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I

(Information)

COURT OF JUSTICE

COURT OF JUSTICE

The new Members of the Court take the oath

(2006/C 326/01)

Mr Bonichot, Ms Lindh and Mr von Danwitz, appointed Judges at the Court of Justice of the European Communities by decisions of the Representatives of the Governments of the Member States of the European Communities of 6 April 2006 ([1]) and 6 July 2006 ([2]), for the period from 7 October 2006 to 6 October 2012, took the oath before the Court on 6 October 2006.

Mr Bot, Mr Mazák and Ms Trstenjak, appointed Advocates General of the Court of Justice of the European Communities by decision of the Representatives of the Governments of the Member States of the European Communities of 6 April 2006 ([1]), for the period from 7 October 2006 to 6 October 2012, took the oath before the Court on 6 October 2006.

([1]) OJ L 104, 13.4.2006, p. 39.
([2]) OJ L 215, 5.8.2006, p. 30.

Election of the President of the Court

(2006/C 326/02)

At their meeting on 9 October 2006, the Judges of the Court of Justice of the European Communities elected, under Article 7(1) of the Rules of Procedure, Mr Skouris as President of the Court for the period from 9 October 2006 to 6 October 2009.

Election of the Presidents of the Chambers

(2006/C 326/03)

At their meeting on 9 October 2006, the Judges of the Court of Justice elected, under the first subparagraph of Article 10(1) of the Rules of Procedure, Mr Jann, Mr Timmermans, Mr Rosas and Mr Lenaerts as Presidents of the First, Second, Third and Fourth Chambers of five Judges respectively for a period of three years ending on 6 October 2009.

At their meeting on 12 October 2006, the Judges of the Court of Justice elected, under the second subparagraph of Article 10 (1) of the Rules of Procedure, Mr Schintgen, Mr Kūris, Mr Klučka and Mr Juhász as Presidents of the Fifth, Sixth, Seventh and Eighth Chambers of three Judges respectively for a period of one year ending on 6 October 2007.

Assignment of the Judges to Chambers

(2006/C 326/04)

At its meetings on 11 and 13 October 2006, the Court decided to assign the Judges to the Chambers as follows:

First Chamber

Mr Jann, President,

Mr Schintgen, Mr Tizzano, Mr Borg Barthet, Mr Ilešič and Mr Levits, Judges

Second Chamber

Mr Timmermans, President,

Mr Kūris, Mr Schiemann, Mr Makarczyk, Mr Bay Larsen and Mr Bonichot, Judges

Third Chamber

Mr Rosas, President,

Mr Klučka, Mr Cunha Rodrigues, Mr Lõhmus, Mr Ó Caoimh and Ms Lindh, Judges

Fourth Chamber

Mr Lenaerts, President,

Mr Juhász, Ms Silva de Lapuerta, Mr Arestis, Mr Malenovský and Mr von Danwitz, Judges

Fifth Chamber

Mr Schintgen, President,

Mr Tizzano, Mr Borg Barthet, Mr Ilešič and Mr Levits, Judges

Sixth Chamber

Mr Kūris, President,

Mr Schiemann, Mr Makarczyk, Mr Bay Larsen and Mr Bonichot, Judges

Seventh Chamber

Mr Klučka, President,

Mr Cunha Rodrigues, Mr Lõhmus, Mr Ó Caoimh and Ms Lindh, Judges

Eighth Chamber

Mr Juhász, President,

Ms Silva de Lapuerta, Mr Arestis, Mr Malenovský and Mr von Danwitz, Judges

Lists for the purposes of determining the composition of the formations of the Court

(2006/C 326/05)

At its meeting on 11 October 2006, the Court drew up the list, referred to in Article 11b(2) of the Rules of Procedure, for the purposes of determining the composition of the Grand Chamber as follows:

Mr Schintgen

Mr von Danwitz

Mr Tizzano

Mr Bonichot

Mr Cunha Rodrigues

Ms Lindh

Ms Silva de Lapuerta

Mr Bay Larsen

Mr Schiemann

Mr Ó Caoimh

Mr Makarczyk

Mr Levits

Mr Kūris

Mr Lõhmus

Mr Juhász

Mr Klučka

Mr Arestis

Mr Malenovský

Mr Borg Barthet

Mr Ilešič

At its meeting on 11 October 2006, the Court drew up the lists, referred to in the first subparagraph of Article 11c(2) of the Rules of Procedure, for the purposes of determining the composition of the Chambers of five Judges as follows:

First Chamber

Mr Schintgen

Mr Levits

Mr Tizzano

Mr Ilešič

Mr Borg Barthet

Second Chamber

Mr Schiemann

Mr Bonichot

Mr Makarczyk

Mr Bay Larsen

Mr Kūris

Third Chamber

Mr Cunha Rodrigues

Ms Lindh

Mr Klučka

Mr Ó Caoimh

Mr Lõhmus

Fourth Chamber

Ms Silva de Lapuerta

Mr von Danwitz

Mr Juhász

Mr Malenovský

Mr Arestis

At its meeting on 13 October 2006, the Court drew up the lists, referred to in the second subparagraph of Article 11c(2) of the Rules of Procedure, for the purposes of determining the composition of the Chambers of three Judges as follows:

Fifth Chamber

Mr Tizzano

Mr Borg Barthet

Mr Ilešič

Mr Levits

Sixth Chamber

Mr Schiemann

Mr Makarczyk

Mr Bay Larsen

Mr Bonichot

Seventh Chamber

Mr Cunha Rodrigues

Mr Lõhmus

Mr Ó Caoimh

Ms Lindh

Eighth Chamber

Ms Silva de Lapuerta

Mr Arestis

Mr Malenovský

Mr von Danwitz

Appointment of the First Advocate General

(2006/C 326/06)

Under the third subparagraph of Article 10(1) of the Rules of Procedure, the Court of Justice appointed Ms Kokott as First Advocate General for a period of one year ending on 6 October 2007.

The new Members of the Court of First Instance take the oath

(2006/C 326/07)

Mr Wahl and Mr Prek, appointed Judges at the Court of First Instance of the European Communities by decisions of the Representatives of the Governments of the Member States of the European Communities of 22 June 2006 [1] and 20 September 2006 [2], for the period from 7 October 2006 to 31 August 2007, took the oath before the Court on 6 October 2006.

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[1] OJ L 189, 12.7.2006, p. 15.
[2] OJ L 274, 5.10.2006, p. 15.

Judgment of the Court (Second Chamber) of 26 October 2006 — Commission of the European Communities v Portuguese Republic

(Case C-239/04) ([1])

(Failure of a Member State to fulfil obligations — Directive 92/43/EEC — Conservation of natural habitats and of wild fauna and flora — Article 6(4) — Castro Verde special protection area — Lack of alternative solutions)

(2006/C 326/08)

Language of the case: Portuguese

Parties

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

Defendant: Portuguese Republic (represented by: L. Fernandes, Agent, and J.F. Ganderez and R. Gomes da Silva, advogados)

Re:

Failure of a Member State to fulfil its obligations — Article 6(4) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7) — Construction of a motorway whose route crosses a special protection area for wild birds — Environmental impact assessment showing negative implications of the route — Existence of alternatives to the route constructed

Operative part of the judgment

The Court:

1. *Declares that, by implementing a project for a motorway whose route crosses the Castro Verde special protection area, notwithstanding the negative environmental impact assessment and without having demonstrated the absence of alternative solutions for the route concerned, the Portuguese Republic has failed to fulfil its obligations under Article 6(4) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, as amended by Directive 97/62/EC of 27 October 1997;*

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

([1]) OJ C 228, 11.9.2004.

Judgment of the Court (First Chamber) of 26 October 2006 (reference for a preliminary ruling from the College van Beroep voor het bedrijfsleven –Netherlands) — Koninklijke Coöperatie Cosun UA v Minister van Landbouw, Natuur en Voedselkwaliteit

(Case C-248/04) ([1])

(Preliminary reference — Agriculture — Common organisation of the markets — Sugar — Article 26 of Regulation (EEC) No 1785/81 and Article 3 of Regulation (EEC) No 2670/81 — Charge due for C Sugar disposed of on the internal market — Inapplicability of Article 13 of Regulation (EEC) No 1430/79 — No possibility of repayment or remission on grounds of equity — Validity of Regulation (EEC) No 1785/81 and Regulation No 2670/81 — Principles of equality and legal certainty — Equity)

(2006/C 326/09)

Language of the case: Dutch

Referring court

College van Beroep voor het bedrijfsleven

Parties to the main proceedings

Applicant: Koninklijke Coöperatie Cosun UA

Defendant: Minister van Landbouw, Natuur en Voedselkwaliteit

Re:

Reference for a preliminary ruling — College van Beroep voor het bedrijfsleven — Validity of Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organisation of the markets in the sugar sector (OJ 1981 L 177, p. 4) and Commission Regulation (EEC) No 2670/81 of 14 September 1981 laying down detailed implementing rules in respect of sugar production in excess of the quota (OJ 1981 L 262, p. 14) where there is no procedure for the remission of additional levies comparable to that provided for in Article 13 of Council Regulation (EEC) No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties (OJ 1979 L 175, p. 1) — Remission on equitable grounds — Producer of non-quota sugar (C sugar) not involved in a case of fraud established by the national authorities and who, for reasons relating to the investigation, was not immediately informed thereof

Operative part of the judgment

Examination of the first question has disclosed nothing capable of affecting the validity of Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organisation of the markets in the sugar sector, as amended by Council Regulation (EEC) No 305/91 of 4 February 1991, or of Commission Regulation (EEC) No 2670/81 of 14 September 1981 laying down detailed implementing rules in respect of sugar production in excess of the quota, as amended by Commission Regulation (EEC) No 3559/91 of 6 December 1991.

([1]) OJ C 217, 28.08.2004.

Judgment of the Court (Second Chamber) of 26 October 2006 — Commission of the European Communities v Italian Republic

(Case C-371/04) ([1])

(Failure of a Member State to fulfil obligations — Freedom of movement for workers — Post in the civil service — Failure to take account of professional experience and seniority gained in other Member States — Articles 10 EC and 39 EC — Article 7(1) of Regulation (EEC) No 1612/68)

(2006/C 326/10)

Language of the case: Italian

Parties

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

Defendant: Italian Republic (represented by: I.M. Braguglia, Agent, and G. Albenzio, avvocato dello Stato)

Re:

Failure of a Member State to fulfil obligations — Articles 10 EC and 39 EC and Article 7(1) of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition, 1968 (II) p. 475) — Employees of the Italian public service — Failure to take account of the professional experience and seniority acquired in another Member State

Operative part of the judgment

The Court:

1. *Declares that, by failing to take into account the professional experience and seniority gained in the exercise of a comparable activity within the public administration of another Member State by a Community worker employed in the Italian civil service, the Italian Republic has failed to fulfil its obligations under Article 39 EC and Article 7(1) of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community;*

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

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

([1]) OJ C 273, 06.11.2004.

Judgment of the Court (First Chamber) of 9 November 2006 — Commission of the European Communities v Kingdom of Belgium

(Case C-433/04) ([1])

(Failure of a Member State to fulfil obligations — Articles 49 EC and 50 EC — Freedom to provide services — Activities in the construction sector — Prevention of tax fraud in the construction sector — National legislation requiring the withholding of 15 % on payments to contracting partners not registered in Belgium — National legislation imposing joint and several liability for the tax debts of contracting partners not registered in Belgium)

(2006/C 326/11)

Language of the case: French

Parties

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

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

Re:

Failure of a Member State to fulfil obligations — Breach of Articles 49 EC and 50 EC — National legislation requiring principals and contractors, on pain of a fine, to withhold 15 % of the amount billed by contracting partners not registered in Belgium and to pay the sum withheld to the Belgian authorities, in order to ensure that the tax debts of those contracting partners are paid — Joint and several liability of principals and contractors for the tax debts of their contracting partners who are not registered

Operative part of the judgment

The Court:

1. *Declares that, by obliging principals and contractors who have recourse to foreign contracting partners not registered in Belgium to withhold 15 % of the sum payable for work carried out and by imposing on those principals and contractors joint and several liability for the tax debts of such contracting partners, the Kingdom of Belgium has failed to fulfil its obligations under Articles 49 EC and 50 EC;*

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

([1]) OJ C 300, 04.12.2004.

Judgment of the Court (Grand Chamber) of 14 November 2006 (reference for a preliminary ruling from the Rechtbank van eerste aanleg te Gent (Belgium)) — Mark Kerckhaert, Bernadette Morres v Belgische Staat

(Case C-513/04) ([1])

(Income tax — Dividends — Tax burden on dividends from shareholdings in companies established in another Member State — No possibility in the State of residence to set off income tax levied at source in another Member State)

(2006/C 326/12)

Language of the case: Dutch

Referring court

Rechtbank van eerste aanleg te Gent

Parties to the main proceedings

Applicants: Mark Kerckhaert, Bernadette Morres

Defendant: Belgische Staat

Re:

Reference for a preliminary ruling — Rechtbank van eerste aanleg te Gent — Interpretation of Article 56(1) EC — Restriction resulting from a national income tax provision — Domestic and foreign dividends — Uniform tax rate — Tax burden higher in regard to dividends from shareholdings in companies established in another Member State — Taxation at source — Not taken into account — Free movement of capital — Discrimination

Operative part of the judgment

Article 73b(1) of the EC Treaty (now Article 56(1) EC) does not preclude legislation of a Member State, such as Belgian tax legislation, which, in the context of tax on income, makes dividends from shares in companies established in the territory of that State and dividends from shares in companies established in another Member State subject to the same uniform rate of taxation, without providing for the possibility of setting off tax levied by deduction at source in that other Member State.

([1]) OJ C 57, 5.3.2005.

Judgment of the Court (First Chamber) of 9 November 2006 (reference for a preliminary ruling from the Korkein hallinto-oikeus — Finland) — Pirkko Marjatta Turpeinen

(Case C-520/04) ([1])

(Freedom of movement for persons — Income tax — Retirement pension — Higher rate of tax for retired persons residing in another Member State)

(2006/C 326/13)

Language of the case: Finnish

Referring court

Korkein hallinto-oikeus

Parties to the main proceedings

Applicant: Pirkko Marjatta Turpeinen

Re:

Reference for a preliminary ruling — Korkein hallinto-oikeus — Interpretation of Articles 12 EC and 39 EC and of Council Directive 90/365/EEC of 28 June 1990 on the right of residence for employees and self-employed persons who have ceased their occupational activity (OJ 1990 L 180, p. 28) — National legislation under which the income of non-residents is subject to a withholding tax — Pension paid to a retired person resident in another Member State subject to a higher rate of tax than if that person had been resident in the Member State concerned

Operative part of the judgment

Article 18 EC must be interpreted as meaning that it precludes national legislation according to which the income tax on a retirement pension paid by an institution of the Member State concerned to a person residing in another Member State exceeds in certain cases the tax which would be payable if that person resided in the first Member State, where that pension constitutes all or nearly all of that person's income.

([1]) OJ C 57, 05.03.2005.

Judgment of the Court (First Chamber) of 26 October 2006 (reference for a preliminary ruling from the Verwaltungsgericht Aachen, Germany) — Hasan Güzeli v Oberbürgermeister der Stadt Aachen

(Case C-4/05) ([1])

(Reference for a preliminary ruling — EEC-Turkey Association — Freedom of movement for workers — Article 10(1) of Decision No 1/80 of the Association Council — Refusal to extend a Turkish worker's residence permit)

(2006/C 326/14)

Language of the case: German

Referring court

Verwaltungsgericht Aachen

Parties to the main proceedings

Applicant: Hasan Güzeli

Defendant: Oberbürgermeister der Stadt Aachen

Re:

Reference for a preliminary ruling — Verwaltungsgericht Aachen — Interpretation of Article 10(1) of Decision No 1/80 of the EEC/Turkey Association Council — Non discrimination against Turkish workers duly registered as belonging to the labour force as regards conditions of employment — Refusal to extend the residence permit putting an end to the employment of a seasonal Turkish worker in possession of a work permit of unlimited duration

Operative part of the judgment

The first indent of Article 6(1) of Decision No 1/80 of the EEC Turkey Association Council of 19 September 1980 on the development of the Association must be interpreted as meaning that a Turkish worker can rely on the rights conferred upon him by that provision only where his paid employment with a second employer complies with the conditions laid down by law and regulation in the host Member State governing entry into its territory and employment. It is for the national court to make the requisite findings in order to establish whether that is the case in respect of a Turkish worker who changed employer prior to expiry of the period of three years provided for in the second indent of Article 6(1) of that decision.

The second sentence of Article 6(2) of Decision No 1/80 must be interpreted as meaning that it is intended to ensure that periods of interruption of legal employment on account of involuntary unemployment and long term sickness do not affect the rights that the Turkish worker has already acquired owing to preceding periods of employment the length of which is fixed in each of the three indents of Article 6(1) respectively.

([1]) OJ C 57, 05.04.2005.

Judgment of the Court (Third Chamber) of 26 October 2006 — Commission of the European Communities v Kingdom of Spain

(Case C-36/05) ([1])

(Failure of a Member State to fulfil obligations — Directive 92/100/EEC — Copyright — Rental and lending right — Failure to transpose within the prescribed period)

(2006/C 326/15)

Language of the case: Spanish

Parties

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

Defendant: Kingdom of Spain (represented by: I. del Cuvillo Contreras, acting as Agent)

Re:

Failure of a Member State to fulfil its obligations — Infringement of Articles 1 and 5 of Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (OJ 1992 L 346, p. 61)

Operative part of the judgment

The Court:

1) *Declares that, by exempting almost all, if not all, categories of establishments undertaking the public lending of works protected by copyright from the obligation to pay remuneration to authors for the lending carried out, the Kingdom of Spain has failed to fulfil its obligations under Articles 1 and 5 of Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property;*

2) *Orders the Kingdom of Spain to pay the costs.*

([1]) OJ C 69 of 19.03.2005.

Judgment of the Court (Second Chamber) of 26 October 2006 — Commission of the European Communities v Hellenic Republic

(Case C-65/05) ([1])

(Failure of a Member State to fulfil obligations — Articles 28 EC and 30 EC — Free movement of goods — Article 43 EC — Freedom of establishment — Article 49 EC — Freedom to provide services — Prohibition on the installation and operation of electrical, electromechanical and electronic games subject to criminal or administrative sanctions — Directive 98/34/EC — Technical standards and regulations — National legislation applicable to electrical, electromechanical and electronic games)

(2006/C 326/16)

Language of the case: Greek

Parties

Applicant: Commission of the European Communities (represented by: M. Patakia, Agent)

Defendant: Hellenic Republic (represented by: A. Samoni-Rantou and N. Dafniou, Agents)

Re:

Failure of a Member State to fulfil obligations — Arts 28, 43 and 49 EC and Art. 8 of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations (OJ 1998 L 204, p. 37) — National legislation applicable to electronic computer games

Operative part of the judgment

The Court:

1. *Declares that, by inserting into Articles 2(1) and 3 of Law No 3037/2002 the prohibition, subject to the criminal and administrative penalties set out in Articles 4 and 5 of the same law, on the installation and operation of all electrical, electromechanical and electronic games, including all computer games, on all public or private premises apart from casinos, the Hellenic Republic has failed to fulfil its obligations under Articles 28 EC, 43 EC and 49 EC and Article 8 of Directive 98/34/CE of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services, as amended by Directive 98/48/EC of the European Parliament and of the Council of 20 July 1998;*

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

([1]) OJ C 82, 02.04.2005.

