption from excise duty for cigarettes imported in travellers' personal luggage is limited to 25 units on entry to the Republic of Austria from certain other Member States, in particular the Republic of Slovenia, notwithstanding the fact that, following the last enlargement of the European Union, that reduced exemption no longer applies to any third country with the sole exception of the Swiss Samnauntal customs enclave, since imports of cigarettes from third countries generally benefit from an exemption for 200 units.*

([1]) OJ C 143, 11.06.2005.

Judgment of the Court (First Chamber) of 28 September 2006 (reference for a preliminary ruling from the Rechtbank 's-Hertogenbosch — Netherlands) — Jean Leon Van Straaten v Staat der Nederlanden and Republiek Italië

(Case C-150/05) ([1])

(Convention implementing the Schengen Agreement — Ne bis in idem principle — Meaning of 'the same acts' and of 'trial disposed of' — Exporting in one State and importing in another State — Acquittal of the accused)

(2006/C 294/23)

Language of the case: Dutch

Referring court

Rechtbank 's-Hertogenbosch

Parties to the main proceedings

Applicant: Jean Leon Van Straaten

Defendants: Staat der Nederlanden and Republiek Italië

Re:

Reference for a preliminary ruling — Rechtbank 's-Hertogenbosch — Interpretation of Article 54 of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (OJ 2000 L 239, p. 19) — *Ne bis in idem* principle — 'Same acts' and 'trial disposed of' — Offence prosecuted as acts of exporting in one State and as acts of importing in another — Whether a trial is finally disposed of in the case where the person charged is acquitted

Operative part of the judgment

1. *Article 54 of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, signed on 19 June 1990 in Schengen, must be interpreted as meaning that:*

   — *the relevant criterion for the purposes of the application of that article is identity of the material acts, understood as the existence of a set of facts which are inextricably linked together, irrespective of the legal classification given to them or the legal interest protected;*

   — *in the case of offences relating to narcotic drugs, the quantities of the drug that are at issue in the two Contracting States concerned or the persons alleged to have been party to the acts in the two States are not required to be identical;*

— *punishable acts consisting of exporting and of importing the same narcotic drugs and which are prosecuted in different Contracting States party to that Convention are, in principle, to be regarded as 'the same acts' for the purposes of Article 54 of the Convention, the definitive assessment in that respect being the task of the competent national courts.*

2. *The ne bis in idem principle, enshrined in Article 54 of that Convention, falls to be applied in respect of a decision of the judicial authorities of a Contracting State by which the accused is acquitted finally for lack of evidence.*

([1]) OJ C 155, 25.06.2005.

Judgment of the Court (Fifth Chamber) of 5 October 2006 — Commission of the European Communities v Republic of Austria

(Case C-226/05) ([1])

(Failure of a Member State to fulfil obligations — Directive 96/82/EC — Major-accident hazards involving dangerous substances — Failure to transpose within the period prescribed)

(2006/C 294/24)

Language of the case: German

Parties

Applicant: Commission of the European Communities (represented by: B. Schima, Agent)

Defendant: Republic of Austria (represented by: E. Riedl, Agent)

Re:

Failure of a Member State to fulfil obligations — Failure fully to transpose Articles 8(2)(b), 11, 12 and 24(1) of Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances (OJ 1997 L 10, p. 13)

Operative part of the judgment

The Court (Fifth Chamber):

1. *Declares that, by failing to transpose, within the period prescribed:*

— *the provisions of Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances into the national legislation on blasting supplies and explosives and the legislation of the Land Salzburg on electricity;*

— *Article 11 of Directive 96/82 in the Länder of Salzburg, Styria and Tirol;*

— *Article 12 of Directive 96/82 in the Land of Upper Austria; and*

— *Article 8(2)(b) of Directive 96/82 in the Länder of Upper Austria, Salzburg and Tirol,*

the Republic of Austria has failed to fulfil its obligations under that directive;

2. *Orders the Republic of Austria to pay the costs.*

([1]) OJ C 171, 09.07.2005.

Judgment of the Court (First Chamber) of 5 October 2006 — Commission of the European Communities v French Republic

(Case C-232/05) ([1])

(Failure of a Member State to fulfil obligations — State aid — Aid granted to Scott Paper SA/Kimberly-Clark — Obligation of recovery — Non-execution owing to the application of a national procedure — National procedural autonomy — Limits — 'National procedure allowing immediate and effective execution' for the purposes of Article 14(3) of Regulation (EC) No 659/1999 — National procedure providing that actions brought against demands for payment issued by national authorities have suspensory effect)

(2006/C 294/25)

Language of the case: French

Parties

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

Defendant: French Republic (represented by: G. de Bergues and S. Ramet, Agents)

Re:

Failure of a Member State to fulfil obligations — Failure to execute within the prescribed period Commission Decision 2002/14/EC of 12 July 2000 on the State aid granted by France to Scott Paper SA/Kimberly-Clark (OJ 2002 L 12, p. 1)

Operative part of the judgment

The Court:

1. *Declares that, by failing to take within the prescribed period all the measures necessary to recover from the beneficiary the aid referred to in Commission Decision 2002/14/EC of 12 July 2000 on the State aid granted by France to Scott Paper SA/Kimberly-Clark, the French Republic has failed to fulfil its obligations under the fourth paragraph of Article 249 EC and Articles 2 and 3 of that decision;*

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

([1]) OJ C 171, 9.07.2005.

Judgment of the Court (Grand Chamber) of 3 October 2006 (reference for a preliminary ruling from the Conseil d'État, France) — Nicolae Bot v Préfet du Val-de-Marne

(Case C-241/05) ([1])

(Convention implementing the Schengen Agreement — Article 20(1) — Conditions of movement of nationals of a third country not subject to a visa requirement — Maximum stay for a period of three months during the six months following the date of first entry into the Schengen Area — Successive stays — Definition of 'first entry')

(2006/C 294/26)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicant: Nicolae Bot

Defendant: Préfet du Val-de-Marne

Re:

Reference for a preliminary ruling — Conseil d'Etat (France) — Interpretation of Article 20(1) of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (OJ 2000 L 239, p. 19) — Meaning of first entry into the territories of the Contracting Parties

Operative part of the judgment

Article 20(1) of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, signed on 19 June 1990 at Schengen, is to be interpreted as meaning that the term 'first entry' in that provision refers, besides the very first entry into the territories of the Contracting States to that agreement, to the first entry into those territories taking place after the expiry of a period of six months from that very first entry and also to any other first entry taking place after the expiry of any new period of six months following an earlier date of first entry.

([1]) OJ C 193, 06.08.2005.

Judgment of the Court (First Chamber) of 5 October 2006 (references for a preliminary ruling from the Bács-Kiskun Megyei Bíróság and the Hajdú-Bihar Megyei Bíróság — Republic of Hungary) — Ákos Nádasdi v Vám- és Pénzügyőrség Észak-Alföldi Regionális Parancsnoksága (C-290/05), Ilona Németh v Vám- és Pénzügyőrség Dél-Alföldi Regionális Parancsnoksága (C-333/05)

(Joined Cases C-290/05 and C-333/05) ([1])

(Internal taxation — Registration duty on motor vehicles — Used motor vehicles — Importation)

(2006/C 294/27)

Language of the case: Hungarian

Referring courts

Bács-Kiskun Megyei Bíróság and Hajdú-Bihar Megyei Bíróság

Parties to the main proceedings

Applicants: Ákos Nádasdi (C-290/05) and Ilona Németh (C-333/05)

Defendants: Vám- és Pénzügyőrség Észak-Alföldi Regionális Parancsnoksága (C-290/05) and Vám- és Pénzügyőrség Dél-Alföldi Regionális Parancsnoksága (C-333/05)

Re:

Reference for a preliminary ruling — Hajdú-Bihar Megyei Bíróság — Interpretation of the first paragraph of Art. 90 EC — Registration duty charged on motor vehicles when they are first placed in circulation in the Member State which is not charged on used motor vehicles placed in circulation in the Member State before 1 February 2004 and which is calculated independently of the value of the motor vehicle

Operative part of the judgment

1) *A tax such as that imposed in Hungary by Law No CX of 2003 on registration duty (a regisztrációs adóról szóló 2003. évi CX. törvény), which does not apply to private motor vehicles by reason of the fact that they cross the frontier, does not constitute a customs duty on imports or a charge having equivalent effect within the meaning of Articles 23 EC and 25 EC.*

2) *The first paragraph of Article 90 EC has to be interpreted as precluding a tax such as that imposed by the Law on registration duty in so far as*

   — *it is charged on used vehicles when they are first placed in circulation in the territory of a Member State, and*

   — *its amount, which is determined exclusively by the vehicles' technical characteristics (engine type, engine capacity) and their environmental classification, is calculated without taking the depreciation of the vehicles into account, in such a way that, when applied to used vehicles imported from other Member States, it exceeds the amount of that duty included in the residual value of similar used vehicles which have already been registered in the Member State of importation.*

   A comparison with used vehicles placed into circulation in the Member State in question before the introduction of that duty is not relevant.

3) *Article 33 of the 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, does not preclude the levy of a tax such as that imposed by the Law on registration duty for which turnover is not the basis of assessment and which does not give rise, in trade between Member States, to formalities connected with the crossing of frontiers.*

(1) OJ C 296, 26.11.2005.
OJ C 315, 10.12.2005.

Judgment of the Court (Fourth Chamber) of 28 September 2006 — Commission of the European Communities v Grand Duchy of Luxembourg

(Case C-353/05) (1)

(Failure of a Member State to fulfil obligations — Directive 2003/54/EC — Failure to transpose within the period prescribed)

(2006/C 294/28)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: B. Schima and F. Simonetti, Agents)

Defendant: Grand Duchy of Luxembourg (represented by: S. Schreiner, Agent)

Re:

Failure of a Member State to fulfil obligations — Failure to adopt, within the period prescribed, the provisions necessary to comply with Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC — Statements made with regard to decommissioning and waste management activities (OJ 2003 L 176, p. 37)

Operative part of the judgment

The Court (Fourth Chamber):

1. *Declares that, by failing to adopt, within the period prescribed, the laws, regulations and administrative provisions necessary to comply with Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC, the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive;*

2. *Orders the Grand Duchy of Luxembourg to pay the costs.*

(1) OJ C 281, 12. 11. 2005.

Judgment of the Court (Fifth Chamber) of 5 October 2006 — Commission of the European Communities v Italian Republic

(Case C-360/05) ([1])

(Failure of a Member State to fulfil obligations — Directive 2003/96/EC — Taxation of energy products and electricity — Failure to transpose within the period prescribed)

(2006/C 294/29)

Language of the case: Italian

Parties

Applicant: Commission of the European Communities (represented by: K. Gross and M. Velardo, Agents)

Defendant: Italian Republic (represented by: G. De Bellis and I. Braguglia, Agents)

Re:

Failure of a Member State to fulfil obligations — Failure to transpose, within the period prescribed, Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity (OJ 2003 L 283, p. 51)

Operative part of the judgment

The Court (Fifth Chamber):

1. *Declares that, by failing to adopt, within the period prescribed, the laws, regulations and administrative provisions necessary to comply with Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity, the Italian Republic has failed to fulfil its obligations under that directive;*

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

([1]) OJ C 281, 12. 11. 2005.

Judgment of the Court (Fifth Chamber) of 28 September 2006 — Commission of the European Communities v Grand Duchy of Luxembourg

(Case C-49/06) ([1])

(Failure of member State to fulfil obligations — Directive 1999/37/EC — Registration documents for vehicles — Failure to transpose within the period prescribed)

(2006/C 294/30)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: N. Yerrell, Agent)

Defendant: Grand Duchy of Luxembourg (represented by: S. Schreiner, Agent)

Re:

Failure of a Member State to fulfil obligations — Failure to adopt, within the period prescribed, the provisions necessary to comply with Council Directive 1999/37/EC of 29 April 1999 on the registration documents for vehicles (OJ 1999 L 138, p. 57)

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt, within the period prescribed, all of the laws, regulations and administrative provisions necessary to comply with Council Directive 1999/37/EC of 29 April 1999 on the registration documents for vehicles, the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive;*

2. *Orders the Grand Duchy of Luxembourg to pay the costs.*

([1]) OJ C 60, 11. 03. 2006.

Order of the Court of 28 September 2006 — Unilever Bestfoods (Ireland) Ltd, formerly Van den Bergh Foods Ltd v Commission of the European Communities, Masterfoods Ltd, Richmond Ice Cream Ltd, formerly Richmond Frozen Confectionery Ltd

(Case C-552/03 P) [1]

(Appeal — Articles 85 and 86 of the EC Treaty (now Articles 81 EC and 82 EC) — Ice creams for immediate consumption — Supply of freezer cabinets to retailers — Exclusivity clause — Right to a fair hearing — Burden of proof)

(2006/C 294/31)

Language of the case: English

Parties

Applicant: Unilever Bestfoods (Ireland) Ltd (formerly Van den Bergh Foods Ltd) (represented by: M. Nicholson and M. Rowe, Solicitors, M. Biesheuvel and M. De Grave, advocaten)

Other parties to the proceedings: Commission of the European Communities (represented by: W. Wils, B. Doherty and A. Whelan, Agents), Masterfoods Ltd (represented by: P. Collins and M. Levitt, Solicitors), Richmond Ice Cream Ltd, formerly Richmond Frozen Confectionery Ltd (represented by: I. Forrester QC)

Re:

Appeal against the judgment of the Court of First Instance (Fifth Chamber) of 23 October 2003 in Case T-65/98 Van den Bergh Foods Ltd (formerly HB Ice Cream Limited) v Commission — Dismissal of an action for annulment of Commission Decision of 11 March 1998 relating to a proceeding under Articles 85 and 86 of the EC Treaty (Case Nos IV/34.073, IV/34.395 and IV/35.496 — Van den Bergh Foods Limited) prohibiting the practice of making freezer cabinets available to retailers exclusively for the storage of ice creams produced by the applicant

Operative part of the order

1. *The appeal is dismissed.*

2. *Unilever Bestfoods (Ireland) Ltd shall pay the costs.*

[1] OJ C 59, 6.03.2004.

Order of the Court (Sixth Chamber) of 13 July 2006 (reference for a preliminary ruling from the Korsholms tingsrätt — Finland) — Teemu Hakala v Oy L. Simons Transport Ab

(Case C-93/05) [1]

(Second subparagraph of Article 104(3) of the Rules of Procedure — Question the answer to which admits of no reasonable doubt — Regulation (EEC) No 3820/85 — Harmonisation of certain social legislation relating to road transport — Payments to wage-earning drivers related to distances covered — Prohibition of such a pay scheme unless it does not endanger road safety)

(2006/C 294/32)

Language of the case: Swedish

Referring court

Korsholms tingsrätt

Parties to the main proceedings

Applicant: Teemu Hakala

Defendant: Oy L. Simons Transport Ab

Re:

Reference for a preliminary ruling — Korsholms tingsrätt — Interpretation of Article 10 of Council Regulation (EEC) No 3820/85 of 20 December 1985 on the harmonisation of certain social legislation relating to road transport (OJ 1985 L 370, p. 1) — Payments to a wage-earning driver based on distances covered

Operative part of the order

A pay scheme based on distances covered is contrary to Article 10 of Council Regulation (EEC) No 3820/85 of 20 December 1985 on the harmonisation of certain social legislation relating to road transport, unless such a scheme is of a kind as not to endanger road safety. It is for the national court to ascertain, in view of all the circumstances of the case in the main proceedings, whether that is the case.

[1] OJ C 143, 11.06.2005

Order of the Court (Fifth Chamber) of 29 June 2006 — Creative Technology Ltd v Office for Harmonisation in the Internal Market (Trade Marks and Designs) José Vila Ortiz

(Case C-314/05 P) [1]

(Appeal — Community trade mark — Article 8(1)(b) of Regulation (EC) No 40/94 — Likelihood of confusion — Application for Community word mark 'PC WORKS' — Opposition by the proprietor of the national figurative mark 'W WORK PRO' — Appeal in part clearly inadmissible and in part clearly unfounded)

(2006/C 294/33)

Language of the case: English

Parties

Applicant: Creative Technology Ltd (represented by: S. Jones and P. Rawlinson, Solicitors)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (represented by: S. Laitinen, Agent) José Vila Ortiz

Re:

Appeal against the judgment of the Court of First Instance (Fourth Chamber) of 25 May 2005 in Case T-352/02 *Creative Technology Ltd* v *Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* dismissing as unfounded an action brought by the applicant for the Community trade mark PC WORKS for products in Class 9 for the annulment of decision R 265/2001-4 of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (OHIM) of 4 September 2002 dismissing the appeal against the decision of the Opposition Division refusing to register that trade mark in opposition proceedings brought by the holder of the national figurative mark W WORK PRO for products in Class 9

Operative part of the order

1. *The appeal is dismissed.*

2. *Creative Technology Ltd is ordered to pay the costs.*

[1] OJ C 296, 26.11.2005.

Order of the Court of 5 October 2006 — Dorte Schmidt-Brown v Commission of the European Communities

(Case C-365/05 P) [1]

(Appeal — Officials — Duty to provide assistance — Rejection of request for financial assistance in defamation proceedings brought before the United Kingdom courts)

(2006/C 294/34)

Language of the case: French

Parties

Applicant: Dorte Schmidt-Brown (represented by: S. Orlandi, A. Coolen, J.-N. Louis and E. Marchal, avocats)

Other party to the proceedings: Commission of the European Communities (represented by: J. Curral and L. Lozano Palacios, Agents, and D. Waelbroeck, avocat)

Re:

Appeal against the judgment of the Court of First Instance (First Chamber) of 5 July 2005 in Case T-387/02 *Schmidt-Brown* v *Commission* dismissing the action for annulment of the Commission's decision of 26 April 2002 rejecting the applicant's request for financial assistance from the Commission in a defamation action brought by the applicant against a company before the High Court of Justice (England and Wales)

Operative part of the order

1. *The appeal is dismissed;*

2. *Ms Schmidt-Brown shall bear the costs.*

[1] OJ C 281 of 12.11.2005.

Order of the Court of 20 September 2006 — Jamal Ouariachi v Commission of the European Communities

(Case C-4/06 P) ([1])

(Appeal — Action for damages — Non-contractual liability of the Community — Appeal manifestly inadmissible)

(2006/C 294/35)

Language of the case: French

Parties

Appellant: Jamal Ouariachi (represented by: F. Blanmailland, lawyer)

Other party to the proceedings: Commission of the European Communities (represented by: F. Dintilhac and G. Boudot, Agents)

Re:

Appeal brought against the order of the Court of First Instance (Fifth Chamber) of 26 October 2005 in Case T-124/04 *Ouariachi* v *Commission* by which it dismissed, as being manifestly unfounded, the application brought by the present appellant for damages to compensate for the loss which he allegedly suffered as result of the alleged illegal conduct of a member of staff of the Commission delegation in Khartoum (Sudan)

Operative part of the order

1. *The appeal is dismissed.*

2. *Mr Ouariachi is ordered to pay the costs.*

([1]) OJ C 48, 25.02.2006.

Order of the Court (Fourth Chamber) of 13 July 2006 — Soffass SpA v Office for Harmonisation in the Internal Market (Trade Marks and Designs), Sodipan SCA

(Case C-92/06 P) ([1])

(Appeal — Community trade mark — Figurative mark 'NICKY' — Opposition by the proprietor of the national figurative marks 'NOKY' and 'noky' — Purely factual assessment — Appeal manifestly inadmissible)

(2006/C 294/36)

Language of the case: Italian

Parties

Appellant: Soffass SpA (represented by: V. Biliardo, C. Bacchini and M. Mazzitelli, lawyers)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), (represented by: M. Capostagno, Agent), Sodipan SCA (represented by: N. Bœspflug, lawyer)

Re:

Appeal against the judgment of the Court of First Instance (First Chamber) of 23 November 2005 in Case T-396/04 *Soffass* v *OHMI* whereby the Court dismissed as unfounded an action by the applicant for the figurative mark 'NICKY' for goods in Class 15 for annulment of Decision R 699/2003-1 of the First Board of Appeal of the Office for Harmonisation in the Internal Market (OHIM) of 16 July 2004 annulling the decision of the Opposition Division dismissing the opposition brought by the proprietor of the national figurative marks 'NOKY' and 'noky' for goods in Class 16.