Judgment of the Court (First Chamber) of 26 October 2006 — Koninklijke Coöperatie Cosun UA v Commission of the European Communities

(Case C-68/05 P) ([1])

(Appeal — Agriculture — Common organisation of the markets — Sugar — Article 26 of Regulation (EEC) No 1785/81 and Article 3 of Regulation (EEC) No 2670/81 — Charge owing for C Sugar disposed of on the internal market — Application for remission — Equity clause laid down in Article 13 of Regulation (EEC) No 1430/79 — 'Import or export duties' — Principles of equality and legal certainty — Equity)

(2006/C 326/17)

Language of the case: Dutch

Parties

Applicant: Koninklijke Coöperatie Cosun UA (represented by: M. Slotboom and N.J. Helder, advocaten)

Other party to the proceedings: Commission of the European Communities (represented by: X. Lewis, Agent, F. Tuytschaever, advocaat)

Re

Appeal against the judgment of the Court of First Instance (Fifth Chamber) of 7 December 2004 in Case T-240/02 Koninklijke Coöperatie Cosun v Commission, by which the Court of First Instance dismissed an application for annulment of Commission Decision REM/19/10 of 2 May 2002 declaring inadmissible the request for remission of import duties lodged by the Netherlands in favour of the applicant

Operative part of the Judgment

1. *The appeal is dismissed;*

2. *Koninklijke Coöperatie Cosun UA is ordered to pay the costs.*

([1]) OJ C 82, 02.04.2005.

Judgment of the Court (Third Chamber) of 9 November 2006 (reference for a preliminary ruling from the Finanzgericht Hamburg — Germany) — Heinrich Schulze GmbH & Co. KG i.L. v Hauptzollamt Hamburg-Jonas

(Case C-120/05) ([1])

(Export refunds — Conditions for granting — Export declaration — Lack of documentary evidence — Use of other types of evidence)

(2006/C 326/18)

Language of the case: German

Referring court

Finanzgericht Hamburg

Parties to the main proceedings

Applicant: Heinrich Schulze GmbH & Co. KG i.L.

Defendant: Hauptzollamt Hamburg-Jonas

Re:

Reference for a preliminary ruling — Finanzgericht Hamburg — Interpretation of the third subparagraph of Article 7(2) of Commission Regulation (EC) No 1222/94 of 30 May 1994 laying down common detailed rules for the application of the system of granting export refunds on certain agricultural products exported in the form of goods not covered by Annex II to the Treaty, and the criteria for fixing the amount of such refunds (OJ 1994 L 136, p. 5) — Exporter unable to fulfil the obligation to provide the competent authorities, in support of its declaration, with all documents and information regarded by those authorities as appropriate — Documents destroyed by force majeure — Possibility of using other types of evidence.

Operative part of the judgment

The third subparagraph of Article 7(1) of Commission Regulation (EC) No 1222/94 of 30 May 1994 laying down common detailed rules for the application of the system of granting export refunds on certain agricultural products exported in the form of goods not covered by Annex II to the Treaty, and the criteria for fixing the amount of such refunds, as amended by Commission Regulation (EC) No 229/96 of 7 February 1996, is to be interpreted as not precluding an exporter from providing evidence by other means where it is unable to provide in support of its export declaration documentary evidence relating to the quantities of products actually used in the manufacture of exported goods, even in a case of force majeure. The national authorities are to assess that other means of evidence, in accordance with the detailed rules laid down in the national law, provided, however, that those rules do not affect either the scope or effectiveness of Community law. For that purpose, national authorities must also take into consideration documents previously exchanged with the exporter when the application is made under the simplified procedure provided for in the third subparagraph of Article 3(2) of that regulation.

([1]) OJ C 143, 11.06.2005.

Judgment of the Court (First Chamber) of 26 October 2006 (reference for a preliminary ruling from the Audiencia Provincial de Madrid — Spain) — Elisa María Mostaza Claro v Centro Móvil Milenium SL

(Case C-168/05) ([1])

(Directive 93/13/EEC — Unfair terms in consumer contracts — Failure to raise the unfair nature of a term during arbitration proceedings — Possibility of raising that objection in the context of an action brought against the arbitration award)

(2006/C 326/19)

Language of the case: Spanish

Referring court

Audiencia Provincial de Madrid

Parties to the main proceedings

Applicant: Elisa María Mostaza Claro

Defendant: Centro Móvil Milenium SL

Re:

Reference for a preliminary ruling — Audiencia Provincial de Madrid — Interpretation of Articles 6(1) and 7(1) of, and point 1(q) of the annex to, Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29) — Adequate and effective means to prevent the use of unfair terms — Invalidity of an arbitration agreement not pleaded by the consumer during the arbitration proceedings

Operative part of the judgment

Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as meaning that a national court seised of an action for annulment of an arbitration award must determine whether the arbitration agreement is void and annul that award where that agreement contains an unfair term, even though the consumer has not pleaded that invalidity in the course of the arbitration proceedings, but only in that of the action for annulment.

([1]) OJ C 155 of 25.6.2005.

Judgment of the Court (First Chamber) of 7 September 2006 (references for a preliminary ruling from the Arios Pagos — Greece) — G. Agorastoudis v Goodyear Hellas AVEE

(Joined Cases C-187/05 to C-190/05) ([1])

(Collective redundancies — Directive 75/129/EEC — Article 1 (2)(d) — Termination of an establishment's activities as a result of a judicial decision — Termination of an establishment's activities of the employer's own volition)

(2006/C 326/20)

Language of the case: Greek

Referring court

Arios Pagos (Greece)

Parties to the main proceedings

Applicants: Georgios Agorastoudis and Others (C-187/05), Ioannis Panou and Others (C-188/05), Kostantinos Kotsampougioukis and Others (C-189/05), Georgios Akritopoulos and Others (C-190/05)

Defendant: Goodyear Hellas AVEE

Intervening parties: Geniki Sinomospondia Ergaton Elladas (GSEE), Ergatoipalliliko Kentro Thessalonikis (C-187/05 and C-189/05)

Re:

Reference for a preliminary ruling — Arios Pagos — Interpretation of Article 1(2) of Council Directive 75/129/EEC of 17 February 1975 on the approximation of the laws of the Member States relating to collective redundancies (OJ 1975 L 48, p. 29) — Inapplicability of the directive to workers affected by the termination of an establishment's activities where that is the result of a judicial decision — Meaning

Operative part of the judgment

Council Directive 75/129/EEC of 17 February 1975 on the approximation of the laws of the Member States relating to collective redundancies must be interpreted as being applicable in the case of collective redundancies that result from the definitive termination of the operation of an undertaking or establishment which has been decided on by the employer of his own accord without a prior judicial decision, and the exception laid down in Article 1(2)(d) of that directive cannot preclude its application.

([1]) OJ C 171, 09.07.2005.

Judgment of the Court (Second Chamber) of 26 October 2006 (reference for a preliminary ruling from the Centrale Raad van Beroep — Netherlands) — K. Tas-Hagen, R.A. Tas v Raadskamer WUBO van de Pensioen- en Uitkeringsraad

(Case C-192/05) ([1])

(Benefit awarded to civilian war victims by a Member State — Condition of residence in the territory of that State at the time when the application for the benefit is submitted — Article 18(1) EC)

(2006/C 326/21)

Language of the case: Dutch

Referring court

Centrale Raad van Beroep

Parties to the main proceedings

Applicants: K. Tas-Hagen, R.A. Tas

Defendant: Raadskamer WUBO van de Pensioen- en Uitkeringsraad

Re:

Preliminary ruling — Centrale Raad van Beroep — Grant of a benefit by a Member State to civilian war victims — Benefit reserved for nationals of the Member State in question who are resident in that Member State at the time when the application is submitted — Whether compatible with Article 18 EC

Operative part of the judgment

Article 18(1) EC must be interpreted as precluding legislation of a Member State under which it refuses to grant to one of its nationals a benefit for civilian war victims solely on the ground that, at the time at which the application was submitted, the person concerned was resident, not in the territory of that Member State, but in the territory of another Member State.

([1]) OJ C 182, 23. 7. 2005.

Judgment of the Court (Sixth Chamber) of 26 October 2006. — Commission of the European Communities v Italian Republic

(Case C-198/05) ([1])

(Failure to fulfil obligations — Directive 92/100/EEC — Rights related to copyright in the field of intellectual property — Public lending right — Failure to transpose within the period prescribed)

(2006/C 326/22)

Language of the case: Italian

Parties

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

Defendant: Italian Republic (represented by: M Braguglia, Agent, and M. Massella Ducci Teri, lawyer)

Re:

Failure to fulfil obligations — Infringement of Articles 1 and 5 of Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (OJ 1992 L 346, p. 61) — Derogation from the exclusive right in respect of public lending — Scope

Operative part of the judgment

The Court:

1. *Declares that, by exempting from the public lending right all categories of lending establishment accessible to the public within the meaning of Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property, the Italian Republic has failed to fulfil its obligations under Articles 1 and 5 of that Directive.*

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

([1]) OJ C 182, 23.7.2005.

Judgment of the Court (Grand Chamber) of 26 October 2006 (reference for a preliminary ruling from the Cour d'appel de Bruxelles (Belgium)) — European Community v Belgian State

(Case C-199/05) ([1])

(Protocol on the Privileges and Immunities of the European Communities — Article 3 — Indirect taxes — Decisions of national courts and tribunals — Registration duties)

(2006/C 326/23)

Language of the case: French

Referring court

Cour d'appel de Bruxelles (Belgium)

Parties to the main proceedings

Applicant: European Community

Defendant: Belgian State

Re:

Request for a preliminary ruling — Cour d'appel de Bruxelles — Interpretation of the second and third paragraphs of Article 3 of the Protocol on the Privileges and Immunities of the European Communities of 8 April 1965 — National legislation introducing a duty in respect of decisions of courts and tribunals concerning orders to pay amounts of money or securities and calculation of amounts of money or securities payable

Operative part of the judgment

1) *Duties such as the registration duties which must be paid following decisions of national courts and tribunals ordering payment of money or liquidation of securities do not amount merely to charges for public utility services within the meaning of the third paragraph of Article 3 of the Protocol on the Privileges and Immunities of the European Communities.*

2) *The second paragraph of Article 3 of that Protocol is to be interpreted as meaning that duties such as the registration duties which must be paid following decisions of national courts and tribunals ordering payment of money or liquidation of securities do not fall within the scope of that provision.*

([1]) OJ C 182 of 23.7.2005.

Judgment of the Court (Second Chamber) of 9 November 2006 (reference for a preliminary ruling from the Tribunal des affaires de sécurité sociale de Longwy — France) — Fabien Nemec v Caisse régionale d'assurance maladie du Nord-Est

(Case C-205/05) ([1])

(Social security for migrant workers — Article 42 EC — Regulation (EEC) No 1408/71 — Article 58 — Allowance for workers exposed to asbestos — Calculation of cash benefits — Refusal to take account of pay earned in another Member State)

(2006/C 326/24)

Language of the case: French

Referring court

Tribunal des affaires de sécurité sociale de Longwy

Parties to the main proceedings

Applicant: Fabien Nemec

Defendant: Caisse régionale d'assurance maladie du Nord-Est

Re:

Reference for a preliminary ruling — Tribunal des affaires de sécurité sociale de Longwy — Interpretation of Article 39 EC, Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (Text with relevance for the EEA and for Switzerland) (OJ 2004 L 166, p. 1) and Article 15 of Regulation (EEC) No 574/72 of the Council of 21 March 1972 fixing the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons and their families moving within the Community (OJ English Special Edition 1972 (I), p. 159) — Failure to take pay earned in another Member State into account when calculating the amount of the allowance for asbestos workers in the case where that pay has not been subject to national social security contributions

Operative part of the judgment

Article 58(1) of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, interpreted in accordance with the objective set out in Article 42 EC, requires that, in a situation such as that in the main proceedings, calculation of the 'average wage or salary', within the meaning of the first of those two provisions, takes into account the pay that the person concerned could reasonably have earned, given his subsequent employment record, had he continued to work in the Member State in which the competent institution is situated.

([1]) OJ C 182, 23.07.2005.

Judgment of the Court (Fourth Chamber) of 26 October 2006 — Commission of the European Communities v Kingdom of Sweden

(Case C-206/05) ([1])

(Failure of a Member State to fulfil obligations — Directive 90/427/EEC — Intra-Community trade in equidae — Requirement for a breeding stallion to be subject to an assessment of its genetic value in Sweden)

(2006/C 326/25)

Language of the case: Swedish

Parties

Applicant: Commission of the European Communities (represented by: F. Erlbacher and K. Simonsson, Agents)

Defendant: Kingdom of Sweden (represented by: K. Norman, Agent)

Re:

Failure to fulfil obligations — Infringement of Article 28 EC and Article 3 of Council Directive 90/427/EEC of 26 June 1990 on the zootechnical and genealogical conditions governing intra-Community trade in equidae (OJ 1990 L 224, p. 55) — Requirement for breeding stallions to be assessed as to their genetic value in Sweden

Operative part of the judgment

The Court:

1) *Declares that, by having laid down in its national legislation a requirement that stallions are to be subject to an assessment of their genetic value in Sweden in order to be used for off-farm mating, the Kingdom of Sweden has failed to fulfil its obligations under Article 3 of Council Directive 90/427/EEC of 26 June 1990 on the zootechnical and genealogical conditions governing intra-Community trade in equidae;*

2) *Orders the Kingdom of Sweden to pay the costs.*

([1]) OJ C 229, 17. 9. 2005.

Judgment of the Court (Second Chamber) of 9 November 2006 — Commission of the European Communities v Ireland

(Case C-216/05) ([1])

(Failure of a Member State to fulfil obligations — Assessment of the effects of certain projects on the environment — Directives 85/337/EEC and 97/11/EC — National legislation — Participation by the public in certain assessment procedures upon payment of fees)

(2006/C 326/26)

Language of the case: English

Parties

Applicant: Commission of the European Communities (represented by: X. Lewis, Agent)

Defendant: Ireland (represented by: D. O'Hagan, Agent, B. Murray, Senior Counsel, and G. Simons, Barrister-at-Law)

Re:

Failure of a Member State to fulfil obligations — Breach of Articles 6 and 8 of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40), as amended by Directive 97/11/EC of 3 March 1997 (OJ 1997 L 73, p. 5) — National legislation giving the public the opportunity to participate in certain assessment procedures on payment of a participation fee

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 193, 06.08.2005.

Judgment of the Court (Third Chamber) of 9 November 2006 — Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland

(Case C-236/05) ([1])

(Failure of a Member State to fulfil obligations — Regulation (EEC) No 2847/93 — Control system in the fisheries sector — Delay in communication of required data)

(2006/C 326/27)

Language of the case: English

Parties

Applicant: Commission of the European Communities (represented by: K. Banks, Agent)

Defendant: United Kingdom of Great Britain and Northern Ireland (represented by: S. Nwaokolo, Agent, and by D.J. Rhee, Barrister)

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 19(i) of Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy (OJ 1993 L 261, p. 1) — Failure to provide the data required thereunder within the period prescribed

Operative part of the judgment

The Court:

1. *Declares that by not communicating in time the data required by the first and third indents of Article 19i of Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy, as last amended by Council Regulation (EC) No 1954/2003 of 4 November 2003, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under that regulation;*

2. *Orders the United Kingdom of Great Britain and Northern Ireland to pay the costs.*

([1]) OJ C 193, 06.08.2005.

Judgment of the Court (First Chamber) of 9 November 2006 — Agraz, SA and Others v Commission of the European Communities

(Case C-243/05 P) ([1])

(Appeals — Common organisation of the markets in processed fruit and vegetable products — Production aid for processed tomato products — Method of calculating the amount of the aid — Non-contractual liability of the Community — Certain loss)

(2006/C 326/28)

Language of the case: French

Parties

Appellants: Agraz, SA, established in Madrid (Spain), Agrícola Conservera de Malpica, SA, established in Toledo (Spain), Agridoro Soc. coop. arl, established in Pontenure (Italy), Alfonso Sellitto SpA, established in Mercato San Severino (Italy), Alimentos Españoles, Alsat, SL, established in Don Benito, (Spain), AR Industrie Alimentari SpA, established in Angri (Italy), Argo Food — Packaging & Innovation Co. SA, established in Serres (Greece), Asteris SA, established in Athens

(Greece), Attianese Srl, established in Nocera Superiore (Italy), Audecoop Distillerie Arzens — Techniques séparatives (AUDIA), established in Bram (France), Benincasa Srl, established in Angri, Boschi Luigi e Figli SpA, established in Fontanellato (Italy), CAS SpA, established in Castagnaro (Italy), Calispa SpA, established in Castel San Giorgio (Italy), Campil — Agro Industrial do Campo do Tejo Lda, established in Cartaxo (Portugal), Campoverde Srl, established in Nocelleto di Carinola (Italy), Carlo Manzella & C. Sas, established in Castel San Giovanni (Italy), Carnes y Conservas Españolas SA, established in Mérida (Spain), CO.TRA.PO Soc. coop. arl, in liquidation, established in Adria (Italy), Columbus Srl, established in Parma (Italy), Compal — Companhia Produtora de Conservas Alimentares, SA, established in Almeirim (Portugal), Conditalia Srl, established in Nocera Superiore, Conservas El Cidacos, SA, established in Autol (Spain), Conservas Elagón, SA, established in Coria (Spain), Conservas Martinete, SA, established in Puebla de la Calzada (Spain), Conservas Vegetales de Extremadura, SA, established in Villafranco del Guadiana (Spain), Conserve Italia Soc. coop. arl, established in San Lazzaro di Savena (Italy), Conserves France SA, established in Nîmes (France), Conserves Guintrand SA, established in Carpentras (France), Conservificio Cooperativo Valbiferno Soc. coop. arl, established in Guglionesi (Italy), Consorzio Casalasco del Pomodoro Soc. coop. arl, established in Rivarolo del Re ed Uniti (Italy), Consorzio Padano Ortofrutticolo (Copador) Soc. coop. arl, established in Collecchio (Italy), Copais Food and Beverage Company SA, established in Nea Ionia (Greece), Tin Industry D. Nomikos SA, established in Marousi (Greece), Davia Srl, established in Gragnano (Italy), De Clemente Conserve Srl, established in Fisciano (Italy), De.Con Srl, established in Scafati (Italy), Desco SpA, established in Terracina (Italy), Di Leo Nobile SpA — Industria Conserve Alimentari, established in Castel San Giorgio, Ditta Emilio Marotta, established in Sant'Antonio Abate (Italy), E. & O. von Felten SpA, established in Fontanini (Italy), Elais SA, established in Athens, Emiliana Conserve Srl, established in Busseto (Italy), Enrico Perano & Figli Spa, established in San Valentino Torio (Italy), FIT — Fomento da Indústria do Tomate, SA, established in Águas de Moura (Portugal), Faiella & C. Srl, established in Scafati, Feger di Gerardo Ferraioli SpA, established in Angri, Fratelli D'Acunzi Srl, established in Nocera Superiore, Fruttagel Soc. coop. arl, established in Alfonsine (Italy), Giaguaro SpA, established in Sarno (Italy), Giulio Franzese Srl, established in Carbonara di Nola (Italy), Greci Geremia & Figli SpA, established in Parma, Greci — Industria Alimentare SpA, established in Parma, Greek Canning Co. SA 'Kyknos', established in Nauplie (Greece), 'Grilli Paolo & Figli Sas' di Grilli Enzo e Togni Selvino, established in Gambettola (Italy), Heinz Iberica, SA, established in Alfaro (Spain), IAN — Industrias Alimentarias de Navarra, SA, established in Vilafranca (Spain), Indústrias de Alimentação Idal, Lda, established in Benavente (Portugal), Industrie Rolli Alimentari SpA, established in Roseto degli Abruzzi (Italy), Italagro — Indústria de Transformação de Produtos Alimentares, SA, established in Castanheira do Ribatejo (Portugal), La Cesenate Conserve Alimentari SpA, established in Cesena (Italy), La Doria SpA, established in Angri, La Dorotea di Giuseppe Alfano & C. Srl, established in Sant'Antonio Abate, La Rosina Srl, established in Angri, Le Quattro Stelle Srl, established in Angri, Louis Martin Production SAS, established in Monteux (France), Menu Srl, established in Medolla (Italy), Mutti SpA, established in Montechiarugolo (Italy), National Conserve Srl, established in Sant'Egidio del Monte Albino (Italy), Nestlé España, SA, established in Miajadas (Spain), Nuova Agricast Srl, established in Verignola (Italy), Pancrazio SpA, established in Cava De' Tirreni (Italy), Pecos SpA, established in Castel San Giorgio, Pomagro Srl, established in Fisciano (Italy), Raffaele Viscardi Srl, established in Scafati, Rodolfi Mansueto SpA, established in Ozzano Taro, Salvati Mario & C. SpA, established in Mercato San Severino, Sefa Srl, established in Nocera Superiore, Serraiki Konservopia Oporokipeftikon Serko SA, established in Serres, Soc. coop. arl. A.R.P. — Agricoltori Riuniti Piacentini, established in Gariga di Podenzano (Italy), Sociedade de Industrialização de Produtos Agrícolas — Sopragol SA, established in Mora (Portugal), Spineta SpA, established in Pontecagnano Faiano (Italy), Star Stabilimento Alimentare SpA, established in Agrate Brianza (Italy), Sugal Alimentos, SA, established in Azambuja (Portugal), Sutol Indústrias Alimentares, Lda, established in Alcácer do Sal (Portugal), Tomsil — Sociedade Industrial de Concentrado de Tomate, SA, established in Ferreira do Alentejo (Portugal), Zanae — Nicoglou levures de boulangerie, Industrie commerce alimentaire SA, established in Thessaloniki (Greece), (represented by: J.L. da Cruz Vilaça and D. Choussy, lawyers,)

Other party to the proceedings: Commission of the European Communities (represented by: M. Nolin, F. Clotuche-Duvieusart and L. Visaggio, acting as Agents,)

Re:

Appeal against the judgment delivered on 17 March 2005 by the Court of First Instance (Third Chamber), *Agraz, SA and Others* v *Commission*, in which the Court rejected an action for compensation for the damage allegedly sustained by the applicants by reason of the method adopted for calculation of production aid as set out in Commission Regulation (EC) No 1519/2000 of 12 July 2000 setting for the 2000/1 marketing year the minimum price and the amount of production aid for processed tomato products (OJ 2000 L 174, p. 29)

Operative part of the judgment

The Court:

1) *Sets aside the judgment of the Court of First Instance of the European Communities of 17 March 2005 in Case T-285/03 Agraz and Others v Commission in so far as it dismissed the claims of the appellants in the present appeal on the ground that the alleged loss was not certain and, consequently, in so far as it ordered them to bear five sixths of their costs and ordered the Commission to pay a sixth of the appellants' costs and to bear its own costs;*

2) *Refers the case back to the Court of First Instance of the European Communities;*

3) *Reserves the costs.*

(1) OJ C 193 of 6.8.2005.