Operative part of the order

1. *The appeal is dismissed.*

2. *Soffass SpA is ordered to pay the costs.*

([1]) OJ C 121, 20.05.2006

Order of the Court (Fourth Chamber) of 13 July 2006 (reference for a preliminary ruling from the Tribunale civile di Bolzano — Italy) — Eurodomus srl v Comune di Bolzano

(Case C-166/06) [1]

(Reference for a preliminary ruling — Manifest inadmissibility)

(2006/C 294/37)

Language of the case: Italian

Referring court

Tribunale civile di Bolzano

Parties to the main proceedings

Applicant: Eurodomus srl

Defendant: Comune di Bolzano

Re:

Reference for a preliminary ruling — Tribunale civile di Bolzano — Interpretation of Article 6(2) of the Treaty on European Union — Provincial administration adopting regulations capable of impeding the application of a decision of an administrative court that is res judicata — Compatibility with Community law

Operative part of the order

The reference for a preliminary ruling made by the Tribunale civile di Bolzano, by decision of 4 January 2006, is inadmissible.

[1] OJ C 154, 01.07.2006

Reference for a preliminary ruling from the Oberlandesgericht Celle (Germany) lodged on 11 August 2006 — Rechtsanwalt Dr Dirk Rüffert, as the liquidator of the assets of Objekt und Bauregie GmbH & Co KG v Land Niedersachsen

(Case C-346/06)

(2006/C 294/38)

Language of the case: German

Referring court

Oberlandesgericht Celle

Parties to the main proceedings

Applicant: Rechtsanwalt Dr Dirk Rüffert, as the liquidator of the assets of Objekt und Bauregie GmbH & Co KG

Defendant: Land Niedersachsen

Question referred

Does it amount to an unjustified restriction on the freedom to provide services under the EC Treaty if a public contracting authority is required by statute to award contracts for building services only to undertakings which, when lodging a tender, undertake in writing to pay their employees, when performing those services, at least the remuneration prescribed by the collective agreement in force at the place where those services are performed?

Reference for a preliminary ruling from the Gerechtshof te Amsterdam (Netherlands) lodged on 30 August 2006 — J.A. van der Steen v Inspector van de belastingdienst Utrecht-Gooi/kantoor Utrecht

(Case C-355/06)

(2006/C 294/39)

Language of the case: Dutch

Referring court

Gerechtshof te Amsterdam

Parties to the main proceedings

Applicant: J.A. van der Steen

Defendant: Inspector van de belastingdienst Utrecht-Gooi/kantoor Utrecht

Question referred

Is Article 4(1) of the Sixth Directive [1] to be interpreted as meaning that if a natural person has the sole activity of actually carrying out all work ensuing from the activities of a private limited company of which he is the sole manager, sole shareholder and sole 'member of staff', that work is not an economic activity because it is carried out in the course of the management and representation of the private limited company and thus not in economic dealings?

[1] 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 (OJ L 145, p. 1)

Reference for a preliminary ruling from the College van Beroep voor het Bedrijfsleven (Netherlands) lodged on 4 September 2006 — Feinchemie Schwebda GmbH and Bayer CropScience AG v College voor de Toelating van Bestrijdingsmiddelen; other party to the proceedings: Agrichem B.V.

(Case C-361/06)

(2006/C 294/40)

Language of the case: Dutch

Referring court

College van Beroep voor het Bedrijfsleven

Parties to the main proceedings

Applicants: Feinchemie Schwebda GmbH and Bayer CropScience AG

Defendant: College voor de Toelating van Bestrijdingsmiddelen

Other party to the proceedings: Agrichem B.V.

Question referred

Must Article 4(1) of Directive 2002/37/EC [1]be interpreted as meaning that that provision does not require Member States to terminate the authorisation of a plant protection product containing ethofumesate before 1 September 2003 on the ground that the authorisation holder does not have, or have access to, a dossier satisfying the conditions set out in Annex II to Directive 91/414/EEC? [2]

[1] Commission Directive 2002/37/EC of 3 May 2002 amending Council Directive 91/414/EEC to include ethofumesate as an active substance (OJ 2002 L 117, p. 10).

[2] Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market (OJ 1991 L 230, p. 1).

Reference for a preliminary ruling from the Hoge Raad der Nederlanden, lodged on 12 September 2006 — Benetton Group SpA v G-Star International B.V.

(Case C-371/06)

(2006/C 294/41)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: Benetton Group SpA

Defendant: G-Star International B.V.

Questions referred

(1) Must Article 3(1)(e), first indent [1], be interpreted as meaning that the prohibition contained therein permanently precludes the registration of a shape as a trade mark where the nature of the product is such that its appearance and shaping determine its market value entirely or substantially as a result of their beauty or original character, or does the prohibition not apply where, prior to the application for registration, the attractiveness of the relevant shape to the public has been determined predominantly by the recognition of it as a distinctive sign?

(2) If the answer to Question 1 is to the latter effect, to what extent must this attractiveness have prevailed for the prohibition no longer to apply?

[1] First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ L 40, 11.2.1989, p. 1).

Reference for a preliminary ruling from VAT and Duties Tribunal, London (United Kingdom) made on 11 September 2006 — Asda Stores Ltd v Commissioners of HM Revenue and Customs

(Case C-372/06)

(2006/C 294/42)

Language of the case: English

Referring court

VAT and Duties Tribunal, London

Parties to the main proceedings

Applicant: Asda Stores Ltd

Defendant: Commissioners of HM Revenue and Customs

Questions referred

Questions concerning non-preferential origin

Compatibility with the Code of relevant provisions of Annex 11 to the Implementing Regulation

(1) Are the rules for determining non-preferential origin contained in Annex 11 to Commission Regulation (EEC) No. 2454/93 ([1]) of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No. 2913/92 ([2]) establishing the Community Customs Code ('the Implementing Regulation') invalid for the colour televisions ('CTVs') produced in Turkey falling within combined nomenclature *ex* 8528 as set out in Column 3 to the table for that heading, by virtue of an incompatibility with the provisions of Article 24 of Council Regulation (EEC) No. 2913/92 of 12 October 1992 establishing the Community Customs Code ('the Community Customs Code')?

(2) In the event that the specific origin rule for CTVs falling within combined nomenclature *ex* 8528 as set out in Column 3 to the table for that heading contained in Annex 11 to the Implementing Regulation is valid, does the non-preferential origin of a separate part, such as a chassis, which incorporated in a finished CTV, have to be determined separately; and, if so, is that non-preferential origin to be determined on the basis of:

(a) the physical processing or working of the product, for the purposes of analysing where the product in question has undergone its last, substantial, economically justified processing or working (assuming the other requirements of Article 24 of the Community Customs Code are met); or

(b) Specific and residual rules agreed by the European Commission and Member States for the purposes of the European Community's Negotiating Position before the World Trade Organisation in the harmonisation of non-preferential rules of origin, the specific rule in the present circumstances being a 45 % added value test and the residual rule being that the country of origin of the good shall be the country in which the major portion of the non-originating materials originated as determined on the basis of each chapter, subject, however, to the qualification that when the originating materials represent at least 50 % of all the materials used, the country of origin of the good shall be the country of origin of those materials, or

(c) some other basis?

(3) If a part of a CTV, such as a chassis, has obtained local origin under Article 24 of the Community Customs Code on the basis of a physical processing or working test, is it then still necessary to determine a value for such part in order to apply to the CTV the specific origin rule for CTVs contained in Annex 11 to the Implementing Regulation?

(4) In the event that the rules agreed for the EC Negotiating Position before the WTO can be applied when applying Annex 11, is it necessary for a part of a CTV, such as a chassis, to have its own actual ex-works price, or may it be ascribed a value equivalent to an ex-works price?

(5) If the answer to either question (3) or question (4) requires an equivalent value to an actual ex-works price to be considered, how is that value to be determined? In particular:

(a) Is it appropriate to apply: (i) Articles 29 or 30 of the Community Customs Code; (ii) any of Articles 141 to 153 of the Implementing Regulation; and (iii) any of the Interpretative Notes on Customs Value set out in Annex 23 to the Implementing Regulation?

(b) What form of evidence of value or cost is needed?

(c) In what circumstances may recourse be had to a computed or constructed cost of a part of a CTV in assessing its non-preferential origin?

(d) What type of costs may be taken into account in calculating a computed or constructed cost of a part?

(e) Is it appropriate to apply average values over a period of time in determining the duty liability of a specific product at a specific point in time?

(f) Is it appropriate to use different methodologies for calculating costs or values when comparing the cost or value of a part with the cost or value of a completed, exported product?

Questions concerning Articles 44 to 47 of Decision No. 1/95 and Article 47 of the Additional Protocol to the Ankara Agreement

(6) Do the provisions of Article 44(2) of Decision No. 1/95 of the EC-Turkey Association Council of 22 December 1995 on implementing the final phase of the Customs Union, read together with Article 47 of the Additional Protocol to the Ankara Agreement, require the Community to have made an application for a recommendation to the EC-Turkey Council of Association and to have made a notification to the EC-Turkey Council of Association prior to making the anti-dumping duties imposed by Council Regulation (EC) No. 2584/98 ([3]) also applicable to products imported from Turkey and which were in free circulation?

(7) Does Article 46 of Decision No. 1/95 require that the Community, having amended by Council Regulation (EC) No. 2584/98 the product scope and duty rates imposed by three previous Council Regulations on imports of certain CTVs originating in China and Korea, inform the Customs Union Joint Committee that it intends to apply these measures also to imports from Turkey, before it can make imports from Turkey of CTVs originating in China or Korea and in free circulation, subject to the application of the new anti-dumping duties imposed by Council Regulation (EC) No. 2584/98?

(8) Do Articles 44 to 47 of Decision No. 1/95 require that traders be informed, or otherwise be made aware, of information given pursuant to Article 46 of Decision No. 1/95 or a notification made pursuant to Article 47(2) of the Additional Protocol to the Ankara Agreement?

(9) In the event that an application, notification or information is required:

(a) What form must any such measure of application and notification pursuant to Article 44 of Decision No. 1/95, read together with Article 47 of the Additional Protocol to the Ankara Agreement, take?

(b) What form must any measure of information given pursuant to Article 46 of Decision No. 1/95 take?

(c) Do the steps taken by the European Commission in the present case sufficiently comply with the required form of application, notification or information?

(d) What is the consequence of non-compliance?

(10) Are Articles 44, 46 and 47 of Decision No. 1/95 and Article 47 of the Additional Protocol to the Ankara Agreement directly applicable or of direct effect in national courts, so as to confer upon individual traders the right to rely upon any breach of the same in order to resist the payment of anti-dumping duties otherwise due?

([1]) OJ L 11, P.88
([2]) OJ L 3, P.23
([3]) OJ L 324, p. 1

Action brought on 15 September 2006 — Commission of the European Communities v Kingdom of Spain

(Case C-380/06)

(2006/C 294/43)

Language of the case: Spanish

Parties

Applicant: Commission of the European Communities (represented by: B. Schima and S. Pardo Quintillán, acting as Agents)

Defendant: Kingdom of Spain

Form of order sought

The Court is asked to:

— declare that, by authorising, under Law 3/2004 of 29 December 2004 on combating late payment in commercial transactions, a period of 90 days for the payment of specific staple foods and postponing the entry into force of certain provisions until 1 July 2006, the Kingdom of Spain has failed to fulfil its obligations under Article 3(1)(2) and (4) of Directive 2000/35/EC of the European Parliament and of the Council of 29 June 2000 on combating late payment in commercial transactions ([1]);

— order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

Directive 2000/35/EC does not provide for the partial or gradual application of its provisions in any circumstances. Accordingly the postponement until 1 July 2006 is contrary to Article 3(1) and (2) thereof. It also infringes Article 3(4) which provides that the Member States are to ensure that, in the interests of creditors and of competitors, adequate and effective means exist to prevent the continued use of terms which are manifestly unfair.

Thus the postponement of the application of the maximum period of 60 days cannot be regarded as an additional requirement in favour of creditors, nor is it in any event acceptable, in particular on account of the fact that national legislation to transpose Directive 2000/35/EC ought to have been brought into force before August 2002.

(1) OJ L 200 of 8.8.2000. p. 35.

Appeal brought on 14 September 2006 by Ocean Trawlers Ltd against the judgment of the Court of First Instance (First Chamber) delivered on 13 June 2006 in Joined Cases T-218/03 to T-240/03: Cathal Boyle and others v Commission of the European Communities

(Case C-382/06 P)

(2006/C 294/44)

Language of the case: English

Parties

Appellant: Ocean Trawlers Ltd (represented by: P. Gallagher SC, A. Collins SC, D. Barry, Solicitor)

Other parties to the proceedings: Ireland, Commission of the European Communities

Form of order sought

The applicant claims that the Court should:

— Set aside the judgment of the Court of First Instance of June 13, 2006 in so far as it dismissed the application in Case T-226/03, *Ocean Trawlers Ltd. V. Commission* for the annulment of Commission Decision 2003/245/EC (1) of 4 April 2003 on the requests received by the Commission to increase MAGP IV objectives to take into account improvements on safety, navigation at sea, hygiene, product quality and working conditions for vessels of more than 12 m in length overall as it applied to the safety capacity application for proposed new RSW vessel MFV Golden Rose and ordered *Ocean Trawlers Ltd.* to bear its own costs.

— Annul Commission Decision 2003/245/EC of 4 April 2003 on the requests received by the Commission to increase MAGP IV objectives to take into account improvements on safety, navigation at sea, hygiene, product quality and working conditions for vessels of more than 12 m in length overall as it applied to the safety capacity application for a proposed new RSW vessel MFV Golden Rose.

— Order the Commission to pay the costs of the entirety of these proceedings.

Pleas in law and main arguments

The appellant submits that the judgment of the Court of First Instance should be set aside on the following grounds:

By determining the appellant's interest in bringing the proceedings by reference to the date of the adoption of decision 2003/245 and not the date on which the application was lodged the Court of First Instance applied an incorrect legal test;

The Court made a substantive error apparent from the documents submitted to it, namely as to the appellant's ownership of the MFV 'Golden Rose' at all times material to the application;

The finding that the appellant was not individually concerned by decision 2003/245 'since the vessels in question are fictitious' has no basis in law and is, moreover, contradicted by the reasoning of the Court of First Instance in its judgment;

The appellant is, and at all material times has been, the owner of the MFV 'Golden Rose'. It therefore cannot be said to have lost the interest it unquestionably had at the commencement of its action for the annulment of decision 2003/245 in so far as it impacted upon its application for safety tonnage in respect of the proposed MFV 'Golden Rose';

The Court of First Instance erred in finding that the appellant was deprived of standing to seek the annulment of decision 2003/245 by reason of the steps it took to mitigate the loss and damage sustained as a result of that measure.

(1) OJ L 90, P. 48

Reference for a preliminary ruling from the The Commissione Tributaria Provinciale (Regional Tax Court) Milan, Italy lodged on 18 September 2006 — Bakemark Italia Srl v Agenzia Entrate Ufficio Milano 1 (Local Tax Office) Milan

(Case C-386/06)

(2006/C 294/45)

Language of the case: Italian

Referring court

The Commissione Tributaria Provinciale (Regional Tax Court), Milan

Parties to the main proceedings

Applicant: Bakemark Italia Srl

Defendant: Agenzia Entrate Ufficio (Local Tax Office) Milan

Question referred

Is Article 19(a)(1)(c), (d) and (e) of DPR No 633/72 incompatible with Article 17 of the Sixth Council Directive No 77/388/EEC of 17 May 1977? ([1])

([1]) OJ L145, p. 1

Action brought on 19 September 2006 — Commission of the European Communities v Republic of Finland

(Case C-387/06)

(2006/C 294/46)

Language of the case: Finnish

Parties

Applicant: Commission of the European Communities (represented by M. Huttunen and M. Shotter, acting as Agents)

Defendant: Republic of Finland

Form of order sought

— declare that, by restricting in Paragraph 43 of the Viestintämarkkinalaki (Communications Market Law) the powers of the national regulatory authority to regulate the termination of calls from a fixed network to a mobile network, the Republic of Finland has failed to fulfil its obligations under Article 8(1), (2)(b) and 3(c) 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 ([1]) and under Article 8(1) and (4) of Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities ([2]);

— order the Republic of Finland to pay the costs.

Pleas in law and main arguments

The period prescribed for implementation of the directive expired on 24 July 2003.

([1]) OJ 2002 L 108, p. 33.
([2]) OJ 2002 L 108, p. 7.

Reference for a preliminary ruling from the Tribunale ordinario di Roma (Italy) lodged on 19 September 2006 — Nuova Agricast srl v Ministero delle Attività Produttive

(Case C-390/06)

(2006/C 294/47)

Language of the case: Italian

Referring court

Tribunale ordinario di Roma

Parties to the main proceedings

Claimant: Nuova Agricast srl

Defendant: Ministero delle Attività Produttive

Question referred

'The question concerns the validity of the EU Commission's decision of 12 July 2000, notified to the Italian Government by letter referenced SG(2000)D/105754 of 2 August 2000, solely with reference to the transitional provision which provides for exceptional derogation from the principle of "necessary aid" — on the occasion of the first implementation of the scheme in question — only for applications "made on the occasion of the last invitation to apply for support measures, organised on the basis of the preceding scheme and approved by the Commission until 31 December 1999, which were considered eligible for aid but were not cleared because insufficient financial resources were allocated to that invitation", with the consequent unjustified passing-over — in breach of the principle of equal treatment and of the obligation to state the reasons on which the decision was based pursuant to Article 253 EC — of applications made in connection with earlier invitations, which had not been supported because of a lack of funds and which were waiting to be included automatically in the next invitation or to be revised and resubmitted in the first "appropriate" invitation established under the new scheme'.

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

(Case C-391/06)

(2006/C 294/48)

Language of the case: English

Parties

Applicant: Commission of the European Communities (represented by: D. Lawunmi, U. Wölker, Agents)

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 Directive 2003/4/EC [1] of the European Parliament and of the Council, 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 14 February 2005.

[1] OJ L 94, P.49

Action brought on 21 September 2006 — Commission of the European Communities v Kingdom of Spain

(Case C-392/06)

(2006/C 294/49)

Language of the case: Spanish

Parties

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

Defendant: Kingdom of Spain

Form of order sought

— declare that, by failing to bring into force the provisions necessary to comply with Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities [1] and, in any event, by failing to communicate them 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 for transposition of Directive 2002/15/EC expired on 23 March 2005.

[1] OJ L 80 of 23.3.2002, p. 35.

Action brought on 22 September 2006 — Commission of the European Communities v Italian Republic

(Case C-394/06)

(2006/C 294/50)

Language of the case: Italian

Parties

Applicant: Commission of the European Communities (represented by: B. Schima and D. Recchia, acting as Agents)

Defendant: Italian Republic

Form of order sought

— declare that, by failing to submit, before 1 July 2005, an annual national report on the promotion of biofuels including all the information laid down in Article 4(1) of Directive 2003/30/EC of the European Parliament and of the Council on the promotion of the use of biofuels or other renewable fuels for transport [1], the Italian Republic has failed to fulfil its obligations under that directive;

— order the Italian Republic to pay the costs.

Pleas in law and main arguments

The period for submitting the annual national report on the promotion of biofuels referred to in Article 4(1) of Directive 2003/30/EC expired on 1 July 2005.

The Italian Republic maintains that it sent to the Commission a report in accordance with the requirements of the directive on 14 July 2006.

In the opinion of the Commission, however, that report is incomplete because it does not make any reference to the national resources allocated to the production of biomass for energy uses other than transport, as laid down in the second indent of Article 4(1) of the directive.

(1) OJ L 123 of 17.5.2003, p. 42.

Reference for a preliminary ruling from the Tribunal Supremo — Sala Primera Civil (Spain) lodged on 22 September 2006 — Entidad de Gestión de los Derechos de los Productores Audiovisuales (EGEDA) v Al Rima, S.A

(Case C-395/06)

(2006/C 294/51)

Language of the case: Spanish

Referring court

Tribunal Supremo — Sala Primera Civil (Spain)

Parties to the main proceedings

Applicant: Entidad de Gestión de los Derechos de los Productores Audiovisuales (EGEDA)

Defendant: Al Rima, S.A

Question(s) referred

1. Does the installation in the rooms of a hotel or similar establishment of television sets to which a terrestrial or satellite television signal is sent by cable constitute an act of communication to the public which is covered by the harmonisation of national laws protecting the rights of phonogram producers and producers of the first fixations of films provided for in Article 3(2) of Directive 2001/29/EC (1) of the European Parliament and of the Council of 22 May 2001?

2. Is it contrary to the protection of the rights of phonogram producers and producers of the first fixations of films pursued by Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 to deem the room of a hotel or similar establishment to be a strictly domestic location, so that communication by means of television sets to which is fed a signal previously received by the hotel or similar establishment is not regarded as communication to the public?

3. For the purposes of protecting the rights of phonogram producers and producers of the first fixations of films pursued by Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001, can communication that is effected through television sets which are installed in rooms and to which a signal previously received by a hotel or similar establishment is fed be regarded as public because successive viewers have access to that communication?

(1) On the harmonisation of certain aspects of copyright and related rights in the information society (OJ 2001 L 167, p. 10).

Reference for a preliminary ruling from the Østre Landsret (Denmark) lodged on 21 September 2006 — Eivind F. Kramme v SAS Scandinavian Airlines Danmark A/S

(Case C-396/06)

(2006/C 294/52)

Language of the case: Danish

Referring court

Østre Landsret

Parties to the main proceedings

Applicant: Eivind F. Kramme

Defendant: SAS Scandinavian Airlines Danmark A/S

Questions referred

1. Is there an extraordinary circumstance when an aircraft is taken out of operation due to technical problems, with the result that a flight is cancelled (see Article 5(3) 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 delay of flights, and repealing Regulation (EEC) No 295/91)?

2. If Question 1 is answered in the affirmative, which reasonable measures for the purposes of the Regulation must an air carrier then take to avoid flight cancellations due to technical problems?

3. If Question 1 is answered in the affirmative, has an air carrier then taken all reasonable measures to avoid cancellation for the purposes of the Regulation if it can be established that there were no aircraft available for use for the flight in respect of which an aircraft which was taken out of operation due to technical problems was scheduled to be used?

4. If Question 1 is answered in the affirmative, is it relevant that the documentation concerning the technical problems relied on by the air carrier originates solely from the air carrier itself?

Action brought on 25 September 2006 — Commission of the European Communities v Kingdom of the Netherlands

(Case C-398/06)

(2006/C 294/53)

Language of the case: Dutch

Parties

Applicant: Commission of the European Communities (represented by: M. Condou-Durande and R. Troosters, Agents)

Defendant: Kingdom of the Netherlands

Form of order sought

— Declare that, by maintaining in force national provisions under which economically non-active and pensioned EU/EEA nationals must prove that they have lasting means of support in order to obtain a residence permit, the Kingdom of the Netherlands has failed to fulfil its obligations under Council Directive 90/364/EEC ([1]) of 28 June 1990 on the right of residence, Council Directive 90/365/EEC ([2]) of 28 June 1990 on the right of residence for employees and self-employed persons who have ceased their occupational activity and Council Directive 68/360/EEC ([3]) of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families;

— order the Kingdom of the Netherlands to pay the costs.

Pleas in law and main arguments

The requirement in the Netherlands rules that in order to obtain a residence permit a person must have sufficient means for a minimum period of one year is not in conformity with Community law.

([1]) OJ 1990 L 180, p. 26.
([2]) OJ 1990 L 180, p. 28.
([3]) OJ, English Special Edition 1968(II), p. 485.

Appeal brought on 25 September 2006 by Faraj Hassan against the judgment of the Court of First Instance (Second Chamber) delivered on 12 July 2006 in Case T-49/04: Faraj Hassan v Council of the European Union and Commission of the European Communities

(Case C-399/06 P)

(2006/C 294/54)

Language of the case: English

Parties

Appellant: Faraj Hassan (represented by: E. Grieves, Barrister, H. Miller, Solicitor)

Other parties to the proceedings: Council of the European Union, Commission of the European Communities

Form of order sought

The applicant claims that the Court should:

1) Set aside the judgment of the Court of First Instance

2) Annul Council Regulation (EC) No 881/2002 of 27 May 2002 ([1]) as amended by Commission Regulation (EC) No 2049/2003 20 November 2003 ([2]) and/or Commission Regulation (EC) No 2049/2003 20 November 2003 in its entirety and/or in respect of the proscription of the Applicant; and

3) Alternatively declare the aforementioned Regulations inapplicable in respect of its application to the applicant; and

4) Take such further action as the Court may deem appropriate; and

5) Order the Council to pay the costs incurred by the applicant in the present proceedings;

6) Order the Council to pay damages.

Pleas in law and main arguments

The appellant maintains that the Council and Commission are obliged to respect the rights protected by the European Convention on Human Rights ('the Convention') and cannot abrogate that obligation, unless 'at least equivalent protection' is offered as a result of that abrogation.

It is further maintained that the protections offered by the operation of the United Nations Security Council ('UNSC') are not equivalent to that offered by the Convention.

The appellant submits that the Court of First Instance erred in law when it:

i) failed to directly assess whether the UNSC offered *equivalent protection* to that of the Convention, specifically in relation to Articles 6, 8, 13 and Article 1 of Protocol 1 of the Convention; and

ii) scrutinized the operation of the UNSC indirectly by virtue of the principle of *jus cogens* rather than by virtue of and by reference to the protection offered by Articles 6, 8, 13 and Article 1 of Protocol 1 of the Convention.

It is further submitted that the Court of First Instance erred when it found that the restriction on the usage of property was not a relevant one as to the substance of the right to property.

([1]) 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-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 L 139, p. 9)

([2]) Commission Regulation (EC) No 2049/2003 of 20 November 2003 amending for the 25th time Council Regulation (EC) No 881/2002 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. (OJ L 303, p. 20)

Action brought on 26 September 2006 — Commission of the European Communities v Bundesrepublik Deutschland

(Case C-401/06)

(2006/C 294/55)

Language of the case: German

Parties

Applicant: Commission of the European Communities (represented by: D. Triantafyllou, acting as Agent)

Defendant: Bundesrepublik Deutschland

Form of order sought

— declare that, by failing to determine the place where the service is supplied in respect of the activity of an executor in accordance with Article 9(2)(e) of the Sixth VAT Directive when the service is performed for customers established outside the Community or for taxable persons established in the Community but not in the same country as the supplier, the Bundesrepublik Deutschland has failed to fulfil its obligations under Article 9(2)(e) of Sixth Council Directive 77/388/EEC of 17 May 1977 on turnover taxes ([1]);

— order the Bundesrepublik Deutschland to pay the costs.

Pleas in law and main arguments

Under the third indent of Article 9(2)(e) of the Sixth VAT Directive the place of supply of certain services which are performed for customers established outside the Community or for taxable persons established in the Community but not in the same country as the supplier is the place where the customer has established his business or has a fixed establishment to which the service is supplied or, in the absence of such a place, the place where he has his permanent address or usually resides. Those services are the services of consultants, engineers, consultancy bureaux, lawyers, accountants and other similar services. That provision of the directive is a rule of conflict which determines the place of taxation of the services and the jurisdiction of the Member States.

Under the provisions of German law and the administrative practice of the tax authorities based thereon, the place where the services of an executor are supplied is the place from which the operator provides its services. The place of supply in respect of those services is therefore not determined under Article 9(2)(e) of the directive when they are performed for customers established outside the Community or for taxable persons established in the Community but not in the same country as the supplier.

That legislation and administrative practice does not comply with the provisions of Article 9 of the Sixth VAT Directive. Services which are performed in the capacity of executor for customers established outside the Community or for taxable persons established in the Community but not in the same country as the supplier are services of which the place of supply must be determined in accordance with Article 9(2)(e) of the Sixth VAT Directive.

The Commission takes the view, contrary to the arguments of the German Government, that the activities of an executor are also among those activities which a lawyer performs principally and habitually. The activity as such rather than the professional title should be taken as a basis for the evaluation: it is the nature of the service which is relevant.

The term 'other similar services' does not refer to a feature common to the activities named in the third indent of Article 9(2)(e) of the Sixth VAT Directive. It is sufficient that the service to be evaluated is similar to any of the activities expressly listed in that provision. That is the case when both activities serve the same purpose. According to the determination of the European Court of Justice, the principal and habitual activities of a lawyer include those of representing and defending the interests of a client. In so far as the Court of Justice refers to 'representing or defending the interests of a person', that requirement is also present in the activities of an executor: he represents and defends the interests of the testator. His activities correspond to those of an independently appointed representative and advisor. The fact that executorship is not an activity reserved to the legal profession does not preclude the two activities from serving the same purpose.

(1) OJ L 145 of 13.6.1977, p. 1.

Appeal brought on 27 September 2006 by Chafiq Ayadi against the judgment of the Court of First Instance (Second Chamber) delivered on 12 July 2006 in Case T-253/02: Chafiq Ayadi v Council of the European Union

(Case C-403/06 P)

(2006/C 294/56)

Language of the case: English

Parties

Appellant: Chafiq Ayadi (represented by: H. Miller, Solicitor and S. Cox, Barrister)

Other parties to the proceedings: Council of the European Union, United Kingdom of Great Britain and Northern Ireland, Commission of the European Communities

Form of order sought

The applicant claims that the Court should order that:

— the decision of the Court of First Instance is set aside, in whole;

— it is declared that Articles 2 and 4 and Annex 1 of Council Regulation (EC) No 881/2002 (1) are invalid insofar as they are of direct and individual concern to the Appellant;

— the Council pay the Appellant's costs of this appeal and of the proceedings before the Court of First Instance.

Pleas in law and main arguments

The appellant submits that the Court of First Instance erred in law in:

a) failing to hold that Article 308 EC, in conjunction with Articles 60 EC and 301 EC, did not confer power on the Council to make the impugned provisions;

b) failing to hold that the making of the impugned powers infringed the fundamental principle of subsidiarity and/or Article 5 EC second paragraph;

c) failing to hold that an essential procedureal requirement has been infringed in the making of the impugned provisions, namely the requirement that the Council state adequate reasons why the measures considered necessary cannot be determined by individual Member States.

d) holding that decisions of the Security Council of the United Nations ('UNSC') which call upon Member States of the United Nations are binding on the Member States and/or upon the Community;

e) holding that the Community courts can only annul a Community measure implementing a UNSC decision by reference to the standard of *ius cogens* and in failing to hold that it can annul such a measure in order to protect human rights recognised in the legal order of the United Nations;

f) failing to hold that the impugned parts of Regulation 881/2002 infringe the Appellant's human rights.

(1) 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-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 L 139, p. 9

Action brought on 1 September 2006 — Landtag Schleswig-Holstein v Commission of the European Communities

(Case C-406/06)

(2006/C 294/57)

Language of the case: German

Parties

Applicant: Landtag Schleswig-Holstein (represented by: S. Laskowski and J. Caspar, acting as Agents)

Defendant: Commission of the European Communities

Form of order sought

— declare that the Court of Justice has jurisdiction and that the action is admissible; in the alternative, refer the action to the Court of First Instance under the second paragraph of Article 54 of the Statute of the Court of Justice (2005);

— annul the Commission decisions of 10 March 2006 (JUR (2006) 55023) and of 23 June 2006 (SG/E/3MM/flD (2006) 6175);

— order the Commission of the European Communities to pay the costs.

Pleas in law and main arguments

The applicant contests the Commission decision of 10 March 2006 and the decision of 23 June 2006 notified on 26 March 2006, each refusing the application of the Landtag Schleswig-Holstein (assembly of the *Land* of Schleswig-Holstein) for full access to internal Commission document SEC (2005) 420 of 22 March 2005. Document SEC (2005) 420 contains the legal grounds for the choice of Article 95 EC as the legal basis for Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC, ([1]) and is referred to in the grounds of the Commission proposal for the directive COM (2005) 438 final (p. 6). That document was requested by the science department of the Landtag of Schleswig-Holstein for the preparation of a legal opinion on the possible effects of Directive 2006/24/EC on parliamentary privilege.

The applicant claims that the adverse decisions and the refusal to grant full access to the document at issue are subject to the following grounds for invalidity as provided for in the second paragraph of Article 230 EC:

— breach of the duty to cooperate in good faith under Article 10 EC in conjunction with Article 1(2) EU or breach of the right of access to the document under Article 255 EC and Article 2(1) of Regulation (EC) No 1049/2001 on access to information in conjunction with Article 10 EC and Article 1(2) EC; and

— misuse of powers.

By virtue of Article 10 EC in conjunction with Article 1(2) EC, the Commission is under an obligation to grant the Landtag of Schleswig-Holstein, as an institution of a Member State, access to the document sought, within the scope of the mutual duties to cooperate in good faith and in compliance with the principle of transparency, since there is strong public and parliamentary interest in the full disclosure of the document.

In addition the right to full access to the document at issue is based on Article 255 EC and Article 2(1) of Regulation No 1049/2001 on access to information in conjunction with Article 10 EC and Article 1(2) EU, and the complaint is made that the Commission incorrectly based its refusal to grant access to the document on the second indent of Article 4(2) of Regulation No 1049/2001 and misused its powers, since disclosure of the document would not undermine the protection of the Commission's legal advice.

([1]) OJ L 105 of 13.4.2006, p. 54.

Action brought on 9 October 2006 — Commission of the European Communities v Portuguese Republic

(Case C-410/06)

(2006/C 294/58)

Language of the case: Portuguese

Parties

Applicant: Commission of the European Communities (represented by: N. Yerrell and G. Braga da Cruz, Agents)

Defendant: Portuguese Republic

Form of order sought

— a declaration that, by failing to adopt (all) the laws, regulations and legislative provisions necessary to comply with Directive 2002/15/EC ([1]) of the European Parliament and of the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities or, in any event, by failing to communicate those provisions to the Commission, the Portuguese Republic has failed to fulfil its obligations under Article 14 of that directive;

— an order that the Portuguese Republic should pay the costs.

Pleas in law and main arguments

The period prescribed for transposition of the directive into national law expired on 23 March 2005.

([1]) OJ L 80. p. 35.

Action brought on 9 October 2006 — Commission of the European Communities v European Parliament, Council of the European Union

(Case C-411/06)

(2006/C 294/59)

Language of the case: English

Parties

Applicant: Commission of the European Communities (represented by: M. Konstantinidis, M. Huttunen, Agents)

Defendants: European Parliament, Council of the European Union

The applicant claims that the Court should:

— annul regulation (EC) No 1013/2006 ([1]) of the European Parliament and of the Council of 14 June 2006 on shipments of waste;

— declare that the effects of the annulled regulation are definitive pending the replacement of the regulation within a reasonable period of time by an act adopted by the European Parliament and the Council on the correct legal basis of Articles 175(1) and 133 EC and justified accordingly in the recitals;

— order European Parliament, Council of the European Union to pay the costs.

Pleas in law and main arguments

The Commission submits that its choice of a double legal basis was decided according to the parameters established by the case-law of the Court of Justice which are the aim and the content of the act. It was based on the appreciation that the regulation includes, both as regards the aims pursued and its contents, two linked components, neither of which can be regarded as secondary or indirect as compared with the other, one falling within the scope of the common commercial policy and the other within that of protection of the environment.

The Commission considers that by basing the regulation solely on article 175(1) EC and deleting article 133 EC as its second legal basis, the European Parliament and the Council have acted in infringement of the Treaty. In accordance with article 231(1) EC, the annulment of the Regulation constitutes the appropriate remedy for this infringement.

([1]) OJ L 190, p.1

Appeal brought on 13 October 2006 by the Kingdom of Belgium against the judgment delivered by the Court of First Instance (Second Chamber) on 25 July 2006 in Case T-221/04 *Belgium* v *Commission*

(Case C-418/06 P)

(2006/C 294/60)

Language of the case: French

Parties

Appellant: Kingdom of Belgium (represented by: A. Hubert, Agent, H. Gilliams, P. de Bandt and L. Goossens, lawyers)

Other party to the proceedings: Commission of the European Communities

Form of order sought

— set aside the judgment delivered by the Court of First Instance on 25 July 2006 in Case T-221/04 and, upholding the action brought by the present appellant, annul Commission Decision 2004/136/EC ([1]) of 4 February 2004;

— in the alternative, set aside the judgment delivered by the Court of First Instance on 25 July 2006 in Case T-221/04 and, on the basis of its unlimited jurisdiction, reduce the correction of € 9 322 809 applied by the Commission in Decision 2004/136/EC to € 1 491 085;

— in the further alternative, set aside the judgment in Case T-221/04 delivered by the Court of First Instance on 25 July 2006 and refer the case back to the Court of First Instance;

— order the Commission to pay the costs of the proceedings before both the Court of Justice and the Court of First Instance.

Pleas in law and main arguments

The appellant raises four grounds in support of its appeal.

In its first ground of appeal, the appellant submits that the Court of First Instance distorted the facts or, at the very least, erred in the legal appraisal of those facts and the consequences in law to be drawn from them. According to the appellant, the judgment is founded in it entirety on an incorrect factual assumption inasmuch as the Court of First Instance took the view that the Belgian computerised system of graphic encoding of agricultural areas (GIS) constitutes a measurement tool which is closer to reality than the area data declared by farmers themselves, whereas the exact area of an agricultural holding can only be determined, in a formal and indubitable manner, either by measurement carried out by a person properly qualified to do so or by photo interpretation of satellite images taken in the framework of teledetection.

By its second ground of appeal, which consists of five limbs, the appellant alleges breach of Articles 6(7) and 8 of Regulation (EEC) No 3508/92 ([2]) and of Articles 6 and 9 of Regulation (EEC) No 3887/92 ([3]) inasmuch as the Court of First Instance, inter alia, wrongly formed the view that the appellant was under an obligation to comply with implied rules necessary for compliance with express rules and inasmuch as it incorrectly considered that the control system introduced by the Belgian authorities would not be effective by reason of the lack of follow-up of the GIS data and because of late encoding of the data. The appellant also submits that, in several respects, the reasoning provided by the Court of First Instance is inadequate and/or contradictory.

The third ground of appeal is based on an error of law allegedly committed by the Court of First Instance in regard to the application of the principle of proportionality, as the maximum harm suffered by FEOGA was, in the opinion of the appellant, significantly less than the flat-rate correction imposed.

Finally, by its fourth ground of appeal; the appellant expresses the view that the Court of First Instance wrongly dismissed, as being inadmissible, its request that that Court reduce the flat-rate correction imposed on the basis of its unlimited jurisdiction. The lack of an express provision conferring on the Community Courts unlimited jurisdiction does not, *ipso facto*, mean that they do not have any such jurisdiction.

([1]) 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 EuropeanAgricultural Guidance and Guarantee Fund (EAGGF) (OJ 2004 L 40, p. 31).

([2]) Council Regulation (EEC) No 3508/92 of 27 November 1992 establishing an integrated administration and control system for certain Community aid schemes (OJ 1992 L 355, 1).

([3]) Commission Regulation (EEC) No 3887/92 of 23 December 1992 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes (OJ 1992 L 391, p. 36), as amended by Commission Regulation (EC) No 1648/95 of 6 July 1995 (OJ 1995 L 156, p. 27).