Judgment of the Court (Second Chamber) of 26 October 2006 (reference for a preliminary ruling from the Hessisches Finanzgericht, Kassel (Germany)) — Turbon International GmbH, as universal successor in title to Kores Nordic Deutschland GmbH v Oberfinanzdirektion Koblenz

(Case C-250/05) ([1])

(Common Customs Tariff — Tariff headings — Classification in the Combined Nomenclature of ink cartridges compatible with Epson Stylus Color printers — Inks (heading 3215) — Parts and accessories of machines of heading 8471 (heading 8473)

(2006/C 326/29)

Language of the case: German

Referring court

Hessisches Finanzgericht, Kassel

Parties to the main proceedings

Applicant: Turbon International GmbH, as universal successor in title to Kores Nordic Deutschland GmbH

Defendant: Oberfinanzdirektion Koblenz

Re:

Reference for a preliminary ruling — Hessisches Finanzgericht (Finance Court, Hesse), Kassel — Interpretation of Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1987 L 256, p.1) — Subheading No 3215 90 80 ('Ink, other than printing ink, writing or drawing ink') and Heading No 8473 ('Parts and accessories of the machines of heading No 8471', that is automatic data-processing machines and units thereof) — Ink cartridge

Operative part of the judgment

Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended by Commission Regulation (EC) No 1734/96 of 9 September 1996, must be interpreted as meaning that an ink cartridge without an integrated print head consisting of plastic casing, foam, a metal screen, seals, tape seal, labels, ink and packing material, which, as regards both the cartridge and the ink, can only be used in a printer with the same characteristics as Epson Stylus Color inkjet printers, must be classified under Subheading 3215 90 80 of the Combined Nomenclature.

([1]) OJ C 217, 3.9.2005.

Judgment of the Court (First Chamber) of 26 October 2006 (reference for a preliminary ruling from the Verwaltungsgericht Sigmaringen — Germany) — Alois Kibler jun. v Land Baden-Württemberg

(Case C-275/05) ([1])

(Milk and milk products — Article 5c of Regulation (EEC) No 804/68 — Additional levy in the milk and milk products sector — Regulations (EEC) Nos 857/84, 590/85 and 1546/88 — Transfer of the reference quantity following the return of part of a holding — Landlord who is not himself a producer of milk or milk products — Rural lease voluntarily brought to an end)

(2006/C 326/30)

Language of the case: German

Referring court

Verwaltungsgericht Sigmaringen

Parties to the main proceedings

Applicant: Alois Kibler jun.

Defendant: Land Baden-Württemberg

Re:

Reference for a preliminary ruling — Verwaltungsgericht Sigmaringen — Interpretation of Article 7(1) of Council Regulation (EEC) No 857/84 of 31 March 1984 adopting general rules for the application of the levy referred to in Article 5c of Regulation (EEC) No 804/68 in the milk and milk products sector (OJ 1984 L 90, p. 13), as amended by Council Regulation (EEC) No 590/85 of 26 February 1985 (OJ 1985 L 68, p. 1), and of Article 7(2), (3) and (4) of Commission Regulation (EEC) No 1546/88 of 3 June 1988 laying down detailed rules for the application of the additional levy referred to in Article 5c of Regulation (EEC) No 804/68 (OJ 1988 L 139, p. 12) — Return to a landlord, who is not himself a producer, of part of a dairy farm which has been let out — Transfer of the reference quantity which is attached thereto

Operative part of the judgment

1. *Article 7(1) of Council Regulation (EEC) No 857/84 of 31 March 1984 adopting general rules for the application of the levy referred to in Article 5c of Regulation (EEC) No 804/68 in the milk and milk products sector, as amended by Council Regulation (EEC) No 590/85 of 26 February 1985, and points 2, 3 and 4 of the first subparagraph of Article 7 of Commission Regulation (EEC) No 1546/88 of 3 June 1988 laying down detailed rules for the application of the additional levy referred to in Article 5c of Regulation (EEC) No 804/68 are to be interpreted as meaning that on the return of a leased part of a holding the corresponding reference quantity for that part cannot pass to the landlord if he is not a milk producer, does not intend to carry out such an activity and does not intend to grant a lease for the undertaking concerned to a milk producer.*

2. *Article 7(1) of Regulation No 857/84, as amended by Regulation No 590/85, and point 4 of the first subparagraph of Article 7 of Regulation No 1546/88 preclude the reference quantity from being retained by the tenant on the ending of a rural lease, where the lease has been voluntarily brought to an end.*

([1]) OJ C 229, 17.09.2005.

Judgment of the Court (Second Chamber) of 9 November 2006 (reference for a preliminary ruling from the Bundesgerichtshof — Germany) — Montex Holdings Ltd v Diesel SpA

(Case C-281/05) ([1])

(Trade marks — Directive 89/104/EEC — Right of the proprietor of a trade mark to prohibit the transit of goods bearing an identical sign through the territory of a Member State in which the mark enjoys protection — Unlawful manufacture — Associated State)

(2006/C 326/31)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Montex Holdings Ltd

Defendant: Diesel SpA

Re:

Reference for a preliminary ruling — Bundesgerichtshof — Interpretation of Articles 28, 29 and 30 of the EC Treaty and of Article 5(1) and (3) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989 L 40, p. 1) — Right of the proprietor of a trade mark to prohibit the transit of goods bearing an identical sign across the territory of a Member State where that mark is protected — No protection in the country of destination

Operative part of the judgment

1. *Article 5(1) and (3) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks is to be interpreted as meaning that the proprietor of a trade mark can prohibit the transit through a Member State in which that mark is protected (the Federal Republic of Germany in the present case) of goods bearing the trade mark and placed under the external transit procedure, whose destination is another Member State where the mark is not so protected (Ireland in the present case), only if those goods are subject to the act of a third party while they are placed under the external transit procedure which necessarily entails their being put on the market in that Member State of transit.*

2. *It is in that regard, in principle, irrelevant whether goods whose destination is a Member State come from an associated State or a third country, or whether those goods have been manufactured in the country of origin lawfully or in infringement of the existing trade mark rights of the proprietor in that country.*

([1]) OJ C 243, 01.10.2005.

Judgment of the Court (Second Chamber) of 26 October 2006 — Commission of the European Communities v Italian Republic

(Case C-302/05) ([1])

(Failure of a Member State to fulfil obligations — Directive 2000/35/EC — Article 4(1) — Retention of title — Enforceability)

(2006/C 326/32)

Language of the case: Italian

Parties

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

Defendant: Italian Republic (represented by: I.M. Braguglia, Agent, and M. Massella Ducci Teri, avocat)

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 4(1) of Directive 2000/35/EEC of the European Parliament and of the Council of 29 June 2000 on combating late payment in commercial transactions (OJ 2000 L 200, p. 35) — Retention of title — National legislation providing that, in order to be enforceable against creditors of the purchaser, a retention of title clause must be confirmed on individual invoices for successive supplies bearing a date that is prior to any attachment procedure

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 229, 17.09.2005.

Judgment of the Court (Fifth Chamber) of 26 October 2006 (reference for a preliminary ruling from the Sozialgericht Köln — Germany) — G. Pohl-Boskamp GmbH & Co. KG v Gemeinsamer Bundesausschuss

(Case C-317/05) ([1])

(Directive 89/105/EEC — Article 6(1) and (2) — Positive list — Obligation to state reasons and provide information concerning remedies)

(2006/C 326/33)

Language of the case: German

Referring court

Sozialgericht Köln

Parties to the main proceedings

Applicant: G. Pohl-Boskamp GmbH & Co. KG

Defendant: Gemeinsamer Bundesausschuss

Intervening parties: AOK-Bundesverband KdöR, IKK-Bundesverband, Bundesverband der Betriebskrankenkassen (BKK), Bundesverband der landwirtschaftlichen Krankenkassen, Verband der Angestellten-Krankenkassen eV, AEV-Arbeiter-Ersatzkassen-Verband eV, Bundesknappschaft, Seekrankenkasse, Bundesrepublik Deutschland

Re:

Reference for a preliminary ruling — Sozialgericht Köln — Interpretation of Article 6(1) and (2) of Council Directive 89/105/EEC of 21 December 1988 relating to the transparency of measures regulating the prices of medicinal products for human use and their inclusion in the scope of national health insurance systems (OJ 1989 L 40, p. 8) — Concept of 'positive list' — National rules providing for the establishment of a list of medicinal products, normally available without a prescription and non-refundable, which may exceptionally be covered by the national health insurance system in cases where they represent standard treatment for certain serious ailments — Obligation to take a decision concerning inclusion on the list within a specified period, to set out reasons for refusal and to inform the applicant of the means of redress available to him

Operative part of the judgment

1. *Council Directive 89/105/EEC of 21 December 1988 relating to the transparency of measures regulating the prices of medicinal products for human use and their inclusion in the scope of national health insurance systems is to be interpreted as precluding rules of a Member State which, following the exclusion of non-prescription medicinal products from the range of benefits provided by the national health system, empower an authority under that system to adopt rules derogating from that exclusion in respect of certain medicines without making provision for a procedure under Article 6 (1) and (2) of that directive.*

2. *Article 6(2) of Directive 89/105 is to be interpreted as meaning that it confers on the manufacturers of medicinal products affected by a decision which allows the coverage by the health insurance system of certain medicinal products containing active ingredients referred to therein the right to a reasoned decision mentioning remedies, even though the rules of the Member State make no provision for any corresponding procedure or remedies.*

([1]) OJ C 281, 12.11.2005.

Judgment of the Court (Second Chamber) of 9 November 2006 — Commission of the European Communities v Joël De Bry

(Case C-344/05 P) ([1])

(Appeal — Official — Reporting procedure — Career development report — 2001/2002 reporting period — Rights of the defence — Article 26, second paragraph, of the Staff Regulations)

(2006/C 326/34)

Language of the case: French

Parties

Appellant: Commission of the European Communities (represented by: L. Lozano Palacios and M.H. Kraemer, Agents)

Other party to the proceedings: Joël De Bry (represented by: S. Orlandi, avocat)

Re:

Appeal brought against the judgment of the Court of First Instance (single judge) in Case T-157/04 *De Bry* v *Commission*, setting aside the decision of 26 May 2003 drawing up the appellant's career development report for the period from 1 July 2001 to 31 December 2002.

Operative part of the judgment

The Court:

1. *Annuls in part the judgment of the Court of First Instance in Case T-157/04 De Bry v Commission, in so far as it set aside the Commission decision of 26 May 2003 making definitive the career development report of Mr De Bry in respect of the period from 1 July 2001 to 31 December 2002 on the ground of a breach of the rights of the defence guaranteed by Article 26 of the Staff Regulations of Officials of the European Communities, on the ground of inconsistency between some descriptive comments and the corresponding numerical mark, as regards the criticism of failure to comply with working hours;*

2. *Dismisses the action;*

3. *Orders each party to bear its own costs in connection with the present proceedings and those incurred in the proceedings at first instance.*

([1]) OJ C 281, 12.11.2005.

Judgment of the Court (Second Chamber) of 26 October 2006 — Commission of the European Communities v Portuguese Republic

(Case C-345/05) ([1])

(Failure of a Member State to fulfil obligations — Tax legislation — Conditions for exemption of capital gains arising on the transfer for valuable consideration of real property — Articles 18 EC, 39 EC and 43 EC — Articles 28 and 31 of the Agreement establishing the European Economic Area — Cohesion of the tax system — Housing policy)

(2006/C 326/35)

Language of the case: Portuguese

Parties

Applicant: Commission of the European Communities (represented by: R. Lyal and M. Afonso, Agents)

Defendant: Portuguese Republic (represented by: L. Fernandes and J. Menezes Leitão, Agents)

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 18 EC, 39 EC, 43 EC and 56(1) EC and of Articles 28, 31 and 40 of the EEA Agreement –National provisions making exemption from capital gains tax arising on the transfer for valuable consideration of real property used as the permanent residence of a taxable person or of his family subject to the condition that such gains are reinvested in the purchase of real property in national territory

Operative part of the judgment

The Court:

1. *Declares that, by maintaining in force fiscal provisions, such as Article 10(5) of the Personal Income Tax Code, making entitlement to exemption from tax on capital gains arising from the transfer for valuable consideration of real property intended for the taxable person's own and permanent residence or for that of a member of his family subject to the condition that the gains realised should be reinvested in the purchase of real property situated in Portuguese territory, the Portuguese Republic has failed to fulfil its obligations under Articles 18 EC, 39 EC and 43 EC, and under Articles 28 and 31 of the European Economic Area Agreement of 2 May 1992;*

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

([1]) OJ C 281, 12.11.2005.

Judgment of the Court (Fifth Chamber) of 9 November 2006 (reference for a preliminary ruling from the Cour de travail de Liège — Belgium) — Monique Chateignier v Office national de l'emploi (ONEM)

(Case C-346/05) ([1])

(Reference for a preliminary ruling — Article 39 EC and Articles 3 and 67 of Regulation (EEC) No 1408/71 — Grant of unemployment benefit subject to the completion of a period of employment in the competent Member State)

(2006/C 326/36)

Language of the case: French

Referring court

Cour de travail de Liège

Parties to the main proceedings

Applicant: Monique Chateignier

Defendant: Office national de l'emploi (ONEM)

Re:

Reference for a preliminary ruling — Cour de travail de Liège — Interpretation of Article 39(2) EC,

Operative part of the judgment

Article 39(2) EC and Article 3(1) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, are to be interpreted as precluding national legislation under which the competent institution of the Member State of residence denies unemployment benefits to a national of another Member State on the ground that, on the date when the benefit claim was submitted, the person concerned had not completed a specified period of employment in that Member State of residence, whereas there is no such requirement for nationals of that Member State.

(1) OJ C 315, 10.12.2005.

Judgment of the Court (Fifth Chamber) of 26 October 2006 — Commission of the European Communities v Grand-Duchy of Luxembourg

(Case C-77/06) (1)

(Failure of a Member State to fulfil obligations — Directive 2001/42/EC — Assessment of the effects of certain plans and programmes on the environment — Failure to implement within the prescribed period)

(2006/C 326/37)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: J. Hottiaux 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 prescribed period, the measures necessary to comply with Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (OJ 2001 L 197, p. 30)

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt, within the prescribed period, the laws, regulations and administrative provisions necessary to comply with Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment, 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 74, 25.03.2006.

Judgment of the Court (Fourth Chamber) of 26 October 2006 — Commission of the European Communities v Republic of Austria

(Case C-94/06) (1)

(Failure of a Member State to fulfil obligations — Failure to transpose — Directive 2002/49/EC)

(2006/C 326/38)

Language of the case: German

Parties

Applicant: Commission of the European Communities (represented by: A. Alcover San Pedro and B. Schima, Agents)

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

Re:

Failure of a Member State to fulfil obligations — Failure to adopt within the prescribed period, the measures necessary to comply with Directive 2002/49/EC of the European Parliament and of the Council of 25 June 2002 relating to the assessment and management of environmental noise — Declaration by the Commission in the Conciliation Committee on the Directive relating to the assessment and management of environmental noise (OJ 2002 L 189, p.12)

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt all the laws, regulations and administrative provisions necessary to transpose into national law Directive 2002/49/EC of the European Parliament and of the Council of 25 June 2002 relating to the assessment and management of environmental noise as regards the Provinces of Burgenland, Carinthia, Upper Austria, Salzburg, Styria and Tyrol, the Republic of Austria has failed to fulfil its obligations under Article 14(1) of that directive;*

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

([1]) OJ C 86, 08.04.2006.

Judgment of the Court (Sixth Chamber) of 26 October 2006 — Commission of the European Communities v Republic of Austria

(Case C-102/06) ([1])

(Failure of a Member State to fulfil obligations — Minimum standards for the reception of asylum seekers in the Member States — Failure to transpose within the prescribed time-limit)

(2006/C 326/39)

Language of the case: German

Parties

Applicant: Commission of the European Communities (represented by: C. O'Reilly and W. Bogensberger, Agents)

Defendant: Republic of Austria (represented by: C. Pesendorfer, Agent)

Re:

Failure of a Member State to fulfil obligations — Failure to have adopted, within the prescribed time-limit, all the measures necessary to comply with Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers (OJ 2003 L 31, p. 18)

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt the the laws, regulations and administrative provisions necessary to comply with Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers, the Republic of Austria has failed to fulfil its obligations under that directive.*

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

([1]) OJ C 96, 22.04.2006.

Judgment of the Court (Fourth Chamber) of 26 October 2006 — Commission of the European Communities v Republic of Finland

(Case C-152/06) ([1])

(Failure of a Member State to fulfil obligations — Directive 2002/95/EC — Hazardous substances — Electrical and electronic equipment — Failure to transpose within the prescribed period)

(2006/C 326/40)

Language of the case: Swedish

Parties

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

Defendant: Republic of Finland (represented by: E. Bygglin, Agent)

Re:

Failure of a Member State to fulfil obligations — Failure to ensure the transposition within the prescribed period, with regard to the autonomous province of Åland, of Directive 2002/95/EC of the European Parliament and of the Council of 27 January 2003 on the restriction of the use of certain hazardous substances in electrical and electronic equipment (OJ 2003 L 37, p. 19)

Operative part of the judgment

The Court:

1. *Declares that by failing to adopt, with regard to the Åland Islands, the laws, regulations and administrative provisions necessary to comply with Directive 2002/95/EC of the European Parliament and of the Council of 27 January 2003 on the restriction of the use of certain hazardous substances in electrical and electronic equipment, the Republic of Finland has failed to fulfil its obligations under that directive;*

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

([1]) OJ C 131, 3.6.2006.