Order of the President of the First Chamber of the Court of 6 September 2006 –Republic of Austria v European Parliament and Council of the European Union

(Case C-161/04) ([1])

(2006/C 294/61)

Language of the case: German

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

([1]) OJ C 106, 30.04.2004.

Order of the President of the Second Chamber of the Court of 4 August 2006 (reference for a preliminary ruling from the Landesgericht Innsbruck — Austria) — Zentralbetriebsrat der Landeskrankenhäuser Tirols v Land Tirol

(Case C-339/05) ([1])

(2006/C 294/62)

Language of the case: German

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

([1]) OJ C 281, 21.11.2005.

Order of the President of the Court of 14 September 2006 — (Reference for a preliminary ruling from the Cour de cassation — Belgium) — Samotor SPRL v Belgian State

(Case C-378/05) ([1])

(2006/C 294/63)

Language of the case: French

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

([1]) OJ C 330, 24.12.2005.

Order of the President of the Court of 24 July 2006 (reference for a preliminary ruling from the Hoge Raad der Nederlanden — Netherlands) — Staatssecretaris van Financiën v P. Jurriëns Beheer BV

(Case C-406/05) ([1])

(2006/C 294/64)

Language of the case: Dutch

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

([1]) OJ C 22, 28.01.2006.

Order of the President of the Court of 10 October 2006 — Commission of the European Communities v French Republic

(Case C-414/05) ([1])

(2006/C 294/65)

Language of the case: French

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

([1]) OJ C 10, 14.01.2006.

Order of the President of the Court of 11 September 2006 — Commission of the European Communities v Italian Republic

(Case C-449/05) ([1])

(2006/C 294/66)

Language of the case: Italian

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

([1]) OJ C 36, 11.02.2006.

Order of the President of the Court of 8 August 2006 — Commission of the European Communities v French Republic

(Case C-18/06) ([1])

(2006/C 294/67)

Language of the case: French

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

([1]) OJ C 60, 11.03.2006.

Order of the President of the Court of 15 September 2006 — Commission of the European Communities v French Republic

(Case C-19/06) ([1])

(2006/C 294/68)

Language of the case: French

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

([1]) OJ C 60, 11.03.2006.

Order of the President of the Court of 21 September 2006 — Commission of the European Communities v Kingdom of Belgium

(Case C-42/06) ([1])

(2006/C 294/69)

Language of the case: French

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

([1]) OJ C 74, 25.03.2006.

Order of the President of the Court of 17 August 2006 — Commission of the European Communities v Grand Duchy of Luxembourg

(Case C-47/06) ([1])

(2006/C 294/70)

Language of the case: French

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

([1]) OJ C 60, 11.03.2006.

Order of the President of the Court of 25 July 2006 — Commission of the European Communities v Kingdom of Spain

(Case C-52/06) ([1])

(2006/C 294/71)

Language of the case: Spanish

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

([1]) OJ C 74, 25.03.2006.

Order of the President of the Court of 11 September 2006 — Commission of the European Communities v Hellenic Republic

(Case C-67/06) ([1])

(2006/C 294/72)

Language of the case: Greek

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

([1]) OJ C 96, 22.04.2006.

Order of the President of the Court of 31 August 2006 — Commission of the European Communities v Italian Republic

(Case C-81/06) ([1])

(2006/C 294/73)

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 31 August 2006 — Commission of the European Communities v Hellenic Republic

(Case C-107/06) ([1])

(2006/C 294/74)

Language of the case: Greek

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 19 September 2006 — Commission of the European Communities v Grand Duchy of Luxembourg

(Case C-113/06) ([1])

(2006/C 294/75)

Language of the case: French

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 19 September 2006 (Reference for a preliminary ruling from the Arbeitsgericht Berlin — Germany) — Annette Radke v Achterberg Service GmbH & Co. KG

(Case C-115/06) ([1])

(2006/C 294/76)

Language of the case: German

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

([1]) OJ C 131, 03.06.2006.

Order of the President of the Court of 21 August 2006 — Commission of the European Communities v Hellenic Republic

(Case C-123/06) ([1])

(2006/C 294/77)

Language of the case: Greek

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

([1]) OJ C 96, 22.04.2006.

Order of the President of the Court of 8 August 2006 — Commission of the European Communities v Grand Duchy of Luxembourg

(Case C-128/06) ([1])

(2006/C 294/78)

Language of the case: French

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

([1]) OJ C 108, 06.05.2005.

Order of the President of the Court of 23 August 2006 — Commission of the European Communities v Ireland

(Case C-137/06) ([1])

(2006/C 294/79)

Language of the case: English

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

([1]) OJ C 131, 03.06.2006.

Order of the President of the Court of 16 May 2006 — Commission of the European Communities v Grand Duchy of Luxembourg

(Case C-151/06) ([1])

(2006/C 294/80)

Language of the case: French

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

([1]) OJ C 108, 06.05.2006.

Order of the President of the Court of 8 August 2006 — Commission of the European Communities v Grand Duchy of Luxembourg

(Case C-236/06) ([1])

(2006/C 294/81)

Language of the case: French

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

([1]) OJ C 165, 15.07.2006.

COURT OF FIRST INSTANCE

Judgment of the Court of First Instance of 27 September 2006 — GlaxoSmithKline Services v Commission

(Case T-168/01) [1]

(Competition — Wholesale distribution of medicines — Parallel trade — Differentiated prices — Article 81(1) EC — Agreement — Restriction of competition — Object — Relevant market — Effect — Article 81(3) EC — Contribution to the promotion of technical progress — No elimination of competition — Evidence — Statement of reasons — Subsidiarity)

(2006/C 294/82)

Language of the case: English

Parties

Applicant: GlaxoSmithKline Services Unlimited, formerly Glaxo Wellcome plc (Brentford, Middlesex, United Kingdom) (represented by S. Martínez Lage, lawyer, I. Forrester QC, F. Depoortere, A. Schultz, T. Louko and I. Vandenborre, lawyers)

Defendant: Commission of the European Communities (represented by: initially P. Oliver, then É. Gippini Fournier, Agents,)

Interveners in support of the defendant: European Association of Euro Pharmaceutical Companies (EAEPC) (Brussels, Belgium)) (represented: initially by U. Zinsmeister and M. Lienemeyer, then by A. Martin-Ehlers, and finally by M. Hartmann-Rüppel, lawyers); Bundesverband der Arzneimittell-Importeure eV, (Mülheim an der Ruhr, Germany) (represented: initially by M. Epping and W. Rehmann, then by W. Rehmann, lawyers); Spain Pharma, SA, (Madrid, Spain) (represented by: P. Muñoz Carpena, B. Ortúzar Somoza and R. Gutiérrez Sánchez, lawyers); and Asociación de exportadores españoles de productos farmacéuticos (Aseprofar), (Madrid, Spain) (represented: initially by M. Araujo Boyd and R. Sanz, then by M. Araujo Boyd and J.L. Buendia Sierra, lawyers)

Re:

Annulment of Commission Decision C(2001) 1202 final of 8 May 2001 relating to a proceeding pursuant to Article 81 of the EC Treaty (Cases IV/36.957/F3 Glaxo Wellcome (notification), IV/36.997/F3 Aseprofar and Fedifar (complaint), IV/37.380/F3 EAEPC (complaint)) — Spain Pharma (complaint), IV/37.138/F3 — BAI (complaint) and IV/37.380/F3 — EAEPC (complaint)) (OJ 2001 L 302, p. 1)

Operative part of the judgment

The Court:

1. *Annuls Articles 2, 3 and 4 of Commission Decision 2001/791/EC of 8 May 2001 relating to a proceeding pursuant to Article 81 of the EC Treaty (Cases IV/36.957/F3 Glaxo Wellcome (notification), IV/36.997/F3 Aseprofar and Fedifar (complaint), IV/37.121/F3 Spain Pharma (complaint), IV/37.138/F3 BAI (complaint) and IV/37.380/F3 EAEPC (complaint));*

2. *Dismisses the remainder of the application;*

3. *Orders GlaxoSmithKline Services Unlimited to bear one half of its own costs and to pay one half of the costs incurred by the Commission, including those relating to the interventions;*

4. *Orders the Commission to bear one half of its own costs and to pay one half of the costs incurred by GlaxoSmithKline Services, including those relating to the interventions;*

5. *Orders the Asociación de exportadores españoles de productos farmacéuticos (Aseprofar), the Bundesverband der Arzneimittell-Importeure eV, the European Association of Euro Pharmaceutical Companies (EAEPC) and Spain Pharma, SA, to bear their own costs.*

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[1] OJ C 275, 29.9.2001.

Judgment of the Court of First Instance of 27 September 2006 –Avebe v Commission

(Case T-314/01) [1]

(Competition — Agreements, decisions and concerted practices — Sodium gluconate — Article 81 EC — Fine — Liability of the parent company for the unlawful conduct of an association without its own legal personality — Article 15(2) of Regulation No 17 — Rights of the defence — Exculpatory documents — Principle of proportionality — Obligation to state reasons)

(2006/C 294/83)

Language of the case: Dutch

Parties

Applicant: Coöperatieve Verkoop- en Productievereniging van Aardappelmeel en Derivaten Avebe BA (Veendam, Netherlands) (represented by: C. Dekker, lawyer)

Defendant: Commission of the European Communities (represented by: A. Bouquet, A. Whelan and W. Wils, Agents, assisted by M. van der Woude, lawyer)

Re:

Annulment of Article 1 of Decision C(2001) 2931 of 2 October 2001 concerning a procedure under Article 81 of the Treaty and Article 53 of the EEA Agreement (Case No COMP/E 1/36.756 — Sodium Gluconate), in so far as it pertains to the applicant or, in the alternative, annulment of Article 3 of that decision in so far as it pertains to the applicant

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the Coöperatieve Verkoop- en Productievereniging van Aardappelmeel en Derivaten Avebe BA to pay the costs.*

([1]) OJ C 68, 16.3.2002.

Judgment of the Court of First Instance of 27 September 2006 — Roquette Frères v Commission

(Case T-322/01) ([1])

(Competition — Agreements, decisions and concerted practices — Sodium gluconate — Article 81 EC — Fine — Article 15(2) of Regulation No 17 — Guidelines on the method of setting fines — Leniency notice — Equal treatment Principle ne bis in idem)

(2006/C 294/84)

Language of the case: French

Parties

Applicant: Roquette Frères, SA (Lestrem, France) (represented by: O. Prost, D. Voillemot and A. Choffel, lawyers)

Defendant: Commission of the European Communities (represented by: initially, A. Bouquet, W. Wils and A. Whelan, and subsequently A. Bouquet, W. Wils and A. Whelan, Agents, assisted by A. Condomines and J. Liygonie, lawyers)

Re:

First, an application for annulment of Articles 1 and 3 of Decision C(2002) 2931 final of 2 October 2001 relating to a proceeding pursuant to Article 81 of the EC Treaty and Article 53 of the EEA Agreement (COMP/E-1/36.756 — Sodium gluconate), in that it sets the amount of the fine imposed on the applicant; second, an application for a reduction in the amount of the find; and, third, an application for repayment to the applicant of the amounts unlawfully received.

Operative part of the judgment

The Court:

1. *Sets the amount of the fine imposed on Roquette Frères SA at EUR 8 105 000;*

2. *Varies Decision C(2002) 2931 final of 2 October 2001 relating to a proceeding pursuant to Article 81 of the EC Treaty and Article 53 of the EEA Agreement (COMP/E-1/36.756 — Sodium gluconate) in so far as it is inconsistent with paragraph 1 above;*

3. *Dismisses the remainder of the application;*

4. *Orders Roquette Frères SA to pay all of the costs.*

([1]) OJ C 68, 16.3.02.

Judgment of the Court of First Instance of 27 September 2006 — Archer Daniels Midland v Commission

(Case T-329/01) ([1])

(Competition — Cartels — Sodium Gluconate — Article 81 EC — Fine — Article 15(2) of Regulation No 17 — Guidelines on the method of setting fines — Leniency Notice — Principle of proportionality — Equal treatment — Non-retroactivity — Obligation to state reasons — Rights of the defence)

(2006/C 294/85)

Language of the case: English

Parties

Applicant: Archer Daniels Midland Co. (Decatur, Illinois, United States) (represented by: C.O. Lenz, lawyer, L. Martin Alegi, M. Garcia and E. Batchelor, Solicitors)

Defendant: Commission of the European Communities (represented by: A. Whelan, A. Bouquet and W. Wils, Agents)

Re:

Application for annulment of Article 1 of Commission Decision C(2001) 2931 final of 2 October 2001 relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case COMP/E-1/36.756 — Sodium Gluconate) in so far as it pertains to the applicant, or at least to the extent that it finds the applicant was party to an infringement after 4 October 1994, and for annulment of Article 3 of that decision in so far as it pertains to the applicant or, in the alternative, annulment or reduction of the fine imposed on it by the decision.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Archer Daniels Midland Co. to pay the costs.*

([1]) OJ C 84, 6.4.2002.

Judgment of the Court of First Instance of 27 September 2006 — Akzo Nobel NV v Commission

(Case T-330/01) ([1])

(Competition — Agreements, decisions and concerted practices — Sodium gluconate — Article 81 EC — Fine — Article 15(2) of Regulation No 17 — Guidelines for the calculation of the amount of fines — Principle of proportionality — Obligation to state reasons)

(2006/C 294/86)

Language of the case: Dutch

Parties

Applicant: Akzo Nobel NV (Arnhem, Netherlands) (represented by: initially by M. van Empel and C. Swaak, and subsequently by C. Swaak, lawyers)

Defendant: Commission of the European Communities (represented by: A. Whelan, A. Bouquet and W. Wils, Agents, assisted by H.van der Woude, lawyer)

Re:

Annulment of Articles 3 and 4 of Decision C(2001) 2931 of 2 October 2001 concerning a procedure under Article 81 of the Treaty and Article 53 of the EEA Agreement (Case No COMP/E 1/36.756 — Sodium Gluconate), in so far as it pertains to the applicant or, in the alternative, reduction of the fine imposed on the applicant.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Akzo Nobel NV to pay the costs.*

([1]) OJ C 68, 16.3.2002.

Judgment of the Court of First Instance of 27 September 2006 — Jungbunzlauer v Commission

(Case T-43/02) ([1])

(Competition — Agreements, decisions and concerted practices — Article 81 EC — Fine — Article 15(2) of Regulation No 17 — Imputability of conduct to a subsidiary — Principle that penalties must be defined by law — Guidelines on the method of setting fines — Principle of proportionality — Principle ne bis in idem — Right of access to the file)

(2006/C 294/87)

Language of the case: German

Parties

Applicant: Jungbunzlauer AG (Basel, Switzerland) (represented by: R. Bechtold, U. Soltész and M. Karl, lawyers)

Defendant: Commission of the European Communities (represented by: P. Oliver, Agent, assisted by H. Freund, lawyer)

Intervener in support of the defendant: Council of the European Union (represented by: E. Karlsson and S. Marquardt, Agents)

Re:

Application for, primarily, annulment of Commission Decision 2002/742/EC of 5 December 2001 relating to a proceeding pursuant to Article 81 of the EC Treaty and Article 53 of the EEA Agreement (COMP/E-1/35.604 — Citric acid) (OJ 2002 L 239, p. 18) and, in the alternative, reduction in the fine imposed on the applicant by that decision.

Operative part of the judgment

The Court:

1. *Dismisses the application;*

2. *Orders Jungbunzlauer AG to bear its own costs and to pay those incurred by the Commission;*

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

([1]) OJ C 97, 20.4.02.

Judgment of the Court of First Instance of 27 September 2006 — Dresdner Bank and Others v Commission

(Joined Cases T-44/02 OP, T-54/02 OP, T-56/02 OP, T-60/02 OP and T-61(02 OP) [1]

(Competition — Article 81 EC — Price-fixing agreement and ways of charging for currency exchange services — Germany — Evidence of the infringement — Application to set aside judgments delivered by default)

(2006/C 294/88)

Language of the case: German

Parties

Applicants: Dresdner Bank AG (Frankfurt-am-Main, Germany) (represented by: M. Hirsch and W. Bosch, lawyers); Bayerische Hypo- und Vereinsbank AG, formerly Vereins- und Westbank AG (Munich, Germany) (represented by:initially J. Schulte, M. Ewen and A. Neus, and subsequently W. Knapp, T. Müller-Ibold and C. Feddersen, lawyers); Bayerische Hypo- und Vereinsbank AG (Munich) (represented by: initially W. Knapp, T. Müller-Ibold and B. Bergmann, and subsequently W. Knapp, T. Müller-Ibold and C. Feddersen, lawyers); DVB Bank AG, formerly Deutsche Verkehrsbank AG (Frankfurt-am-Main) (represented by: M. Klusmann and F. Wiemer, lawyers); and Commerzbank AG (Frankfurt-am-Main) (represented by: H. Satzky and B. Maassen, lawyers)

Defendant: Commission of the European Communities (represented by: T. Christoforou, A. Nijenhuis and M Schneider, Agents)

Re:

Application by the Commission to set aside the judgments of the Court of First Instance of 14 October 2004 in Cases T-44/02 *Dresdner Bank* v *Commission*, not published in the ECR, T-54/02 Vereins- und Westbank v *Commission*, not published in the ECR, T-56/02 *Bayerische Hypo- und Vereinsbank* v *Commission* [2004] ECR II-3495, T-60/02 *Deutsche Verkehrsbank* v *Commission*, not published in the ECR, and T-61/02 *Commerzbank* v *Commission*, not published in the ECR, delivered in default

Operative part of the judgment

The Court:

1. *Dismisses the application to set aside the judgments by default;*

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

[1] OJ C 109, 4.5.2002.

Judgment of the Court of First Instance of 27 September 2006 — Archer Daniels Midland v Commission

(Case T-59/02) [1]

(Competition — Cartels — Citric acid — Article 81 EC — Fine — Article 15(2) of Regulation No 17 — Guidelines on the method of setting fines — Leniency Notice — Principles of legal certainty and non-retroactivity — Principle of proportionality — Equal treatment — Obligation to state reasons — Rights of the defence)

(2006/C 294/89)

Language of the case: English

Parties

Applicant: Archer Daniels Midland Co. (Decatur, Illinois, United States) (represented by: C.O. Lenz, lawyer, L. Martin Alegi, M. Garcia, and E. Batchelor, Solicitors)

Defendant: Commission of the European Communities (represented by: P. Oliver, Agent)

Re:

Application for annulment of Article 1 of Commission Decision 2002/742/EC of 5 December 2001 relating to a proceeding pursuant to Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case COMP/E-1/36.604 — Citric acid) (OJ 2002 L 239, p. 18) in so far as it finds that the applicant infringed Article 81 EC and Article 53 of the EEA Agreement by agreeing to restrict capacity in the market in question and to designate a producer who was to lead price increases in each national segment of the said market, and for the annulment of Article 3 of the same decision in so far as it pertains to the applicant and, in the alternative, for the reduction of the fine imposed on it.

Operative part of the judgment

The Court:

1. *Annuls Article 1 of Commission Decision 2002/742/EC of 5 December 2001 relating to a proceeding pursuant to Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case COMP/E-1/36.604 — Citric acid), in so far as, read in conjunction with recital 158, it finds that Archer Daniels Midland Co. froze, restricted and closed down citric acid production capacity;*

2. *Annuls Article 1 of Decision 2002/742 in so far as, read in conjunction with recital 158, it finds that Archer Daniels Midland Co. designated a producer who was to 'lead' price increases in each national segment of the relevant market;*

3. *Dismisses the remainder of the action;*

4. *Orders the Commission to pay one tenth of the costs incurred by Archer Daniels Midland Co.;*

5. *Orders Archer Daniels Midland Co. to pay the remainder of its own costs and the costs incurred by the Commission.*

(1) OJ C 144, 15.6.2002.