Judgment of the Court (Fourth Chamber) of 26 October 2006 — Commission of the European Communities v Republic of Finland

(Case C-154/06) ([1])

(Failure of a Member State to fulfil obligations — Waste electrical and electronic equipment — Failure to transpose within the prescribed time-limit)

(2006/C 326/41)

Language of the case: Swedish

Parties

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

Defendant: Republic of Finland (represented by: E. Bygglin, Agent)

Re:

Failure of a Member State to fulfil obligations — Directive 2003/108/EC of the European Parliament and of the Council of 8 December 2003 amending Directive 2002/96/EC on waste electrical and electronic equipment (WEEE) (OJ 2003 L 345, p. 106)

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt, in respect of the Åland Islands, the laws, regulations and administrative provisions necessary to comply with Directive 2003/108/EC of the European Parliament and of the Council of 8 December 2003 amending Directive 2002/96/EC on waste electrical and electronic equipment (WEEE), the Republic of Finland has failed to fulfil its obligations under that directive.*

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

([1]) OJ C 131, 03.06.2006.

Judgment of the Court (Sixth Chamber) of 26 October 2006 — Commission of the European Communities v Republic of Finland

(Case C-159/06) ([1])

(Failure of a Member State to fulfil obligations — Directive 2001/42/EC — Assessment of the effects of certain plans and programmes on the environment — Failure to implement within the prescribed period)

(2006/C 326/42)

Language of the case: Swedish

Parties

Applicant: Commission of the European Communities (represented by: U. Wölker, F. Simonetti and K. Nyberg, Agents)

Defendant: Republic of Finland (represented by: E. Bygglin, Agent)

Re:

Failure of a Member State to fulfil obligations — Failure to implement within the prescribed period, with regard to the autonomous province of Åland, Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (OJ 2001 L 197, p. 30)

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment, the Republic of Finland has failed, with regard to the autonomous region of the Åland islands, to fulfil its obligations under that directive.*

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

([1]) OJ C 131, 03.06.2006.

Order of the Court (Fifth Chamber) of 14 September 2006 (reference for a preliminary ruling from the Commissione tributaria provinciale di Pordenone — Italy) — Banca Popolare FriulAdria SpA v Agenzia delle Entrate, Ufficio Pordenone

(Case C-336/04) ([1])

(State aid — Decision 2002/581/EC — Tax advantages granted to banks — First subparagraph of Article 104(3) of the Rules of Procedure — Question referred for a preliminary ruling identical to a question on which the Court has already ruled)

(2006/C 326/43)

Language of the case: Italian

Referring court

Commissione tributaria provinciale di Pordenone

Parties to the main proceedings

Applicant: Banca Popolare FriulAdria SpA

Defendant: Agenzia delle Entrate, Ufficio Pordenone

Re:

Reference for a preliminary ruling — Commissione tributaria provinciale di Pordenone — Validity of Commission Decision 2002/581/EC of 11 December 2001 on the tax measures for banks and banking foundations implemented by Italy (notified under document number C(2001) 3955) (OJ 2002 L 184, p. 27)

Operative part of the order

1. *Consideration of the questions referred has disclosed no factor of such a kind as to affect the validity of Commission Decision 2002/581/EC of 11 December 2001 on the tax measures for banks and banking foundations implemented by Italy.*

2. *Article 87 EC et seq., Article 14 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 and the principles of the protection of legitimate expectations, legal certainty and proportionality cannot preclude a national measure ordering the recovery of aid pursuant to a Commission decision which has classified that aid as incompatible with the common market and consideration of which in the light of those same provisions and general principles has disclosed no factor of such a kind as to affect its validity.*

([1]) OJ C 251, 9.10.2004.

Order of the Court (Sixth Chamber) of 28 September 2006 — El Corte Inglés, SA v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case C-104/05 P) ([1])

(Appeal — Community trade mark — Article 8(1)(b) of Regulation (EC) No 40/94 — Likelihood of confusion — Figurative mark 'EMILIO PUCCI' — Opposition by the proprietor of the national figurative marks 'EMIDIO TUCCI' — Similarity between the goods)

(2006/C 326/44)

Language of the case: Italian

Parties

Applicant: El Corte Inglés, SA (represented by: J.L. Rivas Zurdo, abogado)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) represented by: O. Montalto and P. Bullock, Agents), Emilio Pucci Srl (represented by: P.L. Roncaglia, G. Lazzaretti, M. Boletto and E. Gavuzzi, avvocati)

Re:

Appeal brought against the judgment of the Court of First Instance (Second Chamber) of 13 December 2004 in Case T-8/03 *El Corte Inglés* v *OHIM — Pucci*, dismissing an action for the annulment of the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (OHIM) of 3 October 2002, dismissing the appeal brought by the applicant against the decision of the Opposition Division partially rejecting the opposition brought against the application for registration of the figurative Community trade mark 'EMILIO PUCCI' for goods in Classes 3, 18, 24 and 25

Operative part of the order

1. *The appeal is dismissed.*

2. *El Corte Inglés, SA shall pay 80 % of the costs.*

3. *OHIM shall pay 20 % of the costs.*

([1]) OJ C 115, 14.5.2005.

Order of the Court (Second Chamber) of 28 September 2006 (reference for a preliminary ruling from Symvoulio tis Epikratias — Greece) — Enosi Efopliston Aktoploias, ANEK, Minoikes grammes, N.E. Lesvou, Blue Star Ferries v Ypourgos Emporikis Naftilías, Ypourgos Aigaíou

(Case C-285/05) ([1])

(Article 104(3) of the Rules of Procedure — Regulation (EEC) No 3577/92 — Maritime cabotage — Transitional period — Direct application — Directive 98/18/EC — Safety rules and standards for passenger ships — Compatibility of a national rule prohibiting the supply of maritime services in respect of ships having reached a specific age)

(2006/C 326/45)

Language of the case: Greek

Referring court

Symvoulio tis Epikratias

Parties to the main proceedings

Applicants: Enosi Efopliston Aktoploias, ANEK, Minoikes grammes, N.E. Lesvou, Blue Star Ferries

Defendants: Ypourgos Emporikis Naftilías, Ypourgos Aigaíou

Re:

Reference for a preliminary ruling — Symvoulio tis Epikratias — Interpretation of Articles 1(2), 4 and 6(3) of Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage) (OJ 1992 L 364, p. 7) — Ability of individuals to rely on the regulation to challenge the validity of a national rule adopted before the end of the exemption laid down by the regulation — Interpretation of Articles 5(2) and 6(3)(a) to (c), (f) and (g) of Council Directive 98/18/EC of 17 March 1998 on safety rules and standards for passenger ships (OJ 1998 L 144, p. 1) — Compatibility of a national rule prohibiting the supply of maritime services in respect of ships having reached a specified age

Operative part of the order

1. *Having regard to Article 6(3) of Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage), the latter must be interpreted as not conferring rights on individuals, before 1 January 2004, in the area of cabotage with the Greek islands for regular passenger and cargo services and services provided by vessels of less than 650 gross tonnes.*

2. *Articles 5(2) and 6(3)(a) to (c), (f) and (g) of Council Directive 98/18/EC of 17 March 1998 on safety rules and standards for passenger ships must be interpreted as precluding a national rule, such as that at issue in the main proceedings, which prohibits absolutely ships having reached a specified age from carrying out domestic voyages, when the Member State in question has not taken measures to improve safety requirements in accordance with the procedure laid down by Article 7(4) of that directive.*

([1]) OJ C 243 of 1.10.2005.

Order of the Court of 28 September 2006 — (reference for a preliminary ruling of Oberlandsgericht München — Germany) — Criminal proceedings against Stefan Kremer

(Case C-340/05) ([1])

(First subparagraph of Article 104(3) of the Rules of Procedure — Directive 91/439/EEC — Mutual recognition of driving licences — Withdrawal of licence in one Member State — Licence issued in another Member State — Refusal to recognise the right to drive in the first Member State — Requirement of compliance with national conditions for obtaining a new licence following a withdrawal)

(2006/C 326/46)

Language of the case: German

Referring court

Oberlandsgericht München (Germany)

Criminal proceedings against

Stefan Kremer

Action

Reference for a preliminary ruling — Oberlandsgericht München — Interpretation of Articles 1(2) and 8(2) and (4) of Council Directive 91/439/EEC of 29 July 1991 on driving licences (OJ 1991 L 237, p. 1) — Refusal to recognise the validity of a driving licence issued by another Member State, raised against the holder having had his national licence withdrawn without a prohibition period, due to repeated offences under the road traffic act — Obligation to provide beforehand a medical-psychological opinion attesting to aptitude to drive

Operative part of the judgment

The Court hereby orders:

The combined provisions of Articles 1(2) and 8(2) and (4) of Council Directive 91/439/EEC of 29 July 1991 on driving licences, as amended by Council Directive 97/26/EC of 2 June 1997, preclude a Member State from refusing to recognise, on its territory, the right to drive resulting from a driving licence issued in another Member State and, accordingly, the validity of that licence so long as the holder of that licence, whose previous licence in the territory of the first Member State was withdrawn without a measure prohibiting the holder from obtaining a new licence, has not complied with the conditions required under the laws of that first Member State for the issuance of a new licence following that withdrawal, including an examination of aptitude to drive attesting that the grounds for that withdrawal are no longer present.

([1]) OJ C 296, 26.11.2005.

Order of the Court (Fifth Chamber) of 6 October 2006 (reference for a preliminary ruling from the Hof van beroep te Antwerpen — Belgium) — Lucien de Graaf, Gudula Daniels v Belgian State

(Case C-436/05) ([1])

(Preliminary references — Inadmissibility)

(2006/C 326/47)

Language of the case: Dutch

Referring court

Hof van beroep te Antwerpen

Parties

Applicants: Lucien de Graaf, Gudula Daniels

Defendant: Belgian State

Re:

Reference for a preliminary ruling — Hof van beroep te Antwerpen — Interpretation of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996 (OJ 1997 L 28, p. 1) — Material scope — Whether applicable or not to a supplementary crisis contribution levied by a Member State to finance its social security system — Obligation to pay the contribution even where a person is liable to pay contributions to a social security system other than that of the State of residence — Whether compatible with Article 39 EC

Operative part of the order

The reference for a preliminary ruling from the Hof van beroep te Antwerpen, by decision of 29 November 2005, is inadmissible.

([1]) OJ C 36 of 11.2.2006.

Reference for a preliminary ruling from the Sozialgericht Berlin lodged on 24 February 2006 — Irene Werich v Deutsche Rentenversicherung Bund

(Case C-111/06)

(2006/C 326/48)

Language of the case: German

Referring court

Sozialgericht Berlin

Parties to the main proceedings

Applicant: Irene Werich

Defendant: Deutsche Rentenversicherung Bund

Question referred

Is the provision in point (1) of Annex VI. D. (formerly C.) Germany to Regulation (EEC) No 1408/71 ([1]) on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community (Regulation No 1408/71) compatible with higher-ranking European law, in particular the principle of freedom of movement and the principle of the exportability of benefits under Article 42 of the Treaty establishing the European Community (EC Treaty), inasmuch as it also rules out pension benefits in respect of contribution periods for which compulsory contributions were paid under the insurance legislation of the German Reich?

([1]) OJ English Special Edition, Series I Chapter 1971(II) p. 416.

Reference for a preliminary ruling from the Finanzgericht Düsseldorf (Germany) lodged on 14 September 2006 — BATIG Gesellschaft für Beteiligungen mbH v Hauptzollamt Bielefeld

(Case C-374/06)

(2006/C 326/49)

Language of the case: German

Referring court

Finanzgericht Düsseldorf

Parties to the main proceedings

Applicant: BATIG Gesellschaft für Beteiligungen mbH

Defendant: Hauptzollamt Bielefeld

Question referred

Should Council Directive 92/12/EEC ([1]) of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products be interpreted as meaning that a Member State which has collected excise duty for manufactured tobacco by means of issuing tax markings is obliged to reimburse the recipient of the tax markings for the sum paid for them if manufactured tobacco furnished with those tax markings in another Member State departs from the duty suspension arrangement irregularly with the consequence that the latter Member State collects excise duty for the manufactured tobacco from the trader established there who dispatched the manufactured tobacco under intra-community duty-suspension arrangements ?

([1]) OJ 1992 L 76, p. 1.

Reference for a preliminary ruling from the Verwaltungsgericht Köln (Germany) lodged on 9 October 2006 — Winner Wetten GmbH v Mayor of Bergheim

(Case C-409/06)

(2006/C 326/50)

Language of the case: German

Referring court

Verwaltungsgericht Köln

Parties to the main proceedings

Applicant: Winner Wetten GmbH

Defendant: Mayor of Bergheim

Questions referred

1. Are Article 43 EC and Article 49 EC to be interpreted as meaning that national rules governing a State monopoly on sports betting, which contain impermissible restrictions on the freedom of establishment and the freedom to provide services enshrined in Article 43 EC and Article 49 EC, inasmuch as they do not serve to limit betting activities in a consistent and systematic manner within the terms of the Court's case-law (judgment in Case C-243/01 *Gambelli and Others* [2003] ECR-13031), may still continue to apply for a transitional period on an exceptional basis, notwithstanding the primacy of directly applicable Community law?

2. If Question 1 is to be answered in the affirmative: what conditions need to be met for the purpose of derogating from that primacy and how is the transitional period to be determined?

Appeal brought on 10 October 2006 by Bertelsmann AG, Sony Corporation of America against the judgment of the Court of First Instance (Third Chamber) delivered on 13 July 2006 in Case T-464/04: Independent Music Publishers and Labels Association (Impala, international association) v Commission of the European Communities.

(Case C-413/06 P)

(2006/C 326/51)

Language of the case: English

Parties

Appellants: Bertelsmann AG, Sony Corporation of America (represented by: P. Chappatte, J. Boyce, Solicitors, N. Levy, Barrister, R. Snelders, avocat, T. Graf, Rechtsanwalt)

Other parties to the proceedings: Commission of the European Communities, Independent Music Publishers and Labels Association (Impala, association internationale), Sony BMG Music Entertainment BV

Form of order sought

The applicant claims that the Court should:

— annul the judgment of the Court of First Instance of 13 July 2006 in Case T-464/04;

— reject Impala's application for annulment of the Commission's decision or, alternatively, refer the case back for reconsideration to the Court of First Instance; and

— order Impala to pay the costs of the present proceedings.

Pleas in law and main arguments

The appellants make seven pleas on appeal:

First, that the Court of First Instance erred in law by using the Commission's statement of objections as a benchmark for its substantive assessment of the decision.

Second, that the Court of First Instance erred in law by requiring the Commission to conduct a new market investigation following the notifying parties' response to the statement of objections.

Third, that the Court of First Instance erred in law by applying an erroneous and excessively high standard of proof for merger clearance decisions.

Fourth, that the Court if First Instance exceeded the scope of judicial review by substituting its own assessment for that of the Commission and, in doing so, itself committed manifest errors and fundamentally misconstrued the evidence.

Fifth, that the Court of First Instance erred in law by misapplying the criteria developed in *Airtours* for the assessment of the feasibility of tacit collusion.

Sixth, that the Court of First Instance erred in law by applying an erroneous and excessive standard of reasoning for merger clearance decisions.

Seventh, that the Court of First Instance erred in law by relying on evidence that was not disclosed to the applicants and that was not before the Commission at the time it adopted its decision.

Reference for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 11 October 2006 — Lidl Belgium GmbH & Co. KG v Finanzamt Heilbronn

(Case C-414/06)

(2006/C 326/52)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Lidl Belgium GmbH & Co. KG

Defendant: Finanzamt Heilbronn

Question referred

Is it compatible with Articles 43 EC and 56 EC for a German company with income from industrial or commercial activities to be precluded, when calculating its profits, from deducting losses from a permanent establishment in another Member State (here: Luxembourg) on the ground that, according to the applicable double taxation convention, the corresponding income from such a permanent establishment is not subject to taxation in Germany?

Reference for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 11 October 2006 — Stahlwerk Ergste Westig GmbH v Finanzamt Düsseldorf-Mettmann

(Case C-415/06)

(2006/C 326/53)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Stahlwerk Ergste Westig GmbH

Defendant: Finanzamt Düsseldorf-Mettmann

Questions referred

1. Is it compatible with Articles 56 EC and 58 EC for a German company with income from industrial or commercial activities to be precluded, when calculating its profits, from deducting losses from a permanent establishment in a non-member country (here: the United States) on the ground that, according to the applicable double taxation convention, the corresponding income from such a permanent establishment is not subject to taxation in Germany?

2. Having regard to the proviso in Article 57(1) EC, is a convention provision with the above content compatible with Community law if the applicable provisions of the double taxation convention already existed on 31 December 1993 but the exclusion of taking account of losses resulting from those provisions had been removed up to 1998 by domestic German law?

Action brought on 11 October 2006 — Commission of the European Communities v Republic of Poland

(Case C-416/06)

(2006/C 326/54)

Language of the case: Polish

Parties

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

Defendant: Republic of Poland

Form of order sought

— declare that, by not ensuring actual availability of at least one comprehensive directory and one comprehensive directory enquiry service in accordance with the requirements set out in Article 5(1) and (2) and Article 25(1) and (3) of Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services ([1]), the Republic of Poland has failed to fulfil its obligations under that directive;

— order the Republic of Poland to pay the costs.

Pleas in law and main arguments

The time-limit for transposition of Directive 2002/22 expired on 30 June 2004.

([1]) OJ No L 108, 24.4.2002, p. 51.

Reference for a preliminary ruling from the Verwaltungsgericht Schwerin (Germany) lodged on 16 October 2006 — Rüdiger Jager v Amt für Landwirtschaft Bützow

(Case C-420/06)

(2006/C 326/55)

Language of the case: German

Referring court

Verwaltungsgericht Schwerin

Parties to the main proceedings

Applicant: Rüdiger Jager

Defendant: Amt für Landwirtschaft Bützow

Question referred

Can Article 2(2) of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests ([1]) be construed as meaning that a provision imposing a more favourable penalty (concerning livestock aid) is to be applied retroactively even if that provision in principle only applies for a period of time during which livestock aid in the Member State concerned is no longer granted as a direct payment has been introduced?

([1]) OJ 1995 L 312, p. 1.

Reference for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 16 October 2006 — Fratelli Martini & C. s.p.a, Cargill s.r.l. v Ministero delle Politiche Agricole e Forestali, Ministero della Salute, Ministero delle Attività Produttive

(Case C-421/06)

(2006/C 326/56)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicants: Fratelli Martini & C. s.p.a, Cargill s.r.l.

Defendants: Ministero delle Politiche Agricole e Forestali, Ministero della Salute, Ministero delle Attività Produttive,

Questions referred

1. Following the judgment of the Court of Justice of 6 December 2005 in Joined Cases 453/03, 11/04, 12/04 and 194/04, which declared Directive 2002/2 ([1]) partially invalid, are the European institutions which adopted that Directive, having regard to Article 233 of the EC Treaty (referring to acts which have been declared void) 'required to take the necessary measures to comply with the judgment of the Court of Justice'?

2. If the answer to question (1) is in the affirmative, must the measures which the European institutions are required to adopt in order to bring Directive 2002/2 into conformity with that judgment of the Court of Justice enter into force first in the Community legal order, to enable the Member States to implement them in their own legal systems?

3. Must the measures referred to in question (2) be adopted by the Community institutions and implemented by the Member States in a manner which ensures compliance with the subsequently adopted Regulation No 183/2005? ([2])

4. Must Regulation No 183/2005, read together with Articles 8 and 16 of Regulation No 178/2002 ([3]), be interpreted as prohibiting producers of feedingstuffs from affixing to their products labels which could mislead consumers?

5. Are labels affixed to feedingstuffs to be regarded as misleading for consumers where the percentages of the various ingredients, as indicated on those labels, may intentionally be set by the producers at levels which deviate by 15 % in each case from the actual percentage?

([1]) OJ L 63, p. 23.
([2]) OJ L 35, p. 1.
([3]) OJ L 31, p. 1.

Action brought on 16 October 2006 — Commission of the European Communities v Republic of Poland

(Case C-422/06)

(2006/C 326/57)

Language of the case: Polish

Parties

Applicant: Commission of the European Communities (represented by: H. Støvlbæk and K. Mojzesowicz, acting as Agents)

Defendant: Republic of Poland

Form of order sought

— declare that, by not adopting all the laws, regulations and administrative provisions necessary to comply with Council Directive 74/557/EEC of 4 June 1974 on the attainment of freedom of establishment and freedom to provide services in respect of activities of self-employed persons and of intermediaries engaging in the trade and distribution of toxic products ([1]) or, in any event, not informing the Commission thereof, the Republic of Poland has failed to fulfil its obligations under Article 8 of that directive;

— order the Republic of Poland to pay the costs.