Judgment of the Court of First Instance of 27 September 2006 — Haladjian Frères v Commission

(Case T-204/03) (1)

(Competition — Article 81 EC — Article 82 EC — Distribution of spare parts — Parallel imports — Complaint — Decision rejecting complaint)

(2006/C 294/90)

Language of the case: French

Parties

Applicant: Haladjian Frères (Sorgues, France) (represented by: N. Coutrelis, lawyer)

Defendant: Commission of the European Communities (represented by: A. Whelan and O. Beynet, Agents, assisted by D. Waelbroeck, lawyer)

Interveners in support of the defendant: Caterpillar, Inc. (Peoria, Illinois, United States) and Caterpillar Group Services SA (Charleroi, Belgium) (represented by: initially N. Levy, Solicitor, and S. Kingston, Barrister, then N. Levy and T. Graf, lawyer)

Re:

Application for annulment of the Commission's decision of 1 April 2003 rejecting the complaint alleging infringements of Articles 81 EC and 82 EC lodged by Haladjian Frères SA against Caterpillar, Inc.

Operative part of the judgment

The Court:

1. *Dismisses the application;*

2. *Orders the applicant to bear its own costs and to pay the costs incurred by the Commission and the interveners.*

(1) OJ C 200, 23.8.2003.

Judgment of the Court of First Instance of 27 September 2006 — Werkgroep Commerciële Jachthavens Zuidelijke Randmeren and Others v Commission of the European Communities

(Case T-117/04) (1)

(State aid — Aid awarded by the Netherlands authorities to non-profit-making marinas — Action for annulment — Admissibility)

(2006/C 294/91)

Language of the case: Dutch

Parties

Applicants: Vereniging Werkgroep Commerciële Jachthavens Zuidelijke Randmeren (Zeewolde, Netherlands); Jachthaven Zijl Zeewolde BV (Zeewolde); Maatschappij tot exploitatie van onroerende goederen Wolderwijd II BV (Zeewolde); Jachthaven Strand-Horst BV (Ermelo, Netherlands); Recreatiegebied Erkemederstrand vof (Zeewolde); Jachthaven- en Campingbedrijf Nieuwboer BV (Bunschoten-Spakenburg, Netherlands); Jachthaven Naarden BV (Naarden, Netherlands), (represented by: T. Ottervanger, A. Bijleveld and A. van den Oord, lawyers)

Defendant: Commission of the European Communities (represented by: H. van Vliet, A. Bouquet and A. Nijenhuis, Agents)

Intervener in support of the defendant: Kingdom of the Netherlands, represented by H. Sevenster and M. de Grave, Agents,

Re:

Application for annulment of Commission Decision 2004/114/EC of 29 October 2003 concerning aid measures implemented by the Netherlands in favour of non-profit harbours for recreational crafts (OJ 2004 L 34, p. 63).

Operative part of the judgment

The Court:

1. *Dismisses the action as inadmissible.*

2. *Orders the applicants to bear their own costs as well as those incurred by the Commission. The Kingdom of the Netherlands shall bear its own costs.*

(1) OJ C 118, 30.4.2004.

Judgment of the Court of First Instance (First Chamber) of 27 September 2006 — Ferriere Nord v Commission

(Case T-153/04) [1]

(Competition — Fine — Breach of Article 81 EC — Powers of the Commission in respect of the enforcement of sanctions — Limitation period — Articles 4 and 6 of Regulation (EEC) No 2988/74 — Admissibility)

(2006/C 294/92)

Language of the case: Italian

Parties

Applicant: Ferriere Nord SpA (Osoppo, Italy) (represented by: W. Viscardini and G. Donà, lawyers)

Defendant: Commission of the European Communities (represented by: A. Nijenhuis and A. Whelan, acting as Agents, and by A. Colabianchi, lawyer)

Re:

Annulment of the Commission decisions notified by letter of 5 February 2004 and by facsimile of 13 April 2004 concerning the outstanding balance of the fine imposed on the applicant by Commission Decision 89/515/EEC of 2 August 1989 relating to a proceeding under Article 85 of the EEC Treaty (IV/31.553 — Welded steel mesh) (OJ 1989 L 260, p. 1)

Operative part of the judgment

The Court:

1. *Annuls the Commission decisions notified by letter of 5 February 2004 and by facsimile of 13 April 2004 concerning the outstanding balance of the fine imposed on the applicant by Commission Decision 89/515/EEC of 2 August 1989 relating to a proceeding under Article 85 of the EEC Treaty (IV/31.553 — Welded steel mesh);*

2. *Orders the Commission, in addition to bearing its own costs, to pay those of the applicant.*

[1] OJ C 168, 26.6.2004.

Judgment of the Court of First Instance of 27 September 2006 — Telefónica v OHIM — Branch (emergia)

(Case T-172/04) [1]

(Community trade mark — Opposition proceedings — Application for the figurative Community trade mark emergia — Earlier word Community trade mark EMERGEA — Likelihood of confusion — Refusal to register — Article 8(1)(b) of Regulation (EC) No 40/94)

(2006/C 294/93)

Language of the case: Spanish

Parties

Applicant: Telefónica, SA (Madrid, Spain) (represented by: A. Sirimarco, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the Court of First Instance: David Branch (Reading, United Kingdom) (represented by: initially, C. Berenguer Marsal, and subsequently, I.M. Barroso Sánchez-Lafuente and M.C. Trullols Durán, lawyers)

Re:

Action for annulment of the decision of the First Board of Appeal of OHIM of 12 March 2004 (Case R 676/2002-1) relating to opposition proceedings between David Branch and Telefónica, SA.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

[1] OJ C 179, 10.07.2004.

Judgment of the Court of First Instance of 27 September 2006 — Koistinen v Commission

(Case T-259/04) ([1])

(Officials — Remuneration — Expatriation allowance — Article 4(1)(a) of Annex VII to the Staff Regulations — Definition of habitually resident)

(2006/C 294/94)

Language of the case: French

Parties

Applicant: Anne Koistinen (Brussels, Belgium) (represented by: S. Orlandi, X. Martin Membiela, A, Coolen, J.-N. Louis and É. Marchal, lawyers)

Defendant: Commission of the European Communities (represented by: J. Currall and L. Lozano Palacios, Agents)

Re:

Claim for annulment of the Commission's decision of 18 July 2003 refusing to grant to the applicant the expatriation allowance provided for by Article 4(1)(a) of Annex VII of the Staff Regulations of Officials of the European Communities

Operative part of the judgment

The Court:

1. *Annuls the Commission's decision refusing to grant the applicant the expatriation allowance provided for in Article 4 of Annex VII to the Staff Regulations of Officials of the European Communities;*

2. *Orders the Commission to pay all the costs.*

([1]) OJ C 262, 23.10.2004.

Judgment of the Court of First Instance of 3 October 2006 — Hewlett-Packard v Commission

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

(Refusal of repayment of import duties — Action for annulment — Importation of printers and printer cartridges from Singapore — Particular circumstances — Equity clause — Article 239 of Regulation No 2913/92)

(2006/C 294/95)

Language of the case: German

Parties

Applicant: Hewlett-Packard GmbH (Böblingen, Germany) (represented by: F. Boulanger, M. Mrozek and M. Tervooren, lawyers)

Defendant: Commission of the European Communities (represented by: X. Lewis, acting as Agent, and B. Wägenbaur, lawyer)

Re:

Action for annulment of Commission Decision REM 06/02 of 7 April 2004 advising the German authorities that the applicant should not receive repayment of import duties on printers and printer cartridges from Singapore.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the applicant to bear its own costs and pay those of the Commission.*

([1]) OJ C 262, 23.10.2004.

Judgment of the Court of First Instance (Fourth Chamber) of 27 September 2006 — Kontouli v Council of the European Union

(Case T-416/04) [1]

(Officials — Invalidity pension — Weighting — Determination of place of residence — Withdrawal of an administrative act — Legitimate expectations)

(2006/C 294/96)

Language of the case: English

Parties

Applicant: Anna Kontouli (represented by: initially V. Akritidis and M. Tragalou, and subsequently V. Akritidis, lawyers)

Defendant: Council of the European Union (represented by: M. Sims and D. Zahariou, acting as Agents)

Re:

Application, first, for annulment of the Council's decision of 5 December 2003 withdrawing the right to have the weighting fixed for the United Kingdom applied to the applicant's invalidity pension and, second, for damages

Operative part of the judgment

The Court:

1. *Annuls the Council's decision of 5 December 2003 withdrawing the application of the weighting for the United Kingdom to the applicant's pension in so far as it withdraws that entitlement, with retroactive effect, for the period from 1 May 2003 to 31 December 2003;*

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

3. *Orders the Council to bear one third of the applicant's costs in addition to its own costs.*

[1] OJ C 31, 05.02.2005.

Judgment of the Court of First Instance of 27 September 2006 — Blackler v Parliament

(Case T-420/04) [1]

(Officials — Competition on the basis of qualifications and tests — Conditions for admission — Length of studies — Assessment of the candidates' qualifications and merits — Infringement of the notice of competition — Manifest error of assessment)

(2006/C 294/97)

Language of the case: French

Parties

Applicant: Kenneth Blackler (Ispra, Italy) (represented by: P. Goergen, lawyer)

Defendant: European Parliament (represented by: A. Bencomo Weber and J.F. De Wachter, Agents)

Re:

Primarily, application for annulment of the Secretary General of the European Parliament's decision of 11 July 2004 confirming the decision of the selection board in competition PE/98/A of 21 April 2004 not to admit the applicant to the oral tests in that competition or, in the alternative, application for an order that the European Parliament should pay the applicant EUR 100 000 by way of damages for the material and non-material loss suffered by him.

Operative part of the judgment

The Court:

1. *Rejects the application;*

2. *Orders the parties to bear their own costs.*

[1] OJ C 300, 4.12.2004.

Judgment of the Court of First Instance of 27 September 2006 — Dimitra Lantzoni v Court of Justice

(Case T-156/05) ([1])

(Officials — Promotion — Award of promotion points — Link to staff report — Refusal of promotion)

(2006/C 294/98)

Language of the case: French

Parties

Applicant: Dimitra Lantzoni (residing at Übersyren, Luxembourg) (represented by: M. Bouché, lawyer)

Defendant: Court of Justice (represented by: M. Schauss, Agent)

Re:

Annulment of the decision of 8 March 2005 of the defendant's Complaints Committee relating, first, to the promotion points awarded to the applicant for 2002 and, second, to the fact that she was not promoted in 2003.

Operative part of the judgment

The Court:

1. *Dismisses the action.*

2. *Orders the parties to bear their own costs.*

([1]) OJ C 155 of 25.6.2005

Judgment of the Court of First Instance of 3 October 2006 — Nijs v Court of Auditors

(Case T-171/05) ([1])

(Officials — Promotion — Promotion year 2003 — Staff report — Award of merit points — Decision not to promote the applicant to the post of translator-reviser)

(2006/C 294/99)

Language of the case: French

Parties

Applicant: Bart Nijs (Bereldange, Luxembourg) (represented by: F. Rollinger, lawyer)

Defendant: Court of Auditors (represented by: T. Kennedy, J.-M. Stenier and G. Corstens, Agents)

Re:

First, annulment of the decision definitively establishing his staff report for the year 2003, of the decision awarding the applicant's merit points for the year 2003 and of the decision not to promote him in 2004, and also of the decision rejecting his complaint against those decisions and, second, a claim for damages.

Operative part of the judgment

The Court:

1. *Annuls the Court of Auditors' decisions awarding the applicant his merit points for the year 2003 and not to promote him in 2004.*

2. *Rejects the remainder of the action.*

3. *Orders the Court of Auditors to bear its own costs and half those incurred by the applicant.*

4. *Orders the applicant to bear all the costs relating to the proceedings for interim relief.*

([1]) OJ C 182 of 23.7.2005.

Order of the Court of First Instance of 18 September 2006 — Wirtschaftskammer Kärnten and best connect Ampere Strompool v Commission

(Case T-350/03) ([1])

(Action for annulment — Competition — Decision declaring a concentration to be compatible with the common market — Legal persons — Acts of individual concern to them — Inadmissibility)

(2006/C 294/100)

Language of the case: German

Parties

Applicants: Wirtschaftskammer Kärnten and best connect Ampere Strompool GmbH (Klagenfurt, Austria) (represented by: M. Angerer, lawyer)

Defendant: Commission of the European Communities (represented by: initially, A. Bouquet, S. Rating and K. Mojzesowicz, and subsequently, A. Bouquet and K. Mojzesowicz)

Intervener in support of the applicants: Ampere AG (Berlin, Germany) (represented by: C. von Hammerstein and C.-S. Schweer, lawyers)

Interveners in support of the defendant: Österreichische Elektrizitätswirtschafts-AG (Vienna, Austria); EVN AG (Maria Enzersdorf, Austria); Wien Energie GmbH (Vienna); Energie AG Oberösterreich (Linz, Austria); Burgenländische Elektrizitätswirtschafts-AG (Eisenstadt, Austria); and Linz AG für Energie, Telekommunikation, Verkehr und Kommunale Dienste (Linz) (represented by: S. Polster and H. Wollmann, lawyers)

Re:

Application for annulment of Commission Decision 2004/271/EC of 11 June 2003 declaring a concentration to be compatible with the common market and the EEA Agreement (Case COMP/M.2947 — Verbund/EnergieAllianz) (OJ 2004 L 92, p. 91)

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *The applicants are ordered to bear their own costs and jointly and severally the costs incurred by the Commission and by the interveners Österreichische Elektrizitätswirtschafts-AG, EVN AG, Wien Energie GmbH, Energie AG Oberösterreich, Burgenländische Elektrizitätswirtschafts-AG and Linz AG für Energie, Telekommunikation, Verkehr und Kommunale Dienste.*

3. *The intervener Ampere AG is ordered to bear its own costs.*

([1]) OJ C 7, 10.01.2004.

Order of the Court of First Instance of 19 September 2006 — Bavendam and Others v Commission

(Case T-80/05) ([1])

(Action for annulment — Directive 92/43/EEC — Conservation of natural habitats and of wild fauna and flora — Decisions 2004/798/EC and 2004/813/EC — List of sites of Community importance for the Continental biogeographical region and the Atlantic biogeographical region — Persons directly and individually concerned — Inadmissibility)

(2006/C 294/101)

Language of the case: German

Parties

Applicants: Hinrich Bavendam (Bremen, Germany); Günther Früchtnicht (Bremen); Hinrich Geerken (Bremen); Hans-Jürgen Weyhausen-Brinkmann (Bremen); Curt-Hildebrand von Einsiedel (Leipzig, Germany); Christina Gräfin von Schall-Riaucour (Ahlen-Vorhelm, Germany); Franz-Albert Metternich-Sandor, Prinz von Ratibor und Corvey (Höxter, Germany); Christoph Prinz zu Schleswig-Holstein (Thumby, Germany); and Stadt Schloß Holte-Stukenbrock (Germany) (represented by: T. Giesen, lawyer)

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

Re:

Action for annulment of Commission Decision 2004/798/EC of 7 December 2004 adopting, pursuant to Council Directive 92/43/EEC, the list of sites of Community importance for the Continental biogeographical region (OJ 2004 L 382, p. 1), and Commission Decision 2004/813/EC of 7 December 2004 adopting, pursuant to Council Directive 92/43/EEC, the list of sites of Community importance for the Atlantic biogeographical region (OJ 2004 L 387, p. 1).

Operative part of the order

1. *The action is dismissed as inadmissible;*

2. *The applicants shall bear their own costs and pay those of the Commission.*

([1]) OJ C 143, 11.6.2005.

Order of the Court of First Instance of 19 September 2006 — CFE v Commission

(Case T-100/05) ([1])

(Action for annulment — Directive 92/43/EEC — Conservation of natural habitats and of wild fauna and flora — Decision 2004/813/EC — List of sites of Community importance for the Atlantic biogeographical region — Person directly affected — Inadmissibility)

(2006/C 294/102)

Language of the case: French

Parties

Applicant: Compagnie d'entreprises CFE SA (Brussels, Belgium) (represented by: B. Louveaux and J. van Ypersele, lawyers)

Defendant: Commission of the European Communities (represented by: M. van Beek and F. Simonetti, Agents)

Re:

Application for annulment of Commission Decision 2004/813/EC of 7 December 2004 adopting, pursuant to Council Directive 92/43/EEC, the list of sites of Community importance for the Atlantic biogeographical region (OJ 2004 L 387, p. 1)

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *In addition to bearing its own costs, the applicant is ordered to pay the costs incurred by the Commission.*

([1]) OJ C 106, 30.04.2005.

Order of the Court of First Instance of 19 September 2006 — Rodenbröker and Others v Commission

(Case T-117/05) ([1])

(Action for annulment — Directive 92/43/EEC — Conservation of natural habitats and of wild fauna and flora — Decision 2004/813/EC — List of sites of Community importance for the Atlantic biogeographical region — Persons directly and individually concerned — Inadmissibility)

(2006/C 294/103)

Language of the case: German

Parties

Applicants: Andreas Rodenbröker (Hövelhof, Germany) and the other 81 applicants whose names appear in the Annex to the order (represented by: H. Glatzel, lawyer)

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

Re:

Action for annulment of Commission Decision 2004/813/EC of 7 December 2004 adopting, pursuant to Council Directive 92/43/EEC, the list of sites of Community importance for the Atlantic biogeographical region (OJ 2004 L 387, p. 1).

Operative part of the order

1. *The action is dismissed as inadmissible;*

2. *The applicants shall bear their own costs and pay those of the Commission, including those relating to the application for interim measures.*

([1]) OJ C 143, 11.6.2005.

Order of the Court of First Instance of 19 September 2006 — Benkö and Others v Commission

(Case T-122/05) ([1])

(Action for annulment — Directive 92/43/EEC — Conservation of natural habitats and of wild fauna and flora — Decision 2004/798/EC — List of sites of Community importance for the Continental biogeographical region — Persons directly and individually concerned — Inadmissibility)

(2006/C 294/104)

Language of the case: German

Parties

Applicants: Robert Benkö (Kohfidisch, Austria); Nikolaus Draskovich (Güssing, Austria); Alexander Freiherr von Kottwitz-Erdödy (Kohfidisch); Peter Masser (Deutschlandsberg, Austria); Alfred Prinz von und zu Liechtenstein (Deutschlandsberg); Marktgemeinde Götzendorf an der Leitha (Austria); Gemeinde Ebergassing (Austria); Ernst Harrach (Bruck an der Leitha, Austria); Schlossgut Schönbühel-Aggstein AG (Vaduz, Liechtenstein), and Heinrich Rüdiger Fürst Starhemberg'sche Familienstiftung (Vaduz) (represented by: M. Schaffgotsch, lawyer)

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

Re:

Action for annulment of Commission Decision 2004/798/EC of 7 December 2004 adopting, pursuant to Council Directive 92/43/EEC, the list of sites of Community importance for the Continental biogeographical region (OJ 2004 L 382, p. 1).

Operative part of the order

1. *The action is dismissed as inadmissible;*

2. *The applicants shall bear their own costs and pay those of the Commission.*

([1]) OJ C 171, 9.7.2005.