Pleas in law and main arguments

The time-limit for transposition of Directive 74/557 expired on 30 June 2004.

([1]) OJ No L 307, 18.11.1974, p. 5.

Action brought on 16 October 2006 — Commission of the European Communities v Republic of Poland

(Case C-423/06)

(2006/C 326/58)

Language of the case: Polish

Parties

Applicant: Commission of the European Communities (represented by: H. Støvlbæk and K. Mojzesowicz, acting as Agents)

Defendant: Republic of Poland

Form of order sought

— declare that, by not adopting all the laws, regulations and administrative provisions necessary to comply with Council Directive 74/556/EEC of 4 June 1974 laying down detailed provisions concerning transitional measures relating to activities, trade in and distribution of toxic products and activities entailing the professional use of such products including activities of intermediaries ([1]) or, in any event, not informing the Commission thereof, the Republic of Poland has failed to fulfil its obligations under Article 7 of that directive;

— order the Republic of Poland to pay the costs.

Pleas in law and main arguments

The time-limit for transposition of Directive 74/556 expired on 30 June 2004.

([1]) OJ No L 307, 18.11.1974, p. 1.

Reference for a preliminary ruling from the Corte Suprema di Cassazione (Italy) lodged on 16 October 2006 — Ministero dell'Economia e delle Finanze v Part Service Srl, in liquidation

(Case C-425/06)

(2006/C 326/59)

Language of the case: Italian

Referring court

La Corte Suprema di Cassazione

Parties to the main proceedings

Applicant: Ministero dell'Economia e delle Finanze

Defendant: Part Service Srl, in liquidation

Questions referred

1. Does the concept of abuse of rights, defined in the judgment of the Court of Justice in Case C-255/02 as *transactions, the essential aim of which is to obtain a tax advantage,* correspond to the definition *transactions carried out for no commercial reasons other than a tax advantage,* or is it broader or more restrictive than that definition?

2. For the purposes of VAT, may there be considered to be an abuse of rights (or of legal forms), with the consequent loss of Community own revenue accruing from value added tax, where contracts for leasing arrangements (*locazione finanziaria*), financing, insurance and intermediation contracts are concluded separately with the effect that only the consideration paid in respect of the grant of the right to use the goods is subject to VAT, whereas a single contract of leasing in accordance with the practice and interpretation of national case-law would include the financing and would therefore make the whole of the consideration subject to VAT?

Action brought on 17 October 2006 — Commission of the European Communities v Hellenic Republic

(Case C-426/06)

(2006/C 326/60)

Language of the case: Greek

Parties

Applicant: Commission of the European Communities (represented by: S. Pardo Quintillán and M. Konstantinidis)

Defendant: Hellenic Republic

Form of order sought

The Court is asked to:

— declare that, by failing to take the appropriate measures to transpose fully and correctly Article 2 (points 27, 28, 31, 32, 34 and 36), Articles 4 and 5, Article 6(2), Article 7, Article 8 (1) and (2), Article 9, Article 10(2), Article 11(2) to (6), Article 13(4), Article 14 and Annexes II to VIII of Directive 2000/60/EC [1] of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy, the Hellenic Republic has failed to fulfil its obligations under those provisions and Article 24(1) of that Directive

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

The Greek authorities transposed Directive 2000/60/EC into Greek law by Law 3199/2003, which was published in the Official Gazette (FEK/A/280/9.12.2003) and notified to the Commission as the national measure of transposition. Examination of the conformity of that legislative act with Directive 2000/60/EC has shown that it is a law which requires specification by way of the adoption of implementing measures by which all the provisions of the directive will be transposed.

In the Commission's view, exact transposition of the directive into Greek law has particular significance in the present case because Directive 2000/60/EC, on account of its extended subject-matter and scope of application constitutes a legislative text of fundamental importance as regards the protection and viable management of water.

The Greek authorities recognise, moreover, that the directive has not been transposed fully and that the adoption of additional measures is necessary; the procedure for the adoption of such measures has begun but has not yet been completed.

[1] OJ L 327 of 22.12.2000, p. 1.

Reference for a preliminary ruling from the Bundesarbeitsgericht (Germany) lodged on 18 October 2006 — Birgit Bartsch v Bosch und Siemens Hausgeräte (BSH) Altersfürsorge GmbH

(Case C-427/06)

(2006/C 326/61)

Language of the case: German

Referring court

Bundesarbeitsgericht

Parties to the main proceedings

Applicant: Birgit Bartsch

Defendants: Bosch und Siemens Hausgeräte (BSH) Altersfürsorge GmbH

Questions referred

1. a) Does the primary legislation of the European Communities contain a prohibition of discrimination on grounds of age the protection by which must be guaranteed by the Member States even if the possibly discriminatory treatment is not connected to Community law?

   b) In the event that question a) is answered in the negative:

   Does such a connection to Community law arise from Article 13 EC or — even before the time-limit for transposition has expired — from Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation ([1])?

2. Is any prohibition of discrimination on grounds of age arising from the answer to question 1 also applicable between private employers on the one hand and their employees or pensioners and their survivors on the other hand?

3. If question 2 is answered in the affirmative:

   a) Is a provision of an occupational pension scheme, which provides that a survivor's pension will not be granted to a surviving spouse in the event that the survivor is more than 15 years younger than the deceased former employee, within the scope of the prohibition of discrimination on grounds of age?

   b) If question a) above is answered in the affirmative:

   Can such a provision be justified by the fact that the employer has an interest in limiting the risks arising from the occupational pension scheme?

   c) In the event that question 3 b) is answered in the negative:

   Does the possible prohibition of discrimination on grounds of age have unlimited retroactive effect as regards the law relating to occupational pension schemes or is it limited as regards the past, and if so in what way?

([1]) OJ L 303, p. 16.

Reference for a preliminary ruling from the Tribunal Superior de Justicia de la Comunidad Autónoma del País Vasco (Spain) lodged on 18 October 2006 — Unión General de Trabajadores de la Rioja UGT-RIOJA v Juntas Generales del Territorio Histórico de Vizcaya, Diputación Foral de Vizcaya, Cámara de Comercio, Industria y Navegación de Bilbao, Confederación Empresarial Vasca

(Case C-428/06)

(2006/C 326/62)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de la Comunidad Autónoma del País Vasco

Parties to the main proceedings

Applicant: Unión General de Trabajadores de la Rioja UGT-RIOJA

Defendants: Juntas Generales del Territorio Histórico de Vizcaya, Diputación Foral de Vizcaya, Cámara de Comercio, Industria y Navegación de Bilbao, Confederación Empresarial Vasca

Question referred

Must Article 87(1) EC be construed as meaning that, by providing for a rate of tax lower than the basic rate set in Spanish State legislation and for deductions from the amount of tax payable which do not exist in State tax legislation, provisions in the field of taxation adopted by the Juntas Generales del Territorio Histórico de Bizkaia amending Articles 29(1)(a), 37 and 39 of the Provincial Law on Company Tax, which take effect in the jurisdiction of that infra-State autonomous body, must be regarded as selective and as covered by the definition of State aid enshrined in Article 87(1) EC and, accordingly, must be notified to the Commission pursuant to Article 88(3) EC?

Reference for a preliminary ruling from the Tribunal Superior de Justicia de la Comunidad Autónoma del Pais Vasco (Spain) lodged on 18 October 2006 — Comunidad Autónoma de La Rioja v Juntas Generales del Territorio Histórico de Vizcaya, Diputación Foral de Vizcaya, Cámara de Comercio, Industria y Navegación de Bilbao, Confederación Empresarial Vasca

(Case C-429/06)

(2006/C 326/63)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de la Comunidad Autónoma del Pais Vasco

Parties to the main proceedings

Applicant: Comunidad Autónoma de La Rioja

Defendants: Juntas Generales del Territorio Histórico de Vizcaya, Diputación Foral de Vizcaya, Cámara de Comercio, Industria y Navegación de Bilbao, Confederación Empresarial Vasca

Question referred

Must Article 87(1) EC be construed as meaning that, by providing for a rate of tax lower than the basic rate set in Spanish State legislation and for deductions from the amount of tax payable which do not exist in State tax legislation, provisions in the field of taxation adopted by the Juntas Generales del Territorio Histórico de Bizkaia amending Articles 29(1)(a), 37 and 39 of the Provincial Law on Company Tax, which take effect in the jurisdiction of that infra-State autonomous body, must be regarded as selective and as covered by the definition of State aid enshrined in Article 87(1) EC and, accordingly, must be notified to the Commission pursuant to Article 88(3) EC?

Reference for a preliminary ruling from the Tribunal Superior de Justicia de la Comunidad Autónoma del País Vasco (Spain) lodged on 18 October 2006 — Comunidad Autónoma de La Rioja v Diputación Foral de Álava, Juntas Generales del Territorio Histórico de Álava, Confederación Empresarial vasca

(Case C-430/06)

(2006/C 326/64)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de la Comunidad Autónoma del País Vasco

Parties to the main proceedings

Applicant: Comunidad Autónoma de La Rioja

Defendants: Diputación Foral de Álava, Juntas Generales del Territorio Histórico de Álava, Confederación Empresarial vasca

Question referred

Must Article 87(1) EC be construed as meaning that, by providing for a rate of tax lower than the basic rate set in Spanish State legislation and for a deduction from the amount of tax payable which does not exist in State tax legislation, provisions in the field of taxation adopted by the Juntas Generales del Territorio Histórico de Álava amending Articles 29(1)(a) and 37 of the Provincial Law on Company Tax, which take effect in the jurisdiction of that infra-State autonomous body, must be regarded as selective and as covered by the definition of State aid enshrined in Article 87(1) EC and, accordingly, must be notified to the Commission pursuant to Article 88(3) EC?

Reference for a preliminary ruling from the Tribunal Superior de Justicia de la Comunidad Autónoma de País Vasco (Spain) lodged on 18 October 2006 — Comunidad Autónoma de la Rioja v Diputación Foral de Guipúzcoa, Juntas Generales de Guipúzcoa, Confederación Empresarial Vasca

(Case C-431/06)

(2006/C 326/65)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de la Comunidad Autónoma de País Vasco

Parties to the main proceedings

Applicant: Comunidad Autónoma de la Rioja

Defendants: Diputación Foral de Guipúzcoa, Juntas Generales de Guipúzcoa, Confederación Empresarial Vasca

Question referred

Must Article 87(1) EC be construed as meaning that, by providing for a rate of tax lower than the basic rate set in Spanish State legislation and for a deduction from the amount of tax payable which does not exist in State tax legislation, provisions in the field of taxation adopted by the Juntas Generales del Territorio Histórico de Gipuzkoa amending Articles 29 (1)(a) and 37 of the Provincial Law on Company Tax, which take effect in the jurisdiction of that infra-State autonomous body, must be regarded as selective and as covered by the definition of State aid enshrined in Article 87(1) EC and, accordingly, must be notified to the Commission pursuant to Article 88(3) EC?

Reference for a preliminary ruling from the Tribunal Superior de Justicia de la Comunidad Autónoma del País Vasco (Spain) lodged on 18 October 2006 — Comunidad Autónoma de Castilla y León v Juntas Generales de Guipúzcoa, Diputación Foral de Guipúzcoa, Confederación Empresarial Vasca

(Case C-432/06)

(2006/C 326/66)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de la Comunidad Autónoma del País Vasco

Parties to the main proceedings

Applicant: Comunidad Autónoma de Castilla y León

Defendants: Juntas Generales de Guipúzcoa, Diputación Foral de Guipúzcoa, Confederación Empresarial Vasca

Questions referred

Must Article 87(1) EC be construed as meaning that, by providing for a rate of tax lower than the basic rate set in Spanish State legislation and for a deduction from the amount of tax payable which does not exist in State tax legislation, provisions in the field of taxation adopted by the Juntas Generales del Territorio Histórico de Gipuzkoa amending Articles 29 (1)(a) and 37 of the Provincial Law on Company Tax, which take effect in the jurisdiction of that infra-State autonomous body, must be regarded as selective and as covered by the definition of State aid enshrined in Article 87(1) EC and, accordingly, must be notified to the Commission pursuant to Article 88(3) EC?

Reference for a preliminary ruling from the Tribunal Superior de Justicia de la Comunidad Autónoma del País Vasco (Spain) lodged on 18 October 2006 — Comunidad Autónoma de Castilla y León v Juntas Generales del Territorio Histórico de Álava, Diputación Foral de Álava, Confederación Empresarial Vasca

(Case C-433/06)

(2006/C 326/67)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de la Comunidad Autónoma del País Vasco

Parties to the main proceedings

Applicant: Comunidad Autónoma de Castilla y León

Defendant: Juntas Generales del Territorio Histórico de Álava, Diputación Foral de Álava, Confederación Empresarial Vasca

Question referred

Must Article 87(1) EC be construed as meaning that, by providing for a rate of tax lower than the basic rate set in Spanish State legislation and for a deduction from the amount of tax payable which does not exist in State tax legislation, provisions in the field of taxation adopted by the Juntas Generales del Territorio Histórico de Álava amending Articles 29(1)(a) and 37 of the Provincial Law on Company Tax, which take effect in the jurisdiction of that infra-State autonomous body, must be regarded as selective and as covered by the definition of State aid enshrined in Article 87(1) EC and, accordingly, must be notified to the Commission pursuant to Article 88(3) EC?

Reference for a preliminary ruling from the Tribunal Superior de Justicia de la Comunidad Autónoma del País Vasco (Spain) lodged on 18 October 2006 — Comunidad Autónoma de Castilla y León v Diputación Foral de Vizcaya, Juntas Generales del Territorio Histórico de Vizcaya, Cámara de Comercio, Industria y Navegación de Bilbao, Confederación Empresarial Vasca

(Case C-434/06)

(2006/C 326/68)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de la Comunidad Autónoma del País Vasco

Parties to the main proceedings

Applicant: Comunidad Autónoma de Castilla y León

Defendants: Diputación Foral de Vizcaya, Juntas Generales del Territorio Histórico de Vizcaya, Cámara de Comercio, Industria y Navegación de Bilbao, Confederación Empresarial Vasca

Question referred

Must Article 87(1) EC be construed as meaning that, by providing for a rate of tax lower than the basic rate set in Spanish State legislation and for a deduction from the amount of tax payable which does not exist in State tax legislation, provisions in the field of taxation adopted by the Juntas Generales del Territorio Histórico de Bizkaia amending Articles 29(1)(a) and 37 of the Provincial Law on Company Tax, which take effect in the jurisdiction of that infra-State autonomous body, must be regarded as selective and as covered by the definition of State aid enshrined in Article 87(1) EC and, accordingly, must be notified to the Commission pursuant to Article 88(3) EC?

Reference for a preliminary ruling from the Korkein hallinto-oikeus (Finland) lodged on 17 October 2006 — C

(Case C-435/06)

(2006/C 326/69)

Language of the case: Finnish

Referring court

Korkein hallinto-oikeus (Finland)

Parties to the main proceedings

Applicant: C

Questions referred

1. (a) Does Council Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, (the Brussels 11a Regulation) ([1]) apply, in a case such as the present, to the enforcement of a public law decision in connection with child welfare, relating to the immediate taking into custody of a child and his or her placement in a foster family outside the home, taken as a single decision, in its entirety;

   (b) or solely to that part of the decision relating to placement outside the home in a foster family, having regard to the provision in Article 1(2)(d) of the regulation;

   (c) and, in the latter case, is the Brussels IIa Regulation applicable to a decision on placement contained in one on taking into custody, even if the decision on custody itself, on which the placement decision is dependent, is subject to legislation, based on the mutual recognition and enforcement of judgments and administrative decisions, that has been harmonised in cooperation between the Member States concerned?

2. If the answer to Question 1(a) is in the affirmative, is it possible, given that the Regulation takes no account of the legislation harmonised by the Nordic Council on the recognition and enforcement of public law decisions on custody, as described above, but solely of a corresponding private law convention, nevertheless to apply this harmonised legislation based on the direct recognition and enforcement of administrative decisions as a form of cooperation between administrative authorities to the taking into custody of a child?

3. If the answer to Question 1(a) is in the affirmative and that to Question 2 is in the negative, does the Brussels IIa Regulation apply temporally to a case, taking account of Articles 72 and 64(2) of the regulation and the abovementioned harmonised Nordic legislation on public law decisions on custody, if in Sweden the administrative authorities took their decision both on immediate taking into custody and on placement with a family on 23.2.2005 and submitted their decision on immediate custody to the administrative court for confirmation on 25.2.2005, and that court accordingly confirmed the decision on 3.3.2005?

([1]) OJ L 338, p. 1.

Reference for a preliminary ruling from the Finanzgericht Hamburg (Germany) lodged on 23 October 2006 — Per Gronfeldt, Tatiana Gronfeldt v Finanzamt Hamburg-Am Tierpark

(Case C-436/06)

(2006/C 326/70)

Language of the case: German

Referring court

Finanzgericht Hamburg

Parties to the main proceedings

Applicants: Per Gronfeldt, Tatiana Gronfeldt

Defendant: Finanzamt Hamburg-Am Tierpark

Question referred

Is it compatible with Article 56 of the Treaty establishing the European Community (EC), on the free movement of capital, that the profits from a sale of shares in a foreign limited company in 2001 were subject to tax if the seller held, either directly or indirectly, a share of at least 1 % of the company's capital within the previous five years, whereas the profits from the sale of shares in a (national) limited company subject to unlimited corporation tax in 2001 were, in otherwise comparable circumstances, subject to tax only in the case of a substantial shareholding of at least 10 %?

Reference for a preliminary ruling from the Niedersächsisches Finanzgericht (Germany) lodged on 24 October 2006 — SECURENTA Göttinger Immobilienanlagen und Vermögensmanagement AG als Rechtsnachfolgerin der Göttinger Vermögensanlagen AG v Finanzamt Göttingen

(Case C-437/06)

(2006/C 326/71)

Language of the case: German

Referring court

Niedersächsisches Finanzgericht

Parties to the main proceedings

Applicant: SECURENTA Göttinger Immobilienanlagen und Vermögensmanagement AG als Rechtsnachfolgerin der Göttinger Vermögensanlagen AG

Defendant: Finanzamt Göttingen

Questions referred

1. If a taxable person simultaneously engages in a business activity and a non-business activity, is the entitlement to deduct input tax determined according to the proportion of assessable and taxable transactions, on the one hand, to the assessable and exempt transactions, on the other hand (the applicant's view), or is the deduction of tax allowed only to the extent that the expenditure connected with the issue of shares and silent partnerships is to be attributed to the applicant's economic activity within the meaning of Article 2(1) of Council Directive 77/388/EEC ([1]) of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes?

2. If the deduction of tax is allowed only to the extent that the expenditure connected with the issue of shares and silent partnerships is to be attributed to the applicant's economic activity, should the apportionment of the input tax between business activity and non-business activity be carried out according to a so-called 'investment formula' or is — as the applicant submits — a 'transaction formula', applying Article 17(5) of Directive 77/388/EEC mutatis mutandis, also appropriate?

([1]) OJ 1977 L 145, p. 1.

Reference for a preliminary ruling from the Sozialgericht Würzburg (Germany) lodged on 24 October 2006 — Otmar Greser v Bundesagentur für Arbeit

(Case C-438/06)

(2006/C 326/72)

Language of the case: German

Referring court

Sozialgericht Würzburg

Parties to the main proceedings

Applicant: Otmar Greser

Defendant: Bundesagentur für Arbeit

Question referred

The preliminary issue in the present case is how Article 71(1)(b) of Regulation (EEC) No 1408/71 ([1]) is to be interpreted. Under that provision, must a worker return to his place of residence or is it sufficient that he returns to another place in the Member State once a week?

([1]) OJ, English Special Edition 1971 (II), p. 416.