Action brought on 24 August 2006 — Kretschmer v Parliament

(Case T-229/06)

(2006/C 294/105)

Language of the case: French

Parties

Applicant: Elfriede Kretschmer (Overijse, Belgium) (represented by: G. Vandersanden, lawyer)

Defendant: European Parliament

Form of order sought

The Court is asked to:

— Annul the decision, brought to the applicant's notice on 14 June 2006, not to grant her payment of the daily subsistence allowance in full with effect from 16 October 2003 and determining Overijse (Belgium) as her place of recruitment;

— as a consequence, order the defendant to pay the following sums:

— (i) by way of daily subsistence allowance:

  — EUR 50 per day in respect of the period from 16 October 2003 to 30 April 2004 in accordance with Article 12(1) of the Rules governing the secondment of national experts to the European Parliament of 2 June 2003;

  — EUR 84 per day in respect of the period from 1 May 2004 to 31 March 2005 in accordance with Article 12(1) of the Rules governing the secondment of national experts to the European Parliament of 3 May 2004;

  — EUR 84,35 per day with effect from 1 May 2005 in accordance with Article 15(2) of the Rules governing the secondment of national experts to the European Parliament of 7 March 2005;

— (ii) EUR 72,39 by way of supplementary monthly allowance in accordance with Article 15(2) of the Rules governing the secondment of national experts to the European Parliament of 7 March 2005;

— order the defendant to pay the applicant default interest on the sums referred to at (i) and (ii) from the respective due dates until the date of actual payment. The interest rate must be the rate fixed by the European Central Bank for principal refinancing operations applicable for the period in question, increased by two points;

— order the defendant to pay the token sum of one euro as compensation for non-material damage caused to the applicant on account of the faults committed as a result of delays in the management of the case;

— order the defendant to pay the costs in their entirety.

Pleas in law and main arguments

The applicant is a national expert on secondment to the European Parliament. Her initial contract for the period from 16 October 2003 to 15 October 2004 was renewed for the period from 16 October 2004 to 15 October 2005 and then again for a further two-year period from 16 October 2005 to 15 October 2007. By her application, she seeks annulment of the decision, brought to her attention by e-mail on 14 June 2006, not to grant her payment of the daily subsistence allowance in full with effect from 16 October 2003 and determining Overijse (Belgium) as her place of recruitment.

In support of her claim, the applicant alleges misinterpretation and misapplication of the 2002, 2004 and 2005 Ruless on national experts on secondment (SNEs) to the Parliament. The applicant maintains that, at the time when she was first recruited, her place of residence was in Germany and not in Belgium, which was considered by the Parliament authorities to be her place of recruitment. She submits that her secondment was approved by agreement between her authority from which she came (the Minister-President of the Land of North-Rhine Westphalia) and the Commission when she was first engaged as a temporary agent for the period from 1 September 2002 to 31 July 2003, which, in her view, constitutes evidence of her place of residence prior to her recruitment and at the times when her contracts were renewed. The applicant also maintains that the fact that she moved to Brussels to take up her duties as SNE and registered as a temporary resident in Brussels in accordance with Belgian law, cannot be regarded as constituting a change in 'place of residence', which presupposes fixed, permanent and settled establishment. In support of her position, she relies on the fact that she is subject to fixed-term recruitment for a maximum period of six years and that, at the end of that period she will, in principle, return to Germany to resume her duties as judge in the national courts. She therefore considers that throughout the period of employment as SNE her place of residence has been Germany and not Brussels.

With regard to the claim for compensation, the applicant considers that the European Parliament exceeded a reasonable period in responding to her requests for clarification and for a review of her situation and, furthermore, that such conduct is inconsistent with the requirements of the European Code of good administrative conduct. The applicant seeks an order that the defendant pay the token sum of one euro as compensation for the non-material damage thus caused. The applicant also seeks default interest on the sums due to her under the 2002, 2004 and 2005 rules on SNEs.

Action brought on 4 September 2006 — Nederlandse Omroep Stichting v Commission of the European Communities

(Case T-237/06)

(2006/C 294/106)

Language of the case: Dutch

Parties

Applicant: Nederlandse Omroep Stichting (represented by: J.J. Feenstra and H.M.H. Speyart, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Annul the Commission's decision, in particular Article 1(1) and (2) and Articles 2 and 3 and the recitals on which they are based;

— order the Commission to pay the costs

Pleas in law and main arguments

By its application the Nederlandse Omroep Stichting (NOS) seeks the annulment of the Commission's decision of 22 June 2006 on ad hoc financing of the Dutch public broadcasters (State aid C 2/2004 [ex NN 170/2003]).

In support of its application the applicant alleges, first, breach of Article 88(1), (2) and (3) EC and of Regulation No 659/1999 ([1]). It submits that the Commission has incorrectly interpreted and applied the distinction between new and existing aid. The ad hoc aid which is the subject of the contested decision was merely a part of the total system of public financing of Dutch public broadcasters. The general system has been recognised by the Commission as existing aid. The cash flows, which the Commission refers to as ad hoc financing, are provided on the same lines and should, according to the applicant, therefore be regarded as existing aid.

Secondly, the applicant alleges breach of Articles 87 and 88 EC as result of the Commission's incorrect interpretation and application of the judgment in *Altmark* ([2]). According to the applicant, the Commission found, wrongly and on the basis of an unfair criterion, that the ad hoc financing should be regarded as State aid. The applicant submits that the criteria developed in *Altmark* by the Court of Justice cannot be applied in the present situation. Instead, the Amsterdam Protocol on the financing of public broadcasting ([3]) should be the point of departure.

Thirdly, the applicant alleges breach of Articles 87 and 88 EC, Article 253 EC and Regulation No 659/1999 as result of the lack of connection between the provision of the ad hoc financing and the overcompensation found by the Commission. According to the applicant, the overcompensation connected with the creation of reserves in the case of the broadcasting institutions is not sufficiently attributable to the allocation of the funds which the Commission refers to as ad hoc financing.

Fourthly, the applicant alleges breach of Articles 87 and 88 EC as result of the fact that the Commission wrongly regards copyright royalties as State aid. Moreover, the ad hoc financing is not favouring the applicant as an undertaking within the meaning of Article 87(1) EC and the public financing awarded does not lead to a distortion of competition within the meaning of Article 87(1) EC.

Fifthly, the applicant alleges breach of Article 86(2) EC owing to a lack of proportionality. Also when viewed in the light of the Amsterdam Protocol on the financing of public broadcasting, the Commission wrongly failed, after finding that there was no distortion of competition, to balance the lack of negative effects of overcompensation against the interest of the performance of a public task and the Community's interest in general. The applicant submits that the Commission should have also taken into account the limited nature of the Dutch language area and the fact that the reserves that had arisen would have led to expenditure in the foreseeable future and would thus have disappeared.

Finally, the applicant alleges breach of the rules of procedure in Article 88(2) EC and the rights of the defence as result of the fact that the Commission extended the scope of the investigation in various respects.

([1]) Council Regulation (EC) No. 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 1999 L 83, p. 1).

([2]) Case C-280/00 *Altmark Trans GmbH and Regierungspräsidium Magdeburg* v *Nahverkehrsgesellschaft Altmark GmbH* [2003] ECR I-7747.

([3]) Protocol annexed to the Treaty establishing the European Community concerning the system of public broadcasting in the Member States.

Action brought on 12 September 2006 — Germany v Commission

(Case T-258/06)

(2006/C 294/107)

Language of the case: German

Parties

Applicant: Federal Republic of Germany (represented by: M. Lumma and C. Schulze-Bahr)

Defendant: Commission of the European Communities

Form of order sought

— declare null and void the Commission's interpretative communication of 23 June 2006 on the Community law applicable to contract awards not or not fully subject to the provisions of the public procurement directives; and

— order the defendant to pay the costs.

Pleas in law and main arguments

The applicant takes issue with the Commission's interpretative communication on the Community law applicable to contract awards not or not fully subject to the provisions of the public procurement directives, which was placed on the Commission's internet website on 24 July 2006 and published in the *Official Journal* on 1 August 2006 (OJ 2006 C 179, p. 2).

As grounds for its action, the applicant submits that the Commission was not competent to issue the contested communication. It argues in this connection that the contested communication contains new rules on tendering which go beyond the obligations arising under existing Community law. These new rules will have legally binding effects for the Member States. The EC Treaty, however, contains no authorisation which would enable the defendant to adopt such rules. The present case therefore, in the applicant's view, essentially involves an instance of *de facto* legislation.

The applicant goes on to contend that, by establishing mandatory rules, the defendant has upset the institutional balance existing between the Council, the European Parliament and the Commission.

In conclusion the applicant submits that, even if the Commission were competent to issue the contested communication, the latter would still have to be declared null and void as the principle of legal certainty has been infringed. The defendant ought to have invoked the appropriate legal basis and made express reference to this in the legal measure in question. The Commission thus also breached the duty to state reasons laid down in Article 253 EC.

Action brought on 20 September 2006 — Torres v OHIM — Navisa Industrial Vinícola Española (MANSO DE VELASCO)

(Case T-259/06)

(2006/C 294/108)

Language in which the application was lodged: Spanish

Parties

Applicant: Miguel Torres SA (Barcelona, Spain) (represented by: E. Armijo Chávarri and A. Castán Pérez-Gómez, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Navisa Industrial Vinícola Española SA

Form of order sought

— annul the decision of the First Board of Appeal of OHIM of 29 June 2006 in Case R-865/2005-1;

— order OHIM to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Miguel Torres SA

Community trade mark concerned: Word mark MANSO DE VELASCO for goods in Class 33 — application No 2261527

Proprietor of the mark or sign cited in the opposition proceedings: Navisa Industrial Vinícola Española SA

Mark or sign cited in opposition: Spanish word mark VELASCO for goods in Class 33

Decision of the Opposition Division: Opposition upheld and refusal of the application

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 8(1)(b) of Regulation (EC) No 40/94 [1] given that there is no likelihood of confusion between the conflicting signs making them incompatible.

[1] Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ L 11 of 14.1.1994, p. 1).

Appeal brought on 18 September 2006 by the Commission against the judgment of the Civil Service Tribunal delivered on 12 July 2006 in Case F-18/05, D v Commission

(Case T-262/06 P)

(2006/C 294/109)

Language of the case: French

Parties

Appellant: Commission of the European Communities

Other party to the proceedings: 'D'

Form of order sought by the appellant

— annul the judgment of the Civil Service Tribunal of 12 July 2006 in Case F-18/05, *D* v *Commission*;

— refer the case back to the Civil Service Tribunal for it to rule on the other pleas;

— make an appropriate order as to the costs of the appeal, alternatively, reserve the costs for appraisal by the Civil Service Tribunal.

Pleas in law and main arguments

By judgment of 12 July 2006, the annulment of which is sought in this appeal, the Civil Service Tribunal set aside the Commission's decision of 4 May 2004 turning down the request for recognition that the disease from which the applicant is suffering is occupational in origin and ordered the Commission to pay all of the costs.

In support of its application for annulment of that judgment, the Commission submits a plea alleging infringement of Community law, in particular Article 48(2) of the Rules of Procedure, in that the Tribunal treated as admissible an argument concerning the infringement of *res judicata* which, according to the Commission, was put forward by the applicant for the first time in the reply at first instance. Furthermore, the Commission submits that the Tribunal erred in law and/or misinterpreted the matters of law put forward by the parties, in particular by the Commission itself. As regards the assessment of the substantive arguments, the Commission maintains that the Tribunal infringed Community law, in particular Article 73 of the Staff Regulations of Officials of the European Communities and the rules relating thereto, misconstrued the scope of the judgment in Case T-376/02 [1] and failed to meet its obligation to state reasons. It also submits that the Tribunal undermined the principle of legal certainty.

[1] Case T-376/02 O v *Commission* [2004] ECR-SC I-A-349 and II-1595.

Action brought on 22 September 2006 — DC-HADLER NETWORKS v Commission

(Case T-264/06)

(2006/C 294/110)

Language of the case: French

Parties

Applicant: DC-HADLER NETWORKS (Brussels, Belgium) (represented by: L. Muller, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— Declare the application admissible and well founded;

— annul the contested measure.

Pleas in law and main arguments

The applicant in the present action took part in the invitation to tender procedure in respect of the project Europe Aid/122742/C/SUP/RE entitled 'Social Integration of the Disabled in Privolzhsky Federal Okrug — Supply of social integration and rehabilitation-related equipment for the disabled and IT and office equipment for the information network', which is part of the Tacis national action Programme 2003 [1]. By letter of 20 June 2006, the Commission notified the applicant that its tender had been successful for Lots 1, 2 and 4. However, on 14 July the Commission sent the applicant a letter informing it that the contracting authority had decided to annul the tender procedure and not to sign the contract with it on the basis that there was insufficient competition. In the present action, the applicant seeks the annulment of the decision contained in that letter.

The applicant puts forward two pleas in law in support of its application.

The first plea alleges infringement of an essential procedural requirement in that, according to the applicant, the reasons put forward by the Commission in support of its decision ultimately not to award it the contract cannot be regarded as satisfactory. It maintains that it was only when it requested the Commission to do so, in a letter dated 17 July 2006, that the latter clarified, by letter of 27 July 2006, that its decision was based on Article 101 of Council Regulation No 1605/2002 ([2]). In the applicant's opinion, it is not possible to ascertain from the reasons put forward by the Commission in support of the contested decision what prompted it to go back on its earlier decision to award the applicant the contract. It submits that that lack of precision in the Commission's reasoning is all the more significant as the Commission resiled from its earlier official position.

The second plea alleges infringement of Article 253 EC. The applicant considers that, by withdrawing the invitation to tender on the ground of insufficient competition, the Commission committed a manifest and serious error by putting forward an imprecise and incomplete set of reasons since, on previous occasions, the applicant has obtained a number of contracts in cases where it was the only tenderer.

([1]) Programme based on Council Regulation (EC, Euratom) No 99/2000 of 29 December 1999 concerning the provision of assistance to the partner States in Eastern Europe and Central Asia (OJ 2000 L 12, p. 1).

([2]) Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 248, p. 1).

Action brought on 20 September 2006 — Lee/DE v OHIM — Cooperativa Italiana di Ristorazione (PIAZZA del SOLE)

(Case T-265/06)

(2006/C 294/111)

Language in which the application was lodged: French

Parties

Applicant: Sara Lee/DE NV (Utrecht, the Netherlands) (represented by: C. Hollier-Larousse, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Cooperativa Italiana di Ristorazione Soc. coop.rl

Form of order sought

— annul and amend the decision of the Second Board of Appeal of OHIM in so far as it confirmed the rejection of the partial opposition lodged by the applicant against the application for the Community mark 'PIAZZA del SOLE' No 1 518 901 and the rejection of Opposition No B 337 081;

— consequently, dismiss, in part, the registration of the Community mark 'PIAZZA del SOLE' No 1 518 901, in so far as it designates the goods in Classes 21, 29, 30 and 42;

— order OHIM to pay all the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Cooperativa Italiana di Ristorazione Soc. coop.rl

Community trade mark concerned: Word mark 'PIAZZA del SOLE' for goods and services in Classes 16, 21, 25, 29, 30, 35, 36 and 42 — Application No 1 518 901

Proprietor of the mark or sign cited in the opposition proceedings: Applicant

Mark or sign cited in opposition: National and international word marks 'PIAZZA' and 'PIAZZA D'ORO' for goods in Classes 21, 29, 30 and 42

Decision of the Opposition Division: Opposition rejected

Decision of the Board of Appeal: Appeal dismissed

Pleas in law: Breach of Article 8(1)(b) of Regulation No 40/94 ([1]) in so far as the Board of Appeal, in the contested decision, made a number of errors in considering that there was little distinctiveness as to the element common to the signs in question, in so far as it did not draw the necessary conclusions from its finding that the elements 'D'ORO' and 'DEL SOLE' are common words and in so far as it considered that the differences between the marks prevailed over the way the marks were perceived.

([1]) Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1).

Action brought on 26 September 2006 — Commission v TH Parkner

(Case T-266/06)

(2006/C 294/112)

Language of the case: German

Parties

Claimant: Commission of the European Communities (represented by: M. Wilderspin, Agent, and R. van der Hout, lawyer)

Defendant: TH Parkner GmbH (Mühlhausen, Germany)

Form of order sought

— Order the defendant to pay to the claimant EUR 64 078,58 plus 6.04 % interest with effect from 1 August 2001 to 31 December 2002 and 8.04 % interest with effect from 1 January 2003;

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

Pleas in law and main arguments

The claimant entered into a contract with the defendant concerning the granting of an advance payment for the construction of a central heating plant with a thermo-electric converter (Stirling Motor) in industrial premises in Thuringia within the framework of the promotion of energy technology in Europe (THERMIE programme).

The Commission terminated this contract by letter of 4 December 1995 as the defendant had not used the amount paid to it in a manner consistent with the contract. The present action seeks to effect recovery from the defendant of the final outstanding instalment plus default interest.

Action brought on 22 September 2006 — Olympiaki Aeroporia Ipiresies v Commission

(Case T-268/06)

(2006/C 294/113)

Language of the case: Greek

Parties

Applicant: Olympiaki Aeroporia Ipiresies A.E. (Olympic Airways Services S.A.) (represented by: P. Anestis, T. Soames, G. Goeteyn, S. Mavrogenis, M. Pinto de Lemos Fermiano Rato, lawyers,)

Defendant: Commission of the European Communities

Form of order sought

The Court is asked to:

— annul, pursuant to Articles 230 EC and 231 EC, the imposition of a maximum amount of DR 668 783 057 under Article 1 of Commission Decision E(2006) 1580 final of 26 April 2006 in respect of compensation to which the applicant is lawfully entitled for the period 11 to 14 September 2001;

— annul Article 2 of the contested decision, according to which the compensation paid to the applicant is not compatible with the common market;

— order the Commission to pay the costs.

Pleas in law and main arguments

The application is directed against Commission Decision E(2006) 1580 final of 26 April 2006, concerning a State aid scheme C-39/2003 (ex NN 119/02) put into effect by Greece in favour of the airline industry to compensate for losses suffered between 11 and 14 September 2001.

First, the applicant maintains that the Commission, in concluding that the financial aid granted to make good the damage which arose after 14 September 2001 is not directly linked to the closure of the airspace of the United States because of the terrorist attacks of 11 September 2001 and consequently constitutes State aid that is incompatible with the common market, clearly committed an error of assessment of the factual circumstances and thus infringed Article 87(2)(b) EC.

In conclusion, the applicant alleges that the complete lack of reasons for the rejection of the compensation in question constitutes infringement of an essential procedural requirement which renders the decision invalid.

Action brought on 25 September 2006 — Lego Juris v OHIM — Mega Brands (Lego brick)

(Case T-270/06)

(2006/C 294/114)

Language in which the application was lodged: English

Parties

Applicant: Lego Juris A/S (Billund, Denmark) (represented by: V. von Bomhard, A. Renck and T. Dolde, lawyers)

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

Other party to the proceedings before the Board of Appeal: Mega Brands Inc. (Montreal, Canada)

Form of order sought

— Annul the decision of the Grand Board of Appeal of the Office of Harmonisation in the Internal Market (Trade Marks and Designs) of 10 July 2006 in case No R 856/2004-G; and

— order that the costs of the proceedings be borne by the defendant.

Pleas in law and main arguments

Registered Community trade mark subject of the application for a declaration of invalidity: The figurative mark 'LEGO brick' for products in class 28 claiming the 'colour red' — Community Trade mark No 107 029

Proprietor of the Community trade mark: The applicant

Party requesting the declaration of invalidity of the Community trade mark: Mega Brands Inc.

Decision of the Cancellation Division: Declaration of invalidity of the Community trade mark

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: The applicant advances a single plea in law in support of its application. Precisely, the applicant contends that the contested decision violates Article 7(1)(e)(ii) CTMR of Council Regulation (EC) No 40/94 in so far as it allegedly misinterprets the said provision as well as its rationale and, in addition, to the extent that it applies it to something that is not the subject of the trade mark protection granted by the registration at issue.