Reference for a preliminary ruling from the Oberlandesgericht Dresden (Germany) lodged on 24 October 2006 — citiworks AG v Sächsisches Staatsministerium für Wirtschaft und Arbeit als Landesregulierungsbehörde

(Case C-439/06)

(2006/C 326/73)

Language of the case: German

Referring court

Oberlandesgericht Dresden

Parties to the main proceedings

Applicant: citiworks AG

Defendant: Sächsisches Staatsministerium für Wirtschaft und Arbeit as regulatory authority for the Land

Additional parties: 1. Flughafen Leipzig/Halle GmbH, 2. Bundesnetzagentur.

Question referred

Is the first point of Paragraph 110(1) of the Gesetz über die Elektrizitäts- und Gasversorgung (Law on electricity and gas supply or 'EnWG') compatible with Article 20(1) of Directive 2003/54/EC of the European Parliament and the Council ([1]) inasmuch as in accordance with the conditions laid down in the first point of Paragraph 110(1) of the EnWG a so-called 'operation network' is exempted from the general provisions on system access (Paragraphs 20 to 28a of the EnWG) even where such system access would not impose an unreasonable burden?

([1]) OJ L 176, p. 37.

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

(Case C-442/06)

(2006/C 326/74)

Language of the case: Italian

Parties

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

Defendant: Italian Republic

Form of order sought

— declare that, by adopting and maintaining in force Legislative Decree No 36 of 13 January 2003, as amended, which transposes into national law Directive 1999/31/EC ([1]) in a manner inconsistent with the directive itself, the Italian Republic has failed to fulfil its obligations under Articles 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 of Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste;

— order the Italian Republic to pay the costs.

Pleas in law and main arguments

Following receipt of a complaint, the Commission examined whether the national legislation complied with Directive 1999/31/EC. The non-compliance found by the Commission is due to late transposition by the Italian Republic. The directive provides for two distinct legal regimes, depending on whether new or existing landfill sites are at issue. Because of the late transposition effected by the Legislative Decree some landfill sites which should have been subject to the regime laid down for new landfill sites are instead subject to the regime laid down for existing landfill sites.

([1]) OJ L 1999 182, p. 1.

Reference for a preliminary ruling from the Supremo Tribunal Administrativo (Portugal) lodged on 27 October 2006 — Erika Hollmann v Fazenda Pública

(Case C-443/06)

(2006/C 326/75)

Language of the case: Portuguese

Referring court

Supremo Tribunal Administrativo

Parties to the main proceedings

Applicant: Erika Hollmann

Defendant: Fazenda Pública

Intervener: Ministério Público

Question referred

Does Article 43(2) of the Personal Income Tax Code (CIRS), approved by Decree-law No. 442-A/88 of 30 November 1988, as amended by Law No. 109-B/2001 of 27 December 2001, which limits the incidence of the tax to 50 % of capital gains realised by persons residing in Portugal, infringe Articles 12, 18, 39, 43 and 56 of the Treaty establishing the European Community by excluding from that limitation capital gains realised by a person residing in another Member State of the European Union?

Action brought on 26 October 2006 — Commission of the European Communities v Kingdom of Spain

(Case C-444/06)

(2006/C 326/76)

Language of the case: Spanish

Parties

Applicant: Commission of the European Communities (represented by: X. Lewis, acting as Agent, C. Fernandez Vicién and I. Moreno-Tapia Rivas, lawyers)

Defendan: Kingdom of Spain

Form of order sought

— declare that, by failing to provide for a mandatory period within which the contracting authority has to notify the decision on the award of the contract to all the bidders, by failing to provide for a mandatory waiting period between the decision on the award of the contract and its performance and by allowing an annulled contract to continue to have legal effect, the Kingdom of Spain has failed to fulfil its obligations under Article 2(1)(a) and (b) of Council Directive 89/665/EEC ([1]) of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts

— order Kingdom of Spain to pay the costs.

Pleas in law and main arguments

The Commission considers that the Spanish rule on the review of public contracts is not consistent with Directive 89/665 according to the interpretation given by the Court of Justice in Case C-81/98 *Alcatel Austria and Others* [1999] ECR I-7671.

In particular, the Spanish legislation:

does not provide for a mandatory period within which the contracting authority has to notify the decision on the award of the contract to all the bidders,

does not provide for a mandatory waiting period between the decision on the award of the contract and its performance and,

allows an annulled contract to continue to have legal effect.

([1]) OJ 1989 L 395, p.33.

Reference for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 6 November 2006 — Danske Slagterier v Federal Republic of Germany

(Case C-445/06)

(2006/C 326/77)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Danske Slagterier

Defendant: Federal Republic of Germany

Questions referred

1. Do Article 5(1)(o) and Article 6(1)(b)(iii) of Council Directive 64/433/EEC ([1]) of 26 June 1964 on health problems affecting intra-Community trade in fresh meat, as reenacted by Council Directive 91/497/EEC ([2]) of 29 July 1991, in conjunction with Article 5(1), Article 7 and Article 8 of Council Directive 89/662/EEC ([3]) of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market place producers and distributors of pigmeat in a legal position which can give rise to a claim seeking to establish State liability under Community law in the event of errors of transposition or application?

2. May the producers and distributors of pigmeat — irrespective of the answer to the first question — rely on an infringement of Article 30 of the EC Treaty (Article 28 EC) in order to substantiate a claim seeking to establish State liability under Community law where the transposition and application of the abovementioned directives are contrary to Community law?

3. Does Community law require the limitation period for a claim seeking to establish State liability under Community law to be interrupted in the light of Treaty infringement proceedings under Article 226 EC or to be suspended pending the end of those proceedings at least where there is no effective domestic legal remedy to compel the Member State to transpose a directive?

4. Does the limitation period for a claim which seeks to establish State liability under Community law and is based on the inadequate transposition of a directive and an accompanying (de facto) import ban commence, irrespective of the applicable national law, only with the full transposition of the directive, or can the limitation period begin to run, in accordance with national law, when the first injurious effects have already been produced and further injurious effects are foreseeable? If full transposition has a bearing on the commencement of the limitation period, is this true in general or only if the directive confers a right on individuals?

5. Given that the Member States may not frame the conditions for reparation of loss and damage in respect of claims seeking to establish State liability under Community law less favourably than those relating to similar domestic claims and it may not be made virtually impossible or excessively difficult to obtain reparation, are there, generally, objections to a national rule under which liability for damages does not arise where the injured party has wilfully or negligently failed to avert the damage by employing a legal remedy? Are there also objections to this 'primacy of primary legal protection' where it is subject to the proviso that it must be reasonable for the party concerned? Is the fact that the relevant court is likely to be unable to answer the questions of Community law at issue without making a reference to the Court of Justice of the European Communities or that Treaty infringement proceedings under Article 226 EC are already pending sufficient to make it unreasonable under European Community law?

(1) OJ, English Special Edition 1963-64, p. 185.
(2) OJ 1991 L 268, p. 69.
(3) OJ 1989 L 395, p. 13.

Reference for a preliminary ruling from the College van Beroep voor het bedrijfsleven (Netherlands) lodged on 31 October 2006 — A.G. Winkel v Minister van Landbouw, Natuur en Voedselkwaliteit

(Case C-446/06)

(2006/C 326/78)

Language of the case: Dutch

Referring court

College van Beroep voor het bedrijfsleven

Parties to the main proceedings

Applicant: A.G. Winkel

Defendant: Minister van Landbouw, Natuur en Voedselkwaliteit

Questions referred

1. Are rules which, as regards the right to a suckler-cow premium, require, on the basis of the usual animal husbandry practice, that a cow has calved at least once in the period which runs from twenty months before to four months after the date on which the application period started and its calf was not removed from the herd within four months after its birth, compatible with Article 3(f) of Regulation (EC) (1) No 1254/1999?

2. If the answer to Question 1 is in the negative, what criteria must be applied to establish whether the herd is intended for rearing calves for meat production and which cows belong to that herd?

(1) Regulation (EC) No 1254/1999, of 17 May 1999, on the common organisation of the market in beef and veal (OJ 1999 L 160, p. 21).

Reference for a preliminary ruling from the Fővárosi Bíróság lodged on 2 November 2006 — Vodafone Magyarország Mobil Távközlési Zártkörűen Működő Részvénytársaság, Innomed Medical Orvostechnikai Részvénytársaság v Hungarian State, Budapest Főváros Képviselő-testülete, Esztergom Város Önkormányzat Képviselő-testülete

(Case C-447/06)

(2006/C 326/79)

Language of the case: Hungarian

Referring court

Fővárosi Bíróság

Parties to the main proceedings

Applicants: Vodafone Magyarország Mobil Távközlési Zártkörűen Működő Részvénytársaság, Innomed Medical Orvostechnikai Részvénytársaság

Defendants: Hungarian State, Budapest Főváros Képviselő-testülete, Esztergom Város Önkormányzat Képviselő-testülete

Questions referred

1. Must the agreement set out in point 3(a) of part 4 of Annex X 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 ('the Act of Accession') ([1]), which is applicable pursuant to Article 24 of the Act of Accession, and which provides that, notwithstanding Articles 87 and 88 of the EC Treaty, Hungary may apply, up to and including 31 December 2007, local business tax reductions of up to 2 % of the net receipts of undertakings, granted by local government for a limited period of time on the basis of Articles 6 and 7 of the Helyi Adókról Szóló 1990. Évi C. Törvény (Act C of 1990 on local taxes), be interpreted as meaning that it concerns a temporary derogation which allows Hungary to maintain the business tax until that time?

2. In the light thereof, must Article 33 of Sixth Council Directive 77/388/EEC ('the Sixth Directive') ([2]) be interpreted as meaning that thereunder a Member State may not maintain or introduce a tax on profit-making business activities the basis is of assessment of which is made up of net receipts, after deduction of the cost of acquisition of the goods sold and the services supplied by third parties and the cost of raw materials?

3. Depending on the answer given to the two questions above, and having regard to the case-law of the Court of Justice of the European Communities, must the present practice of Hungary's first and second-level tax authorities, which consists in avoiding any examination of the compatibility with Community law of the local business tax, by suggesting to taxpayers that they amend their tax returns by means of self-revision, thus making difficult or impossible the practical application of Community law and requiring taxpayers to initiate tax proceedings with uncertain consequences, be interpreted as impeding the exercise of their rights and therefore as meaning that Hungary is failing to comply with Article 10 of the EC Treaty?

([1]) OJ 2003 L 236, p. 846.
([2]) OJ 1977 L 145, p. 1.

Reference for a preliminary ruling from the Verwaltungsgericht Köln (Germany) lodged on 2 November 2006 — Firma cp-Pharma Handels GmbH v Bundesrepublik Deutschland

(Case C-448/06)

(2006/C 326/80)

Language of the case: German

Referring court

Verwaltungsgericht Köln

Parties to the main proceedings

Applicant: Firma cp-Pharma Handels GmbH

Defendant: Bundesrepublik Deutschland

Question referred

Is Commission Regulation (EC) No 1873/2003 of 24 October 2003 ([1]) amending Annex II to Council Regulation (EEC) No 2377/90 laying down a Community procedure for the establishment of maximum residue limits of veterinary medicinal products in foodstuffs of animal origin ([2]) void on account of a breach of higher-ranking Community law (Articles 1(1) and 3 of Council Regulation (EEC) No 2377/90 in conjunction with Article 4(1) of Council Directive 96/22/EC of 29 April 1996 ([3])), in so far as application of an injection solution as a pharmaceutical form is excluded by virtue of the note marked (*) against the listing of progesterone in Annex II to Council Regulation (EEC) No 2377/90?

([1]) OJ 2003 L 275, p. 9.
([2]) OJ 1990 L 224, p. 1.
([3]) OJ 1996 L 125, p. 3.

Reference for a preliminary ruling from the Tribunal du travail de Bruxelles (Belgium) lodged on 6 November 2006 — Sophiane Gysen v Groupe S — Caisse d'Assurances sociales pour indépendants

(Case C-449/06)

(2006/C 326/81)

Language of the case: French

Referring court

Tribunal du travail de Bruxelles

Parties to the main proceedings

Applicant: Sophiane Gysen

Defendant: Groupe S — Caisse d'Assurances sociales pour indépendants

Question referred

May, or must, Article 67(1) of Regulation (EEC, Euratom, ECSC) [No 259/68] of the Council of 29 February 1968 laying down the Staff Regulations of Officials of the European Communities ([1]) and Annex VII thereto, entitled 'Remuneration …', Section 1: Family allowances, which comprise

(a) household allowance,

(b) dependent child allowance,

(c) education allowance,

be regarded as constituting what the national rules in question describe as an '… international social security convention in force in Belgium'?

([1]) JO L 56, p. 1.

Reference for a preliminary ruling from the Conseil d'État (Belgium) lodged on 6 November 2006 — Varec SA v État belge

(Case C-450/06)

(2006/C 326/82)

Language of the case: French

Referring court

Conseil d'État (Belgium)

Parties to the main proceedings

Applicant: Varec SA

Defendant: État belge

Question referred

Must Article 1(1) of Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts ([1]), read with Article 15(2) of Council Directive 93/36/EEC of 14 June 1993 coordinating procedures for the award of public supply contracts ([2]), and Article 6 of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts ([3]), be interpreted as meaning that the authority responsible for the appeal procedures provided for in that article must ensure confidentiality and observance of the business secrets contained in the files communicated to it by the parties to the case including the awarding authority, whilst at the same time being entitled to apprise itself of such information and take it into consideration?

([1]) OJ L 395, 30.12.1989, p. 33.
([2]) OJ L 199, 09.08.1993, p. 1.
([3]) OJ L 134, 30.04.2004, p. 114.

Reference for a preliminary ruling from the Unabhängiger Finanzsenat, Außenstelle Wien (Austria) lodged on 6 November 2006 — Gabriele Walderdorff v Finanzamt Waldviertel

(Case C-451/06)

(2006/C 326/83)

Language of the case: German

Referring court

Unabhängiger Finanzsenat, Außenstelle Wien

Parties to the main proceedings

Applicant: Gabriele Walderdorff

Defendant: Finanzamt Waldviertel

Questions referred

Is Article 13B(b) 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 ([1]) (as last amended by Council Directive 2006/69/EC of 24 July 2006 ([2])), hereinafter referred to as 'the Sixth Directive', to be interpreted as meaning that the grant of the entitlement to fish, for consideration, in the form of a lease concluded for a period of 10 years

1. by the owner of the property on which the body of water in respect of which the entitlement was granted is located,

2. by the holder of fishing rights in respect of a body of water located on public land

constitutes 'the leasing or letting of immovable property'?

([1]) OJ L 145, p. 1.
([2]) OJ L 221, p. 9.

Reference for a preliminary ruling from the High Court of Justice (England and Wales), Queen's Bench Division (Administrative Court) (United Kingdom) made on 9 November 2006 — The Queen on the application of Synthon BV v Licensing Authority, Interested Party: Smithkline Beecham plc

(Case C-452/06)

(2006/C 326/84)

Language of the case: English

Referring court

High Court of Justice (England & Wales), Queen's Bench Division (Administrative Court)

Parties to the main proceedings

Applicant: Synthon BV

Defendant: Licensing Authority

Interested Party: Smithkline Beecham plc

Questions referred

1. Where:

   — a Member State ('the concerned Member State') receives an application pursuant to Article 28 of Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use ([1]) ('the Directive') for mutual recognition, in the concerned Member State of a marketing authorisation of a medicinal product ('the Product') granted by another Member State ('the reference Member State');

   — such marketing authorisation was granted by the reference Member State pursuant to the abridged application procedure in Article 10(1)(a)(iii) of the Directive on the grounds that the Product is essentially similar to another medicinal product which has already been authorised within the EU for the requisite period ('the Reference Product');

   — the concerned Member State operates a procedure for validation of the application during which it checks that the application contains the particulars and documents required by Articles 8, 10(1)(a)(iii) and 28 of the Directive, including that the particulars provided are compatible with the legal basis upon which the application is submitted;

   (a) is it compatible with the Directive and in particular Article 28 for the concerned Member State to check that the Product is essentially similar to the Reference Product (without carrying out any substantive assessment), to refuse to accept and review the application and not proceed to recognise the marketing authorisation granted by the reference Member State on the grounds that in its opinion the Product is not essentially similar to the Reference Product? or

   (b) is the concerned Member State obliged to recognise the marketing authorisation granted by the reference Member State within 90 days of receipt of the application and the assessment report pursuant to Article 28(4) of the Directive unless the concerned Member State invokes the procedure set out in Articles 29 to 34 of the Directive (which is applicable where there are grounds for supposing that the marketing authorisation of the Product may present a risk to public health within the meaning of Article 29 of the Directive).

2. If the answer to question 1(a) is no and the answer to question 1(b) is yes, where the concerned Member State rejects the application at the validation stage on the grounds that the Product is not essentially similar to the Reference Product, and thereby fails to recognise the marketing authorisation granted by the reference Member State or to invoke the procedure set out in Articles 29 to 34 of the Directive, does the failure by the concerned Member State to recognise the marketing authorisation granted by the reference Member State in the circumstances referred to above amount to a sufficiently serious breach of Community law within the meaning of the second condition in the judgment in Joined Cases C-46/93 and C-48/93 *Brasserie du Pecheur and Factortame*. Alternatively, what factors ought the national court to take into consideration when it comes to determine whether such failure amounts to a sufficiently serious breach?

3. Where the failure of the concerned Member State to recognise the marketing authorisation granted by the reference Member State as set out in question 1 above is based on a general policy adopted by the concerned Member State that different salts of the same active moiety cannot, as a matter of law, be considered essentially similar, does the failure by the concerned Member State to recognise the marketing authorisation granted by the reference Member State in the circumstances referred to above amount to a sufficiently serious breach of Community law within the meaning of the second condition in the judgment in Joined Cases C-46/93 and C-48/93 *Brasserie du Pecheur and Factortame*. Alternatively what factors ought the national court to take into consideration when it comes to determine whether such failure amounts to a sufficiently serious breach?

(1) OJ L 311, p. 67

Reference for a preliminary ruling from the Bundesverwaltungsgericht (Germany) lodged on 13 November 2006 — 01051 Telecom GmbH v Bundesrepublik Deutschland

(Case C-453/06)

(2006/C 326/85)

Language of the case: German

Referring court

Bundesverwaltungsgericht (Germany)

Parties to the main proceedings

Applicant: 01051 Telecom GmbH

Defendant: Bundesrepublik Deutschland

Question referred

Is it consistent with the first sentence of Article 27 of Directive 2002/21/EC of the European Parliament [and of the Council] of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (1) and Article 7 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 (Access Directive) (2) if, under national law, a statutory requirement formerly provided for in that law under which interconnection charges are to be calculated by reference to the cost of the efficient provision of services is to be maintained temporarily, even though there is no obligation to do so under Community law?

(1) OJ L 108, P.33.
(2) OJ L 108, P.7.

Reference for a preliminary ruling from the Bundesvergabeamt (Austria) lodged on 13 November 2006 — pressetext Nachrichtenagentur GmbH v 1. Republic of Austria (Bund), 2. APA-OTS Originaltext-Service GmbH, 3. APA AUSTRIA PRESSE AGENTUR, a registered cooperative with limited liability

(Case C-454/06)

(2006/C 326/86)

Language of the case: German

Referring court

Bundesvergabeamt

Parties to the main proceedings

Applicant: pressetext Nachrichtenagentur GmbH

Respondents: 1. Republic of Austria (Bund), 2. APA-OTS Originaltext-Service GmbH, 3. APA AUSTRIA PRESSE AGENTUR, a registered cooperative with limited liability

Questions referred

1. Are the terms 'awarding' in Article 3(1) of Directive 92/50/EEC (1) and 'awarded' in Articles 8 and 9 of that directive to be interpreted as encompassing circumstances in which a contracting authority intends to obtain services in the future from a service provider established as a limited liability company where those services were previously supplied by a different service provider who is the sole shareholder in the future service provider and has control of the future service provider? In such a case is it legally relevant that the contracting authority has no guarantee that throughout the entire period of the original contract the

shares in the future service provider will not be disposed of in whole or in part to third parties and moreover has no guarantee that the membership of the original service provider, which is in the form of a co-operative society, will remain unchanged throughout the entire contract period?

2. Are the terms 'awarding' in Article 3(1) of Directive 92/50/EEC and 'awarded' in Articles 8 and 9 of that directive to be interpreted as encompassing circumstances in which, during the period of validity of a contract concluded for an indefinite period with certain service providers for the joint provision of services, a contracting authority agrees with those service providers amendments to the charges for specified services under the contract and reformulates an index-linking clause, where these amendments result in different charges and are made upon the changeover to the euro?

3. Are the terms 'awarding' in Article 3(1) of Directive 92/50/EEC and 'awarded' in Articles 8 and 9 of that directive to be interpreted as encompassing circumstances in which, during the period of validity of a contract concluded for an indefinite period with certain service providers for the joint provision of services, a contracting authority agrees with those service providers to amend the contract, first, renewing for a period of three years a waiver of the right to terminate the contract by notice, the waiver no longer being in force at the time of the amendment, and second, also laying down a higher rebate than before for certain volume-related charges within a specified area of supply?

4. *If the answer to any of the first three questions is that there is an award*:

Is Article 11(3)(b) of Directive 92/50/EEC, or are any other provisions of Community law, such as, in particular, the principle of transparency, to be interpreted as permitting a contracting authority to obtain services by awarding a single contract in a negotiated procedure without prior publication of a contract notice, where parts of the services are covered by exclusive rights as referred to in Article 11(3)(b) of Directive 92/50/EEC? Or do the principle of transparency or any other provisions of Community law require in the case of an award of mostly non-priority services that a contract notice is none the less published prior to the contract award, to enable undertakings in the sectors concerned to assess whether services are in fact being awarded that are subject to an exclusive right? Or do the provisions of Community law relating to the award of public contracts require that in such a case services can only be awarded in separate tender procedures, according to whether they are or are not subject to exclusive rights, in order to allow at least competitive tendering as to part?

5. *If the answer to the fourth question is to the effect that a contracting authority may award services which are not subject to exclusive rights in a single procurement procedure together with services which are subject to an exclusive right*:

Can an undertaking which does not have any right to deal with data that is subject to an exclusive right possessed by an undertaking which has a dominant position in the market establish that in that respect it has the capacity, for the purposes of procurement law, to provide a comprehensive service to a contracting authority, by relying on Article 82 EC and an obligation derived from that provision on the market-dominant undertaking which has the power of disposal over the data and is established in a Member State to provide the data on reasonable conditions?

6. If the answer to the first, second and third questions is to the effect that the partial contract transfer in 2000 and/or one or both of the contract amendments referred to constituted new awards; and furthermore should the fourth question be answered to the effect that either when awarding a contract for services not subject to exclusive rights by means of a separate award procedure, or when awarding a combined contract (in the present case for press releases, the basic service and rights to use APADok), a contracting authority should have first published a contract notice to ensure that the intended contract award was transparent and capable of being reviewed:

Is 'harmed' in Article 1(3) of Directive 89/665/EEC [2] and in Article 2(1)(c) of that directive to be interpreted as meaning that an undertaking in a case such as the present one is harmed, within the meaning of those provisions of Directive 89/665/EEC, simply where he has been deprived of the opportunity to participate in a procurement procedure because the contracting authority did not, prior to making the award, publish a contract notice, on the basis of which the undertaking could have tendered for the contract to be awarded, could have submitted an offer or could have had the claim that exclusive rights were involved reviewed by the competent procurement review body?

7. Are the Community law principle of equivalence and the Community law requirement for effective legal protection, or the principle of effectiveness, to be interpreted, having regard to any other relevant provisions of Community law, as conferring an individual and unconditional right on an

undertaking against a Member State such that it has at least six months from the time when it could have known that a contract award infringed procurement law to bring legal proceedings before the competent national authority to seek damages following the contract award on account of an infringement of Community procurement law, while it must be allowed additional time for periods when it could not make such a claim owing to the absence of a statutory basis in national law, in circumstances where under national law claims for damages based on infringements of national law are normally subject to a limitation period of three years from the date of knowledge of the wrongdoer and of the damage and, in the absence of legal protection in a particular area of law, the limitation period does not (continue to) run?

(1) OJ 1992 L 209, p. 1.
(2) OJ 1989 L 395, p. 33.

Reference for a preliminary ruling from the Bundesgerichtshof lodged on 16 November 2006 — Peek & Cloppenburg KG v Cassina S.p.A.

(Case C-456/06)

(2006/C 326/87)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Appellant: Peek & Cloppenburg KG

Respondent: Cassina S.p.A.

Questions referred

1. (a) Can it be assumed that there is a distribution to the public in any manner other than by sale, within the terms of Article 4(1) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (1) ('the Information Society Directive'), in the case where it is made possible for third parties to make use of items of copyright-protected works without the grant of user involving a transfer of *de facto* power to dispose of those items?

   (b) Is there a distribution under Article 4(1) of the Information Society Directive also in the case in which items of copyright-protected works are shown publicly without the possibility of using those items being granted to third parties?

2. If the answers are in the affirmative: can the protection accorded to the free movement of goods preclude, in the abovementioned cases, exercise of the distribution right if the items presented are not under copyright protection in the Member State in which they were manufactured and placed on the market?

(1) OJ 2001 L 167, p. 10.

Appeal brought on 16 November 2006 by the Republic of Finland against the order of 5 September 2006 in Case T-350/05 Republic of Finland v Commission of the European Communities

(Case C-457/06 P)

(2006/C 326/88)

Language of the case: Finnish

Parties

Appellant: Republic of Finland (represented by E. Bygglin)

Other party to the proceedings: Commission of the European Communities

Form of order sought

— set aside the order of the Court of First Instance of the European Communities of 5 September 2006 in Case T-350/05 *Republic of Finland* v *Commission of the European Communities* and declare the action brought by Finland under Article 230 EC admissible and remit the main proceedings to the Court of First Instance, in which the Commission should be ordered to reimburse Finland also the costs incurred in the appeal proceedings

Pleas in law and main arguments

Finland submits that in its order the Court of First Instance infringed Community law within the meaning of Article 58 of the Statute of the Court of Justice.

Finland submits that the Court of First Instance erred in law by considering that the contested decision of the Commission did not constitute a decision against which an action may be brought within the meaning of Article 230 EC.

In Finland's view, the contested decision of the Commission constitutes a decision against which an action may be brought within the meaning of Article 230. By its decision the Commission in fact denied Finland the opportunity to make a conditional payment within the meaning of the case-law of the Court of Justice.

The contested decision thus has binding legal effects on Finland, as required in the case-law on the application of Article 230 EC, which affect Finland's interests and clearly change Finland's legal position. The contested decision also caused Finland a loss of rights and is thus clearly adverse to Finland.

Finland submits that the Court of First Instance made several errors of law in assessing the case and as a result reached a decision contrary to Community law.

Reference for a preliminary ruling from the Regeringsrätten lodged on 16 November 2006 — Skatteverket v Gourmet Classic Ltd

(Case C-458/06)

(2006/C 326/89)

Language of the case: Swedish

Referring court

Regeringsrätten

Parties to the main proceedings

Applicant: Skatteverket

Defendant: Gourmet Classic Ltd

Question referred

Is the alcohol contained in cooking wine to be classified as ethyl alcohol as referred to in the first indent of Article 20 of Council Directive 92/83/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on alcohol and alcoholic beverages? ([1])

([1]) OJ L 316, 31.10.1992, p. 21.

Reference for a preliminary ruling from the Tribunal du travail de Bruxelles (Belgium) lodged on 17 November 2006 — Nadine Paquay v Société d'architectes Hoet + Minne SPRL

(Case C-460/06)

(2006/C 326/90)

Language of the case: French

Referring court

Tribunal du travail de Bruxelles (Belgium)

Parties to the main proceedings

Applicant: Nadine Paquay

Defendant: Société d'architectes Hoet + Minne SPRL

Questions referred

1. Must Article 10 of Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers (tenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) ([1]) be interpreted as only prohibiting the notification of a decision of dismissal during the period of protection referred to in paragraph 1 of that article or does it also prohibit taking a decision of dismissal and attempting to find a permanent replacement for the employee before the end of the period of protection?

2. Is dismissal notified after the period of protection provided for in Article 10 of Directive 92/85, but which is not unrelated to the pregnancy and/or the birth of a child, contrary to Article 2(1) (or 5(1)) of Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions ([2]), and, in such a case, must the sanction be at least equivalent to that laid down by national law in execution of Article 10 of Directive 92/85?

([1]) OJ L 348, p. 1.
([2]) OJ L 39, p. 40.

Appeal brought on 18 November 2006 by Elliniki Etairia pros Prostasian tis Pnevmatikis Idioktisias AE (AEPI). against the order of the Court of First Instance (Fourth Chamber) made on 5 September 2006 in Case T-242/05 AEPI v Commission

(Case C-461/06P)

(2006/C 326/91)

Language of the case: Greek

Parties

Appellant: Elliniki Etairia pros Prostasian tis Pnevmatikis Idioktisias (AEPI) AE (represented by: Theodoros K. Asprogerakas-Grivas, lawyer)

Other party to the proceedings: Commission of the European Communities

Form of order sought

The Court is asked to:

— hold the appeal admissible;

— set aside the contested order No 303852 of 5 September 2006 of the Court of First Instance of the European Communities (Fourth Chamber) in Case T-242/05 in its entirety;

— hear and determine our action of 4 June 2005 (pursuant to Article 230 of the EU Treaty) before the Court of First Instance of the European Communities itself, or send it back to the Court which issued the decision under appeal in order for it to be held admissible on the grounds specified.

— order the respondent to pay the costs.

Pleas in law and main arguments

The grounds of the appeal are:

(a) The decision under appeal dismissed the application and accepted the plea of inadmissibility raised by the Commission of the European Communities without taking into account the individual right to legal protection which arises in every case in which a citizen brings a case before a court; his case must be judged in its entirety and to its full extent and the decision handed down must contain sufficient and lawful reasons.

(b) Although it is accepted that in matters of infringement of the competition rules the Commission of the European Communities is recognized as having discretion as to the action it will take, nevertheless the decision under appeal did not examine whether the Commission remained within the permissible limits of its discretion or exceeded those limits, given the fact that in any event no administrative service is allowed to act ultra vires.

(c) It was wholly impermissible for the decision under appeal to accept that the Commission of the European Communities may act without any supervision in the area of infringement of the principles of competition and, if it is called to account for its actions, is able to avoid doing so by simply raising a plea of inadmissibility.

Reference for a preliminary ruling from the Cour de cassation (France) lodged on 20 November 2006 — Glaxosmithkline et Laboratoires Glaxosmithkline v Jean-Pierre Rouard

(Case C-462/06)

(2006/C 326/92)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Appellants: Glaxosmithkline et Laboratoires Glaxosmithkline

Respondent: Jean-Pierre Rouard

Question referred

Does the rule of special jurisdiction stated in Article 6(1) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ([1]), by virtue of which a person domiciled in a Member State may be sued 'where he is one of a number of defendants, in the courts for the place where any of them is domiciled, provided the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings', apply to proceedings brought by an employee before a court of a Member State against two companies belonging to the same group, one of which, being the one which engaged that employee for the group and refused to re-employ him, is domiciled in that Member State and the other, for which the employee last worked in non-Member States and which dismissed him, in another Member State, when that applicant relies on a clause in the employment contract to claim that the two defendants were his co-employers from whom he claims compensation for his dismissal or does the rule in Article 18(1) of the regulation, by virtue of which, in matters relating to individual contracts of employment, jurisdiction is to be determined by Section 5 of Chapter II, exclude the application of Article 6(1), so that each of the two companies must be sued before the courts of the Member State where it is domiciled?

([1]) OJ 2001 L 12, p. 1.

Reference for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 20 November 2006 — FBTO Schadeverzekeringen N.V. v Jack Odenbreit

(Case C-463/06)

(2006/C 326/93)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Defendant and appellant on a point of law: FBTO Schadeverzekeringen N.V.

Applicant and respondent on a point of law: Jack Odenbreit

Question referred

Is the reference in Article 11(2) of Council Regulation (EC) No 44/2001 ([1]) of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters to Article 9(1)(b) of that regulation to be understood as meaning that the injured party may bring an action directly against the insurer in the courts for the place in a Member State where the injured party is domiciled, provided that such a direct action is permitted and the insurer is domiciled in a Member State?

([1]) OJ 2001 L 12, p. 1.

Reference for a preliminary ruling from the Korkein hallinto-oikeus (Finland) lodged on 20 November 2006 — Avena Nordic Grain Oy

(Case C-464/06)

(2006/C 326/94)

Language of the case: Finnish

Referring court

Korkein hallinto-oikeus (Finland)

Parties to the main proceedings

Applicant: Avena Nordic Grain Oy

Defendant: Finnish Ministry of Land and Agriculture

Question(s) referred

Is Article 5 of Commission Regulation (EC) No 800/1999, ([1]) in conjunction with the principles of proportionality and good administration, to be interpreted as meaning that the competent national authority may recognise an export declaration sent as a fax copy prior to the loading operation if it takes the view that there is not the least suspicion of fraud, the defect in the transmission of the export declaration was based on an error which was made in connection with advice given by the authority and the latter was able to establish that the signed original export declaration sent subsequently was identical in every way to the faxed copy?

([1]) of 15 April 1999 laying down common detailed rules for the application of the system of export refunds on agricultural products (OJ 1999 L 102, p. 11).

Action brought on 20 November 2006 — Commission of the European Communities v Kingdom of Spain

(Case C-465/06)

(2006/C 326/95)

Language of the case: Spanish

Parties

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

Defendant: Kingdom of Spain

Form of order sought

— declare that, by failing to adopt the provisions necessary to comply with Directive 2003/98/EC ([1]) of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information 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 Kingdom of Spain to pay the costs.

Pleas in law and main arguments

The period for transposition of Directive 2003/98/EC expired on 1 July 2005.

([1]) OJ L 345 of 31.12.2003, p. 90.

Reference for a preliminary ruling from the Tribunal de grande instance de Nanterre (France) lodged on 21 November 2006 — Société Roquette Frères SA v Direction générale des douanes et des droits indirects and Recette principale de Gennevilliers de la Direction générale des douanes et des droits indirects

(Case C-466/06)

(2006/C 326/96)

Language of the case: French

Referring court

Tribunal de grande instance, Nanterre

Parties to the main proceedings

Applicant: Société Roquette Frères SA

Defendants: Direction générale des douanes et des droits indirects and Recette principale de Gennevilliers de la Direction générale des douanes et des droits indirects

Questions referred

1. Primarily

Are Article 24(2) of Regulation No 1785/81 ([1]), Article 27 (3) of Regulation No 2038/1999 ([2]), Article 1 of Regulation No 2073/2000 ([3]), Article [1](2) of Regulation No 1745/2002 ([4]) and Article 1 of Regulation No 1739/2003 ([5]) valid in so far as they fix the maximum basic quantities for isoglucose production for Metropolitan France without taking into consideration the isoglucose produced in that Member State between 1 November 1978 and 30 April 1979 as an intermediate product used in the manufacture of other products intended for sale?

2. In the alternative, in the event of a negative reply to the previous question:

Are Commission Regulations Nos 1443/82 ([6]) and 314/2002 ([7]) invalid under Article 33 of Regulation No 2038 1999 and Article 15 of Council Regulation No 1260/2001 on the common organisation of the markets in the sugar sector respectively and with regard to the principles of proportionality and non-discrimination, in so far as they do not provide, for the purposes of calculating the production levy, for excluding from the financing needs the quantities of sugar ([8]) contained in the processed products exported without [export] refund?

([1]) Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organisation of the markets in the sugar sector (OJ 1981 L 177, p. 4).

([2]) Council Regulation (EC) No 2038/1999 of 13 September 1999 on the common organisation of the markets in the sugar sector (OJ 1999 L 252, p. 1).

([3]) Commission Regulation (EC) No 2073/2000 of 29 September 2000 reducing, for the 2000/2001 marketing year, the guaranteed quantity under the production quotas scheme for the sugar sector and the presumed maximum supply needs of sugar refineries under the preferential import arrangements (OJ 2000 L 246, p. 38).

([4]) Commission Regulation (EC) No 1745/2002 of 30 September 2002 reducing, for the 2002/2003 marketing year, the guaranteed quantity under the production quotas scheme for the sugar sector and the presumed maximum supply needs of sugar refineries under the preferential import arrangements (OJ 2002 L 263, p. 31).

([5]) Commission Regulation (EC) No 1739/2003 of 30 September 2003 reducing, for the 2003/2004 marketing year, the guaranteed quantity under the production quotas for the sugar sector and the presumed maximum supply needs of sugar refineries under preferential imports (OJ 2003 L 249, p. 38).

([6]) Commission Regulation (EEC) No 1443/82 of 8 June 1982 laying down detailed rules for the application of the quota system in the sugar sector (OJ 1982 L 158, p. 17).

([7]) Commission Regulation (EC) No 314/2002 of 20 February 2002 laying down detailed rules for the application of the quota system in the sugar sector (OJ 2002 L 50, p. 40).

([8]) Council Regulation (EC) No 1260/2001 on the common organisation of the markets in the sugar sector (OJ 2001 L 178, p.1).

Reference for a preliminary ruling from the Tribunale civile di Genova (Italy) lodged on 21 November 2006 — Consel Gi. Emme Srl v Sistema Logistico dell'Arco Ligure e Alessandrino Srl (SLALA)

(Case C-467/06)

(2006/C 326/97)

Language of the case: Italian

Referring court

Tribunale civile di Genova

Parties to the main proceedings

Applicant: Consel Gi. Emme Srl

Defendant: Sistema Logistico dell'Arco Ligure e Alessandrino Srl (SLALA)

Question referred

1. Does Community law (with particular reference to Articles 43 EC and 49 EC, 82 EC, 86 EC and 87 EC) preclude a Member State from entrusting public services and the management of public infrastructure — on the basis of special legislation with characteristics similar to those of the provisions introduced into Italian law by Article 12 of Decree-Law No 262/06 of 3 October 2006 — to private-law companies (in this case, ANAS spa) which, at the same time, perform the function of regulating and controlling the particular market (of the kind conferred on ANAS spa by the legislation at issue), and are in a position to determine the substance, progress and possible termination of the contract of concession which exists between the State and competitors of the body on which that role has been conferred?

2. Is a rule (such as the rule introduced by the Italian State under the aforementioned Article 12 of Decree-Law No 262/06 of 3 October 2006) which integrates or actually modifies (in particular by replacing them with a sole agreement, adopted by administrative act) the contractual agreements already in place, thereby substantially changing the balance of contractual relations, compatible with Community law (from the perspective of Community law itself or, at least, of law with Community relevance, concerning the freedom to engage in commercial activities, in the light of the case-law of the Court of Justice on this point)?

Action brought on 23 November 2006 — Commission of the European Communities v Hellenic Republic

(Case C-479/06)

(2006/C 326/98)

Language of the case: Greek

Parties

Applicant: Commission of the European Communities (represented by: M. Patakia and D. Lawunmi)

Defendant: Hellenic Republic

Form of order sought

The Court is asked to:

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2004/26/EC ([1]) of the European Parliament and of the Council of 21 April 2004 amending Directive 97/68/EC on the approximation of the laws of the Member States relating to measures against the emission of gaseous and particulate pollutants from internal combustion engines to be installed in non-road mobile machinery, and in any event by failing to inform the Commission of those provisions, the Hellenic Republic has failed to fulfil its obligations under that directive;

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

The period prescribed for transposing Directive 2004/26/EC into domestic law expired on 20 May 2005.

([1]) OJ L 146 of 30.04.04, p. 1.