Action brought on 2 October 2006 — Microsoft v Commission

(Case T-271/06)

(2006/C 294/115)

Language of the case: English

Parties

Applicant: Microsoft Inc (Seattle, USA) (represented by: J-F. Bellis, G. Berrisch, lawyers, I. S. Forrester, QC and D. W. Hull, Solicitor)

Defendant: Commission of the European Communities

Form of order sought

— Annulment of Commission Decision C(2006)3143 final of 12 July 2006 fixing the definitive amount of the periodic penalty payment imposed on Microsoft Corporation by Decision C(2005)4420 final and amending that decision as regards the amount;

— in the alternative, annulment or reduction of the periodic penalty payment imposed; and

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

Pleas in law and main arguments

By a decision of 10 November 2005 (the 'Article 24(1) decision') adopted pursuant to article 24(1) of Regulation 1/2003, the Commission imposed a periodic penalty payment in the event the applicant failed to fulfil its obligation to provide Interoperability Information pursuant to Decision C(2004)900 final of 24 March 2004 (the '2004 decision'). The contested Decision C(2006)3143 of 12 July 2006 fixed the definitive amount of the periodic penalty payment for the period of 16 December 2005 through 20 June 2006 at 280.5 million EUR.

By means of its application, the applicant seeks annulment of the contested decision on the basis of the following grounds:

Firstly, the applicant claims that the Commission violated its duty to give clear information and precise instructions as to what it required for compliance with the 2004 decision. The applicant deemed such information and instructions to be necessary allowing it to opt for the expected means to satisfy the obligation to provide Interoperability Information. In this respect, the applicant further claims that the Commission omitted to include the relevant instructions in the 2004 decision as well as in the Article 24(1) decision itself, whether prior to adoption of the latter, nor until several months had elapsed after such decision was taken.

Secondly, the applicant submits that the Commission failed to prove to the requisite standard that the applicant did not comply with its obligation to provide Interoperability Information as required under the 2004 decision. Precisely, the Commission allegedly failed to put forward clear and convincing reasoning supported by sufficiently precise and coherent evidence that (1) the technical documentation that the applicant made available on 15 December 2005 did not comply with the requirements of the 2004 decision; and (2) none of the subsequent steps that the applicant undertook from 16 December 2005 to June 2006 were sufficient to ensure compliance. Specifically and according to the applicant, the Commission thus failed to objectively evaluate the evidence before it and applied the wrong standard in evaluating the technical documentation.

The applicant advances as a third ground of annulment the fact that the Commission denied it the right to be heard before adopting the contested decision, the reference period for the imposition of the periodic penalty payment being 16 December 2005 through 20 June 2006 while the Statement of Objections was issued on 21 December 2005, not covering a single day of the reference period.

Fourthly, the applicant contends that the Commission violated its rights of defence by denying it full access to the file, including communications between the Commission, on the one hand, and its experts, on the other.

Finally, the applicant suggests that the amount of the periodic penalty payment is excessive and disproportionate as the Commission failed to take into account the complexity of the compliance obligation, while it completely disregarded the applicant's substantial good faith efforts to comply with the Commission's previous decisions.

Action brought on 29 September 2006 — Evropaïki Dynamiki v Court of Justice

(Case T-272/06)

(2006/C 294/116)

Language of the case: English

Parties

Applicant: Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE (Athens, Greece) (represented by: N. Korogiannakis and N. Keramidas, lawyers)

Defendant: Court of Justice of the European Communities

Form of order sought

— Annulment of the decision of the Court of Justice to evaluate the applicant's bid as not successful and award the contract to the successful contractor;

— order the Court of Justice to pay the applicant's legal and other costs and expenses incurred in connection with this application, even if the current application is rejected.

Pleas in law and main arguments

By means of its application, the applicant seeks annulment of the decision of the Court of Justice of 20 July 2006, rejecting its bid filed in response to the open Call for Tenders AM CJ 13/04 for the maintenance, development and support of computer applications (OJ 2005/S 127-125162 & 2005/S 171-169521) and awarding the same Call for Tender to another bidder.

The applicant claims that the contested decision was taken in violation of the Financial Regulation (EC) No 1605/2002 (OJ L 248, 16/09/02, p. 1), its Implementing Rules and Directive 2004/18/EC, through an alleged misinterpretation of the selection criteria, violation of the principles of transparency and equal treatment of the participants.

Moreover, the applicant submits that the contracting authority's decision contains evident errors of assessment in the framework of the evaluation of its offer, exceeding, thus, the discretion that European Institutions dispose in procurement procedures.

Action brought on 11 September 2006 — ISD Polska and Industrial Union of Donbass v Commission

(Case T-273/06)

(2006/C 294/117)

Language of the case: French

Parties

Applicants: ISD Polska sp. z.o.o. (Częstochowa, Poland) and Industrial Union of Donbass Corp. (Donetsk, Ukraine) (represented by: C. Rapin and E. Van den Haute, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— declare this action admissible;

— annul Article 3 of the Commission decision of 5 July 2005 concerning the aid granted by Poland to Huta Częstochowa SA (notified under C(2005) 1962);

— in the alternative, declare that on the date of this action there is no obligation on Poland to recover the aid and interest referred to in Article 3 of the decision and therefore that the amounts of that aid and interest is not payable;

— in the further alternative, annul the second subparagraph of Article 3(2) of the decision and refer the question of the interest to the Commission for a new decision in accordance with Annex A to this application, or with such other consideration as the Court may indicate in the grounds of the judgment;

— in any event, order the Commission to pay all of the costs;

— if the Court should decide that there is no need to adjudicate, order the Commission to pay the costs pursuant to the combined provisions of Article 87(6) and Article 90(a) of the Rules of Procedure of the Court of First Instance.

Pleas in law and main arguments

By its decision C(2005) 1962 final of 5 July 2005 (State Aid No C 20/04, ex NN 25/04), the Commission declared certain restructuring aid granted by Poland to the steel producer Huta Częstochowa SA incompatible with the common market and ordered its recovery. The applicant ISD Polska is successor to the beneficiary of the aid and a subsidiary of the second applicant, Industrial Union of Donbass, which holds all of its shares. The two applicants are referred to in the contested decision among the undertakings required jointly and severally to repay the aid declared incompatible with the common market.

In support of their application for the partial annulment of the decision, the applicants rely on six pleas in law.

By their first plea, they claim that the Commission made a manifest error of assessment of the facts decisive for the outcome of the investigation. They maintain that once the assets of the original beneficiary of the incompatible aid have been sold, those assets having been bought by ISD Polska (and Donbass), it is the seller of the original beneficiary of the aid which retains the benefit of that aid, and must ensure that it is repaid. The applicants claim that in this case, if the Commission had correctly established the relevant facts concerning the sale of the assets of Huta Częstochowa SA to ISD Polska (and Donbass) it would have considered that, because the means of production of Huta Częstochowa were acquired at a price reflecting the market price, restitution of the aid had thereby already been made to the seller. According to the applicants, the Commission was therefore in breach of its obligation to examine, carefully and impartially, all the relevant factors of the case.

The second plea relied upon by the applicants alleges infringement of the right to submit comments, as recognised by Article 88 EC and Article 6 of Regulation No 659/1999 ([1]). They maintain that the publication in the *Official Journal of the European Communities* of the decision to initiate the formal investigation procedure did not state in sufficient detail the aid called into question or its amount, although according to the applicants that information was known to the Commission, which prevented them from ascertaining which aid was covered by the investigation and evaluating the desirability of submitting their comments.

The same alleged irregularity is the basis for the third plea relied on by the applicants, namely infringement of the principle of the protection of legitimate expectations. They maintain that if the decision to initiate the investigation procedure had enabled Donbass to ascertain which aid was covered by the procedure, that company could have submitted evidence to the Commission showing, as ISD Polska and Donbass are doing in this action, that that aid was compatible with Community law.

By their fourth plea, the applicants claim that the Commission infringed Protocol No 8 to the Treaty of Accession, on the restructuring of the Polish steel industry ([2]), by interpreting purely literally some of its provisions which, in the view of the applicants, it should have interpreted in the light of the objectives pursued by that protocol and in consideration of the background to its adoption. That allegedly incorrect interpretation led the Commission to require, by its decision, repayment of State aid received before the adoption of Protocol No 8 by companies not included in Annex 1, which designates eight benefiting companies which are eligible for aid from Poland in derogation from Articles 87 and 88 EC. The applicants claim that since it acted thus without a legal basis, the Commission is not competent to give a decision on some of the aid referred to in the contested decision and that it therefore encroached upon the temporal competence of other Community institutions.

The fifth plea relates to infringement of Article 14(1) of Regulation No 659/1999, since the decision to recover the aid runs counter to the principles of the protection of legitimate expectations, legal certainty and equal treatment.

By their sixth plea, the applicants claim in the alternative that the Commission infringed Regulation No 794/2004 ([3]) when calculating the interest rate applicable to the recovery of the aid in the present case.

([1]) Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, OJ L 83 of 27.3.1999, p. 1.

([2]) OJ 2003 L 236, p. 948.

([3]) Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty, OJ L 140 of 30.4.2004, p. 1.

Action brought on 6 October 2006 — Estaser El Mareny v Commission

(Case T-274/06)

(2006/C 294/118)

Language of the case: Spanish

Parties

Applicant: Estaser El Mareny SL (Valencia, Spain) (represented by: A. Hernández Pardo, S. Beltrán Ruiz and L. Ruiz Ezquerra, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— annul the Commission Decision of 12 April 2006 in Case COMP/B-1/38.348 Repsol CPP relating to a proceeding pursuant to Article 81 of the EC Treaty;

— order the defendant to pay the costs.

Pleas in law and main arguments

This action is brought against the decision of the Commission of 12 April 2006 by which the defendant institution accepted the commitments offered by REPSOL CPP in accordance with Article 9(1) of 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 ([1]).

That decision was made in a proceeding initiated following the application by REPSOL CPP for negative clearance or, failing that, an individual exemption in respect of the standard agreements and/or contracts by means of which it carried out its fuel distribution activities for motor vehicles through service stations in Spain.

In the offer of commitments accepted by the Commission, REPSOL CPP undertook, inter alia, to increase the annual number of service stations which may change supplier, for which it undertook to offer the bare owners/operators of the service stations the possibility of recovery of the right in rem to the usufruct or over the buildings subject, however, to compliance with a series of conditions by the operator.

In support of its claims, the applicant, occupier-operator of a service station which had concluded a supply contract with REPSOL CPP, argues:

(a) that REPSOL CPP's contracts with the service stations infringed and infringe the time-limits laid down by Community provisions for non-compete clauses. In fact, prior to the offer of commitments on the part of REPSOL CPP, the Commission was preparing to give a decision declaring that there was an infringement and ordering that it cease;

(b) that, accordingly, the contracts at issue must be regarded as void under Article 81(2) of the EC Treaty;

(c) that the Commission cannot seek to accept those contracts by means of commitment proceedings, when it does not require the infringing party to bring the restrictive practice to an immediate end, but only requires it to grant the possibility of early recovery. On the other hand, despite the fact that it is the unduly lengthy term of the clauses restricting competition which infringes the competition provisions, it requires the operator, in order to recover its right, to pay a price calculated on the basis, among other things, of the remaining years of the term laid down for the right in rem.

Finally, the applicant pleads infringement of the principle in accordance with which persons subject to Community law may not benefit from their own unlawful acts or become enriched without just cause.

([1]) OJ L 1 of 4.1.2003, p. 1.

Action brought on 4 October 2006 — Omya v Commission

(Case T-275/06)

(2006/C 294/119)

Language of the case: English

Parties

Applicant: Omya AG (Oftringen, Switzerland) (represented by: J. Flynn, Barrister, and C. Ahlborn, Solicitor)

Defendant: Commission of the European Communities

Form of order sought

— […] Omya therefore respectfully asks the Court to annul the decision and to order the Commission to pay Omya's costs.

Pleas in law and main arguments

The applicant seeks the annulment of Commission Decision C(2006) 3163 final of 19 July 2006 in merger case COMP/M.3796 by which the Commission declared the applicant's take over of the precipitated calcium carbonate business from J.M. Huber Corporation compatible with the common market and the functioning of the Agreement on the European Economic Area. The Commission further imposed certain conditions and obligations with which the applicant is to comply.

The applicant contends that (a) the competition concerns which the Commission has identified are unfounded and (b) that in any event the remedies effectively imposed on the applicant are inappropriate and are not justified by the concerns identified by the Commission and are not capable of producing the effects claimed by the Commission.

The applicant invokes three pleas in law in support of its application.

Firstly, the applicant submits that the Commission manifestly erred in concluding that the transaction would significantly impede effective competition.

Secondly, the applicant claims that the Commission manifestly erred in its assessment and breached the principle of proportionality in requiring the disposal of the Kuusankoski plant.

Thirdly, the applicant invokes that the Commission infringed essential procedural requirements by failing to analyse properly the evidence in its file and failing to provide the applicant with access to all relevant documents, thereby infringing the applicant's rights of defence.

Action brought on 9 October 2006 — Omnicare v OHIM — Yamanouchi Pharma (OMNICARE)

(Case T-277/06)

(2006/C 294/120)

Language in which the application was lodged: English

Parties

Applicant: Omnicare Inc. (Covington, USA) (represented by: M. Edenborough, Barrister)

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

Other party before the Board of Appeal: Yamanouchi Pharma GmbH (Heidelberg, Germany)

Form of order sought

— The appeal by the appellant to the Court of First Instance be allowed;

— the decision of the Second Board of Appeal case No R0446/2006-2 be annulled in its entirety;

— the application for *restitutio in integrum* be remitted to the Board of Appeal for reconsideration; and

— the Office pays to the appellant the costs incurred by it in connection with this appeal before the Court of First Instance.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: Word mark 'OMNICARE' for goods and services in classes 16 and 42 — application No 284 067

Proprietor of the mark or sign cited in the opposition proceedings: Yamanouchi Pharma GmbH

Mark or sign cited: National figurative mark 'OMNICARE' for services in classes 35, 41 and 42

Decision of the Opposition Division: Opposition upheld in its entirety

Decision of the Board of Appeal: Refusal of the application for *restitutio in integrum* and declaration that the appeal was deemed not to have been filed

Pleas in law: Misinterpretation of Article 78(5) of Council Regulation No 40/94 in finding that an application for *restitutio in integrum* cannot be made if the subject matter of the said application concerns the failure to comply with the time limit set out in Article 59 of the regulation.

Action brought on 6 October 2006 — United Kingdom v Commission

(Case T-278/06)

(2006/C 294/121)

Language of the case: English

Parties

Applicant: United Kingdom of Great Britain and Northern Ireland (represented by: E. O'Neill, acting as agent, and H. Mercer, Barrister)

Defendant: Commission of the European Communities

Form of order sought

— Article 1 of Commission Decision 2006/554/EC on the clearance of accounts presented by Member States in respect of expenditure of the Guarantee Section of the European Agricultural Guidance and Guarantee Fund be annulled in so far as it excludes from Community financing United Kingdom expenditure for the years 2001-2004 in the sum of £1,351,441.25 in the audit field 'Butterfats in food processing' on the grounds of 'Insufficient quantity controls on manufactured quantities';

— the Commission be ordered to pay the costs incurred by the United Kingdom.

Pleas in law and main arguments

The applicant seeks the partial annulment of the Commission's Decision 2006/554/EC of 27 July 2006 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) [1] and in particular the part concerning the use of butterfats in food processing in the United Kingdom.

The dispute concerns the control measures taken by the applicant under Article 23 of Commission Regulation No 2571/97 ([2]) ('the Commission regulation') which prescribes measures to be taken by Member States *inter alia* in respect of the manufacture and use of concentrated butter for which subsidy is available when the concentrated butter is used for the manufacture of specified pastries and cakes.

Article 23(2) of the Commission regulation provides for an 'on-the-spot' check on manufacturers of concentrated butter 'during the manufacture of concentrated butter' so that 'each tender award is checked […] at least once'.

The Commission finds that the applicant has failed to carry out key controls in that, as a matter of interpretation of the Commission regulation, the applicant is under an obligation to verify physically the quantities in one batch of concentrated butter per tender *after* manufacturing has taken place. The applicant alleges that this in effect amounts to ensure that each tender award is checked at least twice. The applicant claims that the Commission relies on a concept which is not in the Commission regulation of a 'physical' check on quantity.

The applicant invokes two pleas in law:

a) The Commission committed an error of law in that the contested decision was unlawful under the first subparagraph of Article 7(4) of Council Regulation No 1258/1999 ([3]) (the 'Council regulation') on the financing of the common agricultural policy as there was no basis for concluding that the relevant expenditure was not effected in compliance with the Community rules contained in Article 23(2) of the Commission regulation; and

b) the Commission committed an error of law in that the determination of the amount excluded was in breach of the fourth subparagraph of Article 7(4) of the Council regulation.

([1]) OJ 2006 L 218, p. 12.

([2]) Commission Regulation (EC) No 2571/97 of 15 December 1997 on the sale of butter at reduced prices and the granting of aid for cream, butter and concentrated butter for use in the manufacture of pastry products, ice-cream and other foodstuffs (OJ 1997 L 350, p. 3).

([3]) Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy (OJ 1999 L 160, p. 103).

Action brought on 9 October 2006 — Evropaïki Dynamiki v ECB

(Case T-279/06)

(2006/C 294/122)

Language of the case: English

Parties

Applicant: Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE (Athens, Greece) (represented by: N. Korogiannakis and N. Keramidas, lawyers)

Defendant: European Central Bank

Form of order sought

— Annul the decision of the ECB to evaluate the applicant's bid as not successful and award the contract to the successful contractor;

— order ECB to pay the applicant's legal and other costs and expenses incurred in connection with this application, even if the current application is rejected.

Pleas in law and main arguments

The applicant submitted a bid in response to a call by the defendant for a negotiated tender for the provision of IT consultancy and IT development services to the European Central Bank (ECB) (OJ 2005/S 137-135354). The applicant contests the decision to reject its bid and to commence contractual negotiations with other bidders.

In support of its application, the applicant submits that the ECB unlawfully did not disclose the weighting of criteria and sub-criteria in the tender notice and that the ECB used vague terms to evaluate negatively the applicant's bid and thereby violated the principles of transparency and sound administration and failed to state reasons. Furthermore, the applicant claims that the ECB made several errors of appreciation under the evaluation of the applicant's offer. Finally the applicant alleges that the ECB introduced a specific term in the call for tender, which favoured German established companies, and thereby violated among others Articles 12 EC and 49 EC.

Action brought on 4 October 2006 — Italian Republic v Commission

(Case T-280/06)

(2006/C 294/123)

Language of the case: Italian

Parties

Applicant: Italian Republic (represented by: P. Gentili, Avvocato dello Stato)

Defendant: Commission of the European Communities

Form of order sought

— annul memorandum No 06626 of 24 July 2006 of the European Commission — Directorate General Regional Policy — Programmes and projects in Cyprus, Greece, Hungary, Italy, Malta and the Netherlands — concerning payments of the Commission which differ from the sum requested. Ref. ROP Sicily Programme (No CCI 1999 IT 61 PO 011);

— annul all related and prior measures, and order the Commission of the European Communities to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those relied on in Case T-345/04 *Italian Republic* v *Commission* ([1]).

([1]) OJ C 262 of 23.10.04, p. 55.

Action brought on 6 October 2006 — Spain v Commission

(Case T-281/06)

(2006/C 294/124)

Language of the case: Spanish

Parties

Applicant: Kingdom of Spain (represented by: M. Muñoz Pérez)

Defendant: Commission of the European Communities

Form of order sought

The Court is asked to:

— annul Commission Decision 2006/554/EC of 27 July 2006 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the EAGGF in so far as it relates to the subject-matter of this action;

— order the Commission to pay the costs.

Pleas in law and main arguments

By the contested decision, the Commission excluded from Community financing certain expenditure incurred by the Kingdom of Spain in respect of compensatory aid for bananas.

The appropriate correction was made for the alleged existence of weaknesses in quality controls and in the determination of marketed quantities of bananas.