Action brought on 24 November 2006 — Commission of the European Communities v Hellenic Republic

(Case C-481/06)

(2006/C 326/99)

Language of the case: Greek

Parties

Applicant: Commission of the European Communities (represented by: M. Patakia and X. Lewis)

Defendant: Hellenic Republic

Form of order sought

— declare that, by retaining in force Article 7(2) of Law 2955/2001, and by means of the Joint Ministerial Decisions (DI6a/ik 38611 and DI6a/ik 38609 of 12 April 2005) implementing that provision, the Hellenic Republic has failed to fulfil its obligation flowing from Article 6(3) of Directive 93/36/EEC [1] coordinating procedures for the award of public supply contracts and its obligation, as laid down by the case-law of the Court of Justice of the European Communities, to ensure effective and fair competition;

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

The Commission received a complaint relating to the provision of Greek legislation which has placed all material for medical use into categories and set a specific maximum price for each category. That provision, in conjunction with the joint ministerial decisions implementing it, constitutes a legislative framework which allows the direct award of public supply contracts for whole groups of the foregoing products which are classified as not comparable.

In the light of the case-law of the Court of Justice, the Commission considers that the legislative framework in question is contrary to Article 6(3) of Directive 93/36 coordinating procedures for the award of public supply contracts and to the obligation to ensure effective and fair competition. Inasmuch as that provision is in the nature of an exception, it must be interpreted narrowly and it is not possible to allow direct awards for whole categories of products. Also, contracting authorities must make sure that effective competition is preserved and ensure transparency in the public supply field, which is not possible with direct awards, apart from the exceptional cases laid down in Article 6 (3) of Directive 93/36.

The Greek authorities did not contest the Commission's submissions or the existence of the alleged infringement and announced their intention to amend the legislative provision at issue. Nevertheless, no such amendment had been made known up until the date on which the action was brought.

The Commission consequently considers that the Hellenic Republic has failed to fulfil its obligation under Article 6(3) of Directive 93/36 and its obligation to ensure effective and fair competition.

[1] OJ No L 199, 9.8.1993, p. 1.

Action brought on 24 November 2006 — Commission of the European Communities v Portuguese Republic

(Case C-482/06)

(2006/C 326/100)

Language of the case: Portuguese

Parties

Applicant: Commission of the European Communities (represented by: E. Montaguti and G. Braga da Cruz, acting as Agents)

Defendant: Portuguese Republic

Form of order sought

— a declaration that, by failing to adopt (all) the laws, regulations and administrative provisions necessary to comply with Directive 2003/98/EC [1] of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information or, in any event, by failing to communicate those provisions to the European Commission, the Portuguese Republic has failed to fulfil its obligations under Article 12 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 1 July 2005.

[1] OJ 2003 L 345, p. 90.

Action brought on 24 November 2006 — Commission of the European Communities v Federal Republic of Germany

(Case C-485/06)

(2006/C 326/101)

Language of the case: German

Parties

Applicant: Commission of the European Communities (represented by: M. Condou and W. Bogensberger, acting as Agents)

Defendant: Federal Republic of Germany

Form of order sought

The applicant claims that the Court should:

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to implement Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence ([1]), or, in any event, by not communicating those provisions to the Commission, the Federal Republic of Germany has failed to fulfil its obligations under that directive;

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

Pleas in law and main arguments

The period for implementing the Directive expired on 5 December 2004.

([1]) OJ 2002 L 328, p. 17.

Action brought on 27 November 2006 — Commission of the European Communities v Hellenic Republic

(Case C-489/06)

(2006/C 326/102)

Language of the case: Greek

Parties

Applicant: Commission of the European Communities (represented by: M. Patakia and X. Lewis)

Defendant: Hellenic Republic

Form of order sought

— declare that, by rejecting tenders in respect of medical devices bearing the CE certification marking, without, in any event, the competent contracting authorities of Greek hospitals having followed the procedure set out in Directive 93/42/EEC, the Hellenic Republic has failed to fulfil its obligations under Article 8(2) of Directive 93/36/EEC of 14 June 1993 ([1]) coordinating procedures for the award of public supply contracts and Articles 17 and 18 of Council Directive 93/42/EEC of 14 June 1993 ([2]) concerning medical devices;

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

The Commission received a complaint relating to the phenomenon of rejection of medical devices, in the context of calls for competition for supplies to public hospitals in Greece, on grounds relating to the 'general sufficiency and safety of use' thereof, notwithstanding their certification with the CE marking, and without, in any event, the procedure provided for in Directive 93/42/EEC concerning medical devices being followed.

Under Directive 93/36/EEC coordinating procedures for the award of public supply contracts, the tender procedures must be conducted on the basis of the relevant national technical standards implementing European standards, of European technical approvals or of common technical specifications. The Commission considers that, by deciding in the instances at issue that the CE marking did not constitute an appropriate and binding guarantee of the suitability of the products in the tenders, without any of the prescribed exceptions which justify divergence from the directive's provisions being applicable, the Greek contracting authorities infringed the obligations owed by them in that regard under Article 8(2).

At the same time, the Commission points out an infringement of Directive 93/42/EEC concerning medical devices, which lays down specific and exclusive procedures for certifying such devices and placing them on the market, as well as for contesting their suitability. The information available to the Commission reveals continual breach, by the competent Greek authorities which have rejected tenders, of the legal procedures for checking the suitability of medical devices. None of the stages of the procedure provided for in Article 18 of the directive was observed where the correctness of certification — pursuant to Article 17 of the directive — with the CE marking was disputed.

Also, in the Commission's submission, the Greek authorities' claim that the measures which they have taken to eliminate the abovementioned phenomenon are sufficient is contradicted by the very facts and, in any event, in accordance with the Court of Justice's case-law, the existence of national procedures which are designed to deal with every infringement relating to public procurement does not justify infringement of the relevant Community rules by the Member State.

The Commission considers therefore that the Hellenic Republic has infringed its obligations under Directive 93/36/EEC, in particular Article 8(2), and under Directive 93/42/EEC, in particular Articles 17 and 18.

([1]) OJ No L 199, 9.8.1993, p. 1.
([2]) OJ No L 169, 12.7.1993, p. 1.

Action brought on 27 November 2006 — Commission of the European Communities v Hellenic Republic

(Case C-490/06)

(2006/C 326/103)

Language of the case: Greek

Parties

Applicant: Commission of the European Communities (represented by: M. Patakia and D. Lawunmi)

Defendant: Hellenic Republic

Form of order sought

The Court is asked to:

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2002/88/EC [1] of the European Parliament and of the Council of 9 December 2002 amending Directive 97/68/EC on the approximation of the laws of the Member States relating to measures against the emission of gaseous and particulate pollutants from internal combustion engines to be installed in non-road mobile machinery, and in any event by failing to inform the Commission of those provisions, the Hellenic Republic has failed to fulfil its obligations under that directive;

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

The period prescribed for transposing Directive 2002/88/EC into domestic law expired on 11 August 2004.

[1] OJ L 35 of 11.02.2003, p. 28.

Reference for a preliminary ruling from the Vestre Landsret (Denmark) lodged on 28 November 2006 — Danske Svineproducenter v Justitsministeriet

(Case C-491/06)

(2006/C 326/104)

Language of the case: Danish

Referring court

Vestre Landsret (Denmark)

Parties to the main proceedings

Applicant: Danske Svineproducenter

Defendant: Justitsministeriet

Questions referred

1. Are the provisions of Chapter I, point A(2)(b), and Chapter VII, point 48(3), third indent, of the Annex to Council Directive 91/628/EEC concerning the protection of animals during transport [1], as amended by Council Directive 95/29/EC [2], to be interpreted as meaning that a Member State is not entitled to introduce national transitional rules under which, in the case of the transport of pigs of 40 kg and not more than 110 kg where the transport time exceeds eight hours, there must be an internal height for each deck — measured from the highest point on the floor to the lowest point on the ceiling — of at least 100 cm where a mechanical ventilation system is used?

2. Are the provisions of Chapter I, point A(2)(b), and Chapter VII, point 48(3), third indent, of the Annex to Council Directive 91/628/EEC concerning the protection of animals during transport, as amended by Council Directive 95/29/EC, to be interpreted as meaning that a Member State is not entitled to introduce national rules under which, in the case of the transport of pigs of 40 kg and over, where the total journey time exceeds eight hours, means of transport must be used which — for example by means of a lifting roof combined with mobile decks or an equivalent construction — ensure at all times that an internal inspection height of at least 140 cm may be established for each deck — measured from the highest point on the floor to the lowest point on the ceiling — while the internal height of the other decks where animals are transported on several decks must constantly be at least 92 cm, where the pigs transported have an average weight of 100 kg and a mechanical ventilation system is used?

3. Are the provisions of Chapter VI, point 47(D), 'Pigs', of the Annex to Council Directive 91/628/EEC concerning the protection of animals during transport, as amended by Council Directive 95/29/EC, to be interpreted as meaning that a Member State is not entitled to introduce national rules under which, in the case of transports of more than eight hours' duration, there must be at least 0.50 m^2 per 100 kg of pig?

[1] Council Directive 91/628/EEC of 19 November 1991 concerning the protection of animals during transport and amending Directives 90/425/EEC and 91/496/EEC (OJ 1991 L 340, p. 17).

[2] Council Directive 95/29/EC of 29 June 1995 amending Directive 91/628/EEC concerning the protection of animals during transport (OJ 1995 L 148, p. 52).

Action brought on 4 December 2006 — Commission of the European Communities v Federal Republic of Germany

(Case C-496/06)

(2006/C 326/105)

Language of the case: German

Parties

Applicant: Commission of the European Communities (represented by: M. Condou-Durande and W. Bogensberger, acting as Agents)

Defendant: Federal Republic of Germany

Form of order sought

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers ([1]) or, in any event, by failing to communicate them to the Commission, the Federal Republic of Germany has failed to fulfil its obligations under that directive;

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

Pleas in law and main arguments

The period for transposition of the directive expired on 6 February 2005.

([1]) OJ 2003 L 31, p. 18.

Order of the President of the Court of 26 September 2006 — Commission of the European Communities v Federal Republic of Germany

(Case C-181/05) ([1])

(2006/C 326/106)

Language of the case: German

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

([1]) OJ C 171, 09.07.2005.

Order of the President of the Fifth Chamber of the Court of 26 September 2006 — Commission of the European Communities v Kingdom of the Netherlands

(Case C-364/05) ([1])

(2006/C 326/107)

Language of the case: Dutch

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

([1]) OJ C 296, 26.11.2005.

Order of the President of the Court of 18 July 2006 — Commission of the European Communities v Hellenic Republic

(Case C-369/05) ([1])

(2006/C 326/108)

Language of the case: Greek

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

([1]) OJ C 296, 26.11.2005.

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

(Case C-425/05) ([1])

(2006/C 326/109)

Language of the case: English

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

([1]) OJ C 48, 25.02.2006.

Order of the President of the Court of 28 September 2006 — Commission of the European Communities v Czech Republic

(Case C-46/06) ([1])

(2006/C 326/110)

Language of the case: Czech

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 9 October 2006 — Commission of European Communities v Hellenic Republic

(Case C-85/06) ([1])

(2006/C 326/111)

Language of the case: Greek

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 18 September 2006 — Commission of the European Communities v Hellenic Republic

(Case C-86/06) ([1])

(2006/C 326/112)

Language of the case: Greek

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 2 October 2006 — Commission of the European Communities v French Republic

(Case C-101/06) ([1])

(2006/C 326/113)

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 4 October 2006 — Commission of the European Communities v Hellenic Republic

(Case C-298/06) ([1])

(2006/C 326/114)

Language of the case: Greek

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

([1]) OJ C 237, 30.09.2006.

COURT OF FIRST INSTANCE

Judgment of the Court of First Instance of 14 November 2006 — Nanjing Metalink v Council

(Case T-138/02) ([1])

(Dumping — Imports of ferro molybdenum originating in China — Revocation of market economy treatment — Article 2(7)(b) and (c) and Article 6(1) of Regulation (EC) No 384/96)

(2006/C 326/115)

Language of the case: English

Parties

Applicant: Nanjing Metalink International Co. Ltd (Nanjing, China) (represented by: P. Waer, lawyer)

Defendant: Council of the European Union (represented by: S. Marquardt, assisted by G.M. Berrisch, lawyer)

Intervener in support of the defendant: Commission of the European Communities (represented by: T. Scharf and S. Meany, Agents)

Re:

Annulment of Article 1 of Council Regulation (EC) No 215/2002 of 28 January 2002 imposing definitive anti-dumping duties on imports of ferro molybdenum originating in the People's Republic of China (OJ 2002 L 35, p. 1), in so far as it imposes an anti-dumping duty on imports of ferro molybdenum produced by the applicant.

Operative part of the judgment

The Court:

1. *Dismisses the application;*

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

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

([1]) OJ C 169, 13.7.2002.

Judgment of the Court of First Instance of 16 November 2006 — Masdar (UK) Ltd v Commission

(Case T-333/03) ([1])

(Non-contractual liability of the Community — TACIS programme — Sub-contracted services — Refusal to make payment — Unjust enrichment — Negotiorum gestio — Recovery of sum not due — Legitimate expectations — Duty of diligence)

(2006/C 326/116)

Language of the case: English

Parties

Applicant: Masdar (UK) Ltd (established in Eversley, United Kingdom) (represented by: A. Bentley QC, and P. Green, Barrister)

Defendant: Commission of the European Communities (represented by: J. Enegren and M. Wilderspin, Agents)

Re:

Action under Article 235 EC and the second paragraph of Article 288 EC for payment for services supplied by the applicant in connection with TACIS contracts MO.94.01/01.01/B002 and RU 96/5276/00, compensation for the damage suffered by the applicant as a result of the non-payment for those services and payment of interest.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

([1]) OJ C 289 of 29.11.2003.

Judgment of the Court of First Instance of 16 November 2006 — Lichtwer Pharma AG v OHIM — Laboratoire Lafon (Lyco-A)

(Case T-32/04) ([1])

(Community trade mark — Opposition proceedings — Application for Community word mark Lyco-A — Admissibility of the appeal before the Board of Appeal — Cost of proceedings — Apportionment)

(2006/C 326/117)

Language of the case: German

Parties

Applicant: Lichtwer Pharma AG (Berlin, Germany) (represented by: H. Kunz-Hallstein and R. Kunz-Hallstein, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Laboratoire L. Lafon SA (Maisons-Alfort, France)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 13 November 2003 (Case R 1007/2002-4) insofar as that decision rules on the apportionment of the costs incurred in the opposition and appeal proceedings

Operative part of the judgment

The Court:

1. *Annuls paragraph 2 of the operative part of the decision of 13 November 2003 of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Case R 1007/2002-4);*

2. *Orders OHIM to pay the costs.*

([1]) OJ C 106, 30.4.2004.

Judgment of the Court of First Instance of 16 November 2006 — Peróxidos Orgánicos v Commission

(Case T-120/04) ([1])

(Competition — Agreements, decisions and concerted practices — Organic peroxides — Fines — Article 81 EC — Regulation (EEC) No 2988/74 — Limitation period — Duration of the infringement — Apportionment of the burden of proof — Equal treatment)

(2006/C 326/118)

Language of the case: English

Parties

Applicant: Peróxidos Orgánicos, SA (San Cugat del Vallés, Spain) (represented by: A. Creus Carreras and B. Uriarte Valiente, lawyers)

Defendant: Commission of the European Communities (represented by: A. Bouquet and F. Castillo de la Torre, Agents)

Re:

Application for annulment of Commission Decision 2005/349/EC of 10 December 2003 relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case COMP/E-2/37.857 — Organic Peroxides) (OJ 2005 L 110, p. 44).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

([1]) OJ C 118, 30.4.2004.

Judgment of the Court of First Instance of 16 November 2006 — Jabones Pardo v OHIM — Quimi Romar (YUKI)

(Case T-278/04) ([1])

(Community trade mark — Opposition proceedings — Earlier national word mark YUPI — Application for the Community word mark YUKI — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94 — Findings of OHIM — Admissibility)

(2006/C 326/119)

Language of the case: Spanish

Parties

Applicant: Jabones Pardo, SA (Madrid, Spain) (represented by: initially J. Astiz Suárez, then A. Tarí Lázaro, lawyers)

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

Other party/parties to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance: Quimi Romar, SL (Moncada, Spain) (Moncada, Spain) (represented by: A. Sanz-Bermell y Martínez and J. Carlos Heder, lawyers)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 23 April 2004 (Joined Cases R 547/2003-1 and R 604/2003-1), relating to opposition proceedings between Jabones Pardo, SA and Quimi Romar, SL.

Operative part of the judgment

1. *The decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 23 April 2004 (Joined Cases R 547/2003-1 and R 604/2003-1) is annulled in so far as it allowed the intervener's appeal concerning 'soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices', falling within Class 3, and 'sanitary preparations', falling within Class 5, referred to in the Community trade mark application.*

2. *OHIM is to bear its own costs and pay half of the costs incurred by Jabones Pardo, SA.*

3. *Quimi Romar, SL is to bear its own costs.*

([1]) OJ C 251, 9.10.2004.

Judgment of the Court of First Instance of 8 November 2006 — Chetcuti v Commission

(Case T-357/04) ([1])

(Officials — Internal competition — Non-admission to tests as a member of the auxiliary staff)

(2006/C 326/120)

Language of the case: French

Parties

Applicant: Marguerite Chetcuti (Zejtun, Malta) (represented by: M.-A. Lucas, lawyer)

Defendant: Commission of the European Communities (represented by: H. Tserepa-Lacombe and M. Velardo, Agents)

Re:

Application for annulment of the Selection Board's decision of 22 June 2004 rejecting the applicant's candidature and of subsequent acts in the competition procedure

Operative part of the judgment

The Court:

1. *Dismisses the action.*

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

([1]) OJ C 284, 20.11.2004.

Judgment of the Court of First Instance of 14 November 2006 — Neirinck v Commission

(Case T-494/04) ([1])

(Officials — Contract agent — Lawyer's post at the Office for infrastructure and logistics in Brussels (OIB) — Rejection of application — Action for annulment — Action for damages)

(2006/C 326/121)

Language of the case: French

Parties

Applicant: Wineke Neirinck (Brussels, Belgium) (represented, initially, by G. Vandersanden, L. Levi and A. Finchelstein, and subsequently by G. Vandersanden and L. Levi, lawyers)

Defendant: Commission of the European Communities (represented by: J. Currall, D. Martin and L. Lozano Palacios, Agents, and F. Herbert and L. Eskenazi, lawyers)

Re:

First, an application for annulment of the Commission's decisions concerning the rejection of the applicant's candidature for a lawyer's post in the buildings policy sector in the Office for infrastructure and logistics in Brussels (OIB) and the appointment of another candidate to that post and, second, a claim for damages.

Operative part of the judgment

The Court:

1. *Dismisses the action.*

2. *Orders the Commission to pay all the costs, including those incurred by the applicant.*

([1]) OJ C 57, 5.3.2005.

Order of the Court of First Instance of 18 October 2006 — Staelen v Parliament

(Case T-32/05) ([1])

(Officials — Enforcement of a judgment of the Court of First Instance — No need to adjudicate — Action for damages — No pre-litigation procedure — No direct link — Manifestly inadmissible)

(2006/C 326/122)

Language of the case: French

Parties

Applicant: Claire Staelen (Bridel, Luxembourg) (represented by: J. Choucroun, lawyer)

Defendant: European Parliament (represented by: J. de Wachter and M. Mustapha-Pacha, Agents)

Re:

First, annulment of the decision of the Selection Board in Competition EUR/A/151/98, reopened following the judgment of the Court of First Instance of 5 March 2003 in Case T-24/01 *Staelen* v *Parliament* [2005] ECR-SC I-A-79 and II-423, not to enter the applicant in the reserve list for that competition and, second, a claim for damages

Operative part of the order

1. *Declares that there is no longer any need to adjudicate on the claims for annulment.*

2. *Rejects the claim for damages.*

3. *Orders the Parliament to pay its own costs and two thirds of the costs incurred by the applicant.*

([1]) OJ C 115, of 14.5.2005.

Order of the Court of First Instance of 26 September 2006 — Athinaïki Techniki v Commission

(Case T-94/05) ([1])

(Action for annulment — State aid — Complaint — Decision to take no further action on the complaint — Inadmissible)

(2006/C 326/123)

Language of the case: French

Parties

Applicant: Athinaïki Techniki (Athens, Greece) (represented by: S. Pappas, lawyer)

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

Intervener in support of the defendant: Athens Resort Casino AE Symmetochon (Marrousi, Greece