In support of its claims, the applicant State argues that the Commission:

— infringed Articles 2 and 3 of Regulation (EEC) No 729/70 and Article 2 of Regulation (EC) No 1258/1999. It states in that respect that the Spanish authorities correctly applied the provisions of Regulation (EEC) No 1858/93 in force in the years to which the financial correction at issue refer as they were unable to require producers to provide sales invoices for bananas and took into account at the time of calculating the aid a document, the SAD (single administrative document), as evidence of the marketing of bananas. In addition, the Commission has not countered the Spanish authorities' statement to the effect that the quantities of bananas which received aid were in fact marketed, if account is taken of the excess weight which is included in the packaging and other relevant factors.

  So far as concerns quality controls, the applicant State asserts that, in accordance with Article 7 and Annex 1 II.B to Regulation (EC) No 2257/94, the quality inspections observed during the Commission's monitoring visit corresponded with those which the experts of the Ministry of Agriculture of the Autonomous Community of the Canaries carry out on producers' organisations to check that their controls are effective, the basic objective of which was not to ensure that the marketed bananas complied with the appropriate quality requirements;

— was in breach of the principle of proportionality by imposing a pro-rata correction, based exclusively on the assessment of a very low level of risk for the EAGGF, rather than adjusting the financial correction so as to take more account of the hypothetical damage suffered by the EAGGF.

Action brought on 18 October 2006 — Huta 'Częstochowa' v Commission

(Case T-288/06)

(2006/C 294/125)

Language of the case: Polish

Parties

Claimant: Huta 'Częstochowa' S.A. (represented by: Cz. Sadkowski and D. Sałajewski, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Declare invalid point 2 of Article 3(2) of the Commission decision of 5 July 2005 in Case No C 20/04 (ex. NN 25/04) concerning State aid for the benefit of Huta 'Częstochowa' S.A.

Pleas in law and main arguments

The claimant seeks a declaration of invalidity in regard to the European Commission decision of 5 July 2005 in State aid Case No C 20/04 (ex. NN 25/04), Article 3(1) of which declares incompatible with the common market the aid which Poland accorded to Huta 'Częstochowa' S.A over the period from 1997 to May 2002 in the form of operating aid and aid for employment restructuring. The decision was notified to the claimant on 21 August 2006. In Article 3(2) of the contested decision the Commission imposed an obligation on Poland to take all requisite steps to recover the unlawfully granted aid from the undertakings named in that provision, which include the claimant. Pursuant to that decision, all the undertakings mentioned in that provision are jointly and severally liable for the recovery of that aid, which must be effected without delay and in accordance with the procedures under national law. Interest is payable in respect of the entire period from receipt of the aid up to the date on which it is actually repaid, in accordance with the provisions contained in Chapter V of Commission Regulation (EC) No 794/2004 ([1]).

In support of its action, the claimant raises the following heads of complaint:

— Breach of Articles 87 EC and 88 EC and of Article 7(5) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty ([2]) by reason of the Commission's acceptance that the abovementioned provisions permit the adoption of a decision defining aid granted by a Member State prior to its accession to the European Union as being aid incompatible with the common market, even though the aid in question was not applied after Poland acceded to the EC Treaty, and consequently the acceptance that the amounts subject to reimbursement must be increased by interest in respect of the entire period from the date on which the aid was granted to Huta 'Częstochowa' up to that of its actual repayment. The claimant submits that the aid granted in the years 1997 to 2002 and not applied after Poland's accession to the European Union cannot be treated as incompatible with the common market on the basis of Article 87 EC as it could not have affected intra-Community trade in the period prior to 1 May 2004, that is to say, prior to Poland's accession to the European Union, at a time when the Polish market did not constitute part of the intra-Community market. A further reason, in the claimant's view, lies in the fact that Protocol No 8 to the Accession Treaty ([3]) on the restructuring of the Polish steel industry makes no mention of the claimant in Annex 1, as a consequence of which the majority of the provisions of that protocol do not concern the claimant.

— Breach of Article 9(4) of Commission Regulation (EC) No 794/2004 by virtue of the fact that no percentage rate for interest in respect of the repayment of the State aid was laid down in the decision. In the meantime, according to the claimant, pursuant to the provision cited, in connection with the absence in Poland of five-year swap rates for interbank transactions prior to Poland's accession to the European Union, there was a need for coordination between the Commission and Poland in this area which would subsequently have had to be reflected in the contested decision or in some other Commission decision.

([1]) Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC)No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 2004 L 140, p. 1).

([2]) OJ 1999 L 83, p. 1.

([3]) Treaty of 23 April 2003 concerning the accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic to the European Union (OJ 2003 L 236, p. 17).

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Judgment of the Civil Service Tribunal (Plenary Formation) of 26 October 2006 — Landgren v European Training Foundation

(Case F-1/05) ([1])

(Member of the temporary staff — Contract of indeterminate duration — Dismissal — Professional inadequacy — Duty to state reasons — Manifest error of appraisal)

(2006/C 294/126)

Language of the case: French

Parties

Claimant: Pia Landgren (Turin, Italy) (represented by: M.-A. Lucas, lawyer)

Defendant: European Training Foundation (represented by: M. Dunbar, Director, and G. Vandersanden, lawyer)

Re:

Annulment of the decision to dismiss the claimant and application for damages.

Operative part of the judgment

The Tribunal:

1. *sets aside the decision of the European Training Foundation of 25 June 2004 to revoke Ms Landgren's contract of indeterminate duration as a member of the temporary staff;*

2. *enjoins the parties to forward to the Tribunal, within three months of the date of delivery of this judgment, either the jointly agreed amount of monetary compensation resulting from the illegality of the decision of 25 June 2004 or, failing agreement on the matter, the figures which they wish to submit in respect of that amount;*

3. *reserves the costs.*

([1]) OJ C 182 of 23.7.2005, p. 39 (case originally registered before the Court of First Instance of the European Communities under number T-180/05 and transferred to the European Union Civil Service Tribunal by order of 15.12.2005).

Judgment of the Civil Service Tribunal (Second Chamber) of 19 October 2006 — De Smedt v Commission

(Case F-59/05) ([1])

(Member of the contract staff — Request for reclassification of grade and reassessment of the remuneration set on recruitment — Former member of the auxiliary staff employed as a member of the contract staff without any change of functions — Articles 3a and 80(2) and (3) of the CEOS — Duties covered by the different function groups — Equal treatment)

(2006/C 294/127)

Language of the case: French

Parties

Applicant: Elisabeth De Smedt (Wezembeek-Oppem, Belgium) (represented by: L. Vogel, lawyer)

Defendant: Commission of the European Communities (represented by: J. Currall and G. Berscheid, acting as Agents)

Re:

First, annulment of the Commission's decision rejecting the complaint submitted by the applicant, a former member of the auxiliary staff, against the decision fixing her grade and remuneration as a contract staff member and, secondly, an application for damages

Operative part of the judgment

1. *The action is dismissed.*

2. *Each party shall bear its own costs.*

([1]) OJ C 229, 17.9.2005, p. 29 (case initially registered before the Court of First Instance of the European Communities under number T-267/05 and transferred to the Civil Service Tribunal of the European Union by order of 15.12.2005).

Judgment of the Civil Service Tribunal (Second Chamber) of 19 October 2006 — Combescot v Commission

(Case F-114/05) ([1])

(Officials — Appeal — Time-limits — Implied rejection — Explicit refusal, notified at a later stage, to reopen the period for lodging an appeal — Legal interest in bringing proceedings — Inadmissibility)

(2006/C 294/128)

Language of the case: Italian

Parties

Applicant: Philippe Combescot (Popayán, Colombia) (represented by: A. Maritati and V. Messa, lawyers)

Defendant: Commission of the European Communities (represented by: V. Joris and M. Velardo, Agents, assisted by S. Corongiu, lawyer)

Re:

First, annulment of the Commission's decision to reassign the applicant, in the interests of the service, from the Commission's delegation in Guatemala to its Brussels headquarters under the 2003 rotation scheme and, secondly, an application for damages

Operative part of the judgment

1. *The action is dismissed as inadmissible.*

2. *Each party shall bear its own costs.*

([1]) OJ C 22, 28.1.2006, p. 22 (case initially registered before the Court of First Instance of the European Communities under number T-422/05 and transferred to the Civil Service Tribunal of the European Union by order of 15.12.2005)

Action brought on 31 August 2006 — Simon v Court of Justice and Commission

(Case F-100/06)

(2006/C 294/129)

Language of the case: Hungarian

Parties

Applicant: Balázs Simon (Brussels, Belgium) (represented by: György Magyar, lawyer)

Defendants: Court of Justice of the European Communities and Commission of the European Communities

Form of order sought

— annul: (i) the decision of the Appointing Authority of the Court of Justice of 23 February 2006; (ii) the decision of the Appointing Authority of the Commission of 3 March 2006; (iii) the decision of the Appointing Authority of the Commission of 30 May 2006; (iv) the decision of the Appointing Authority of the Court of Justice of 27 June 2006, in so far as those decisions deprive the applicant of the rights to which his appointment as a probationary official on 16 July 2004 entitles him, and thus of his length of service and grade, and of the rights to which his appointment as an established official on 16 April 2005, that is to say, his definitive appointment, entitles him;

— order the defendants to pay the costs.

Pleas in law and main arguments

After having brought Case F-58/06 ([1]), the applicant now challenges both the decisions of the Court of Justice to accept his resignation offered in his statement of 28 October 2005 and the decisions of the Commission fixing his classification at grade A*5.

In support of his action, the applicant puts forward two pleas, alleging, in the first, a breach of the principle prohibiting the withdrawal of rights guaranteed by the Staff Regulations and interference with acquired rights, and, in the second, misuse of powers and an interference with acquired rights.

In his first plea, the applicant, inter alia, submits that, by his statement of 28 October 2005 he did not intend to leave the body of officials, but only to change his place of work and function. Thus, he did not forfeit his acquired rights.

In his second plea, the applicant maintains, inter alia, that, even supposing that by his statement he had waived his status as an official, such waiver would be illegal on the ground that the defendants made it the de facto condition in order for him to be transferred from one institution to another. In addition, the applicant alleges that, in so far as he had been appointed an official at grade A*7 by the Court of Justice, he fulfils the conditions required in order to be classified in that grade, with the result that his classification by the Commission in grade A*5 constitutes a misuse of power that deprives him of his acquired rights.

([1]) OJ C 190, 12.8.2006, p. 35.

Action brought on 2 October 2006 — Sanchez Ferriz and Others v Commission

(Case F-115/06)

(2006/C 294/130)

Language of the case: French

Parties

Applicants: Carlos Sanchez Ferriz (Brussels, Belgium) and Others (represented by: F. Frabetti, lawyer)

Defendant: Commission of the European Communities

Form of order sought

The applicant claims that the Civil Service Tribunal should:

— set aside the list of officials promoted under the 2005 promotion procedure in so far as that list does not include the applicants' names and, incidentally, annul the preparatory measures leading to that decision;

— in the alternative, annul the allocation of promotion points during the promotion procedure mentioned above, in particular, in consequence of the recommendations made by the promotion committees;

— order the defendant to pay the costs.

Pleas in law and main arguments

In support of their action, the applicants put forward five pleas, alleging:

— in the first, infringement of Article 45 of the Staff Regulations;

— in the second, infringement of the General Provisions implementing that article;

— in the third, infringement of the principle of non-discrimination and a manifest error of assessment;

— in the fourth, infringement of Articles 6 and 10 of Annex XIII to the Staff Regulations;

— in the fifth, infringement of the principles of the prohibition of arbitrary procedure and of the prohibition of the abuse of powers, and infringement of the obligation to state reasons.

Action brought on 26 September 2006 — Buckingham and Others v Commission

(Case F-116/06)

(2006/C 294/131)

Language of the case: French

Parties

Applicants: Anne Buckingham (Brussels, Belgium) and Others (represented by: N. Lhoëst, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— annul the decision adopted by the Commission on 23 November 2005, published in Administrative Notices No 85-2005, in that it did not allocate any priority points to the applicants, officials in grade A*12, recognising the work carried out in the interests of the institution for 2004;

— in so far as necessary, annul the express decisions of the Commission rejecting the complaints made by the applicants pursuant to Article 90(2) of the Staff Regulations;

— order the defendant to pay the costs.

Pleas in law and main arguments

The action is based on infringement of Articles 9 and 13 of the General Provisions for Implementing Article 45 of the Staff Regulations and, as a subsidiary plea, on the unlawfulness of the said provisions in that they result in discrimination and infringe Article 5(5) of the Staff Regulations.

Action brought on 2 October 2006 — Loy v European Parliament

(Case F-117/06)

(2006/C 294/132)

Language of the case: Italian

Parties

Applicant: Maddalena Loy (Rome, Italy) (represented by: A. Fratini, lawyer)

Defendant: European Parliament

Form of order sought

— annul the decision of the European Parliament of 30 January 2006, which informed the applicant of the decision to reassign her from the Parliament's Italian Information Office, based in Rome, to the Information Directorate-General, based in Brussels, and of the extension of her temporary contract until 16 July 2006, instead of until 31 December 2009, as previously decided by the Parliament;

— order the defendant to pay, increased by default interest, all of the monthly salaries connected to the applicant's position of press attaché in Rome, from the date on which the temporary contract should have been renewed, that is, from 1 January 2006, until 31 December 2009;

— order the defendant to pay compensation for material damage, estimated at EUR 240 414,42, and EUR 500 000 for non-material damage or such higher or lower amount as the Court may determine;

— order the defendant to pay the costs.

Pleas in law and main arguments

The applicant invokes seven pleas in support of her action:

— the first concerns infringement of the principle of legitimate expectations, in that the administration gave the applicant to believe, beyond any reasonable doubt, that her position as press attaché with the Parliament's Rome Office would be confirmed and that her contract would be extended until 31 December 2009;

— the second concerns infringement of essential procedural requirements by reason of an insufficient and contradictory statement of reasons. In particular, the arguments alleging insufficiency of the applicant's professional capacities are contradicted by the reports concerning her drawn up pursuant to Article 43 of the Staff Regulations;

— the third concerns misuse of powers due to manifest error of assessment of fundamental circumstances and inconsistency. The reassignment decision is not based on professional incompetence or on the interests of the service but on the desire for retaliation on the part of the applicant's hierarchical superior;

— the fourth is based on breach of the duty of care in that, according to the applicant, the contested decision was adopted without the necessary care and without taking account of the employee's interests;

— the fifth concerns infringement of the principles of proportionality and of sound administration. First, the applicant received no warning of the possibility of transfer at such short notice. Second, the facts underlying the transfer were not properly ascertained and the statutory provisions relating to the behaviour for which the applicant is criticised were not complied with;

— the sixth concerns infringement of the right of defence, in particular the fact that the defendant, although having had the opportunity to hear the applicant, did not follow up her declarations in any way, and did not give the parties any opportunity to set out their views on the matter;

— the seventh concerns infringement of the duty to provide assistance set out in Article 24 of the Staff Regulations, which requires the administration to protect officials even where the person responsible for the matters regulated by the provision in question is another official. Although the applicant advanced prima facie evidence capable of supporting her allegations, the administration took no adequate measures.

Action brought on 2 October 2006 — Di Bucci v Commission

(Case F-118/06)

(2006/C 294/133)

Language of the case: French

Parties

Applicant: Vittorio Di Bucci (Brussels, Belgium) (represented by: M. van der Woude, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— annul the merit list and the list of officials promoted to grade A*12 in 2005, drawn up pursuant to Article 10(3) and (4) of the General Provisions for Implementing Article 45 of the Staff Regulations and published in Administrative Notice No 85-2005 of 23 November 2005 and, in any event, annul the decision not to include the applicant's name in the list of promoted officials;

— in so far as necessary, annul all of the measures which led to the adoption of that decision and, in particular, the decisions setting the number of points to be awarded to the applicant;

— order the defendant to pay the costs.

Pleas in law and main arguments

The applicant, an official assigned to the Legal Service who has regularly obtained one of the highest assessments, in terms of merit points (MP), in his grade and in his department, invokes firstly infringement of Article 45 of the Staff Regulations and of the General Provisions for implementing that article, which require merit to be the determining factor for the awarding of Directorate-General (DG) priority points and for promotion. The non-promotion of the applicant is the result, first, of the unlawful conduct which he has already challenged in Cases F-98/05 ([1]) and T-312/04 ([2]); second, of the criteria for awarding DG priority points within the Legal Service, which give priority to the most senior officials in the grade, irrespective of their merit; third, of certain flaws in the awarding of points, in particular by the Promotion Committee, to other officials.

The applicant further alleges that the contested measures also infringe the principle of equal treatment and the principle that officials should have reasonable career prospects, include a manifest error of assessment and constitute a misuse of powers. Finally, they are marred by several procedural or formal defects.

Finally, the applicant pleads the illegality of the abovementioned General Provisions, arguing as follows:

— by omitting to take into account the level of responsibility deployed and the use of different languages in the performance of duties, the General Provisions infringe the new version of Article 45 of the Staff Regulations;

— by providing that promotions are to be determined by the unreasoned awarding of priority points, on the proposal of each DG or the Promotion Committee, Articles 2, 4, 5, 6, 8, 9, 10, 12 and 13 of the General Provisions infringe in particular Articles 25(2) and 45 of the Staff Regulations;

— by attributing to each DG a uniform quota of points per official, Articles 4 and 6 of the General Provisions infringe Article 45 of the Staff Regulations, the principle that officials should have reasonable career prospects, and the principle of equal treatment;

— by providing for the award of transitional priority points based essentially on seniority within a grade, Article 13(2) of and Annex II to the General Provisions infringe Article 45 of the Staff Regulations;

— by providing for the awarding of priority points of the Personnel Committee in recognition of certain supplementary tasks undertaken in the interest of the institution which are already taken into account during the awarding of MPs and DG priority points, Article 9 of and Annex I to the General Provisions infringe Article 45 of the Staff Regulations as well as the principle that officials should have reasonable career prospects and the principle of equal treatment;

— by providing for more favourable treatment for officials of DGs or services that have fewer staff and for officials seconded to the offices of members of the Commission, Article 6(2) of the General Provisions infringes Article 45 of the Staff Regulations as well as the principle that officials should have reasonable career prospects and the principle of equal treatment.

([1]) OJ C 10 of 14.1.2006, p. 24 (case initially registered before the Court of First Instance of the European Communities under number T-381/05 and transferred to the Civil Service Tribunal of the European Communities by order of 15.12.2005).

([2]) OJ C 262 of 23.10.2004, p. 45.

Action brought on 9 October 2006 — Kerstens v Commission

(Case F-119/06)

(2006/C 294/134)

Language of the case: French

Parties

Applicant: Petrus J. F. Kerstens (Overijse, Belgium) (represented by: C. Mourato, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— annul the decision of 8 December 2005 of the Board of the Office for Administration and Payment of Individual Entitlements (PMO) amending the PMO's organisation chart;

— annul the express decision of the Appointing Authority of 6 July 2006 rejecting the applicant's complaint No R/167/06;

— order the Commission to pay the applicant a sum assessed on equitable principles at EUR 5 000as damages;

— order the Commission of the European Communities to pay the costs.

Pleas in law and main arguments

The applicant, formerly head of the 'Resources' Unit of the PMO, challenges the contested decision of 8 December 2005, which has the effect of reassigning him to a research position. He claims infringement of Article 7 of the Staff Regulations in that the reassignment decision in question is contrary to the interests of the service and does not respect the principle of assignment to an equivalent post. The applicant invokes in the second place infringement of the statutory provisions concerning disciplinary sanctions. Third, he alleges misuse of powers.

Order of the Civil Service Tribunal of 24 October 2006 — Martin Magone v Commission

(Case F-36/06) ([1])

(2006/C 294/135)

Language of the case: French

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

([1]) OJ C 96, 22.04.2005.

III

(Notices)

(2006/C 294/136)

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

OJ C 281, 18.11.2006

Past publications

OJ C 261, 28.10.2006

OJ C 249, 14.10.2006

OJ C 237, 30.9.2006

OJ C 224, 16.9.2006

OJ C 212, 2.9.2006

OJ C 190, 12.8.2006

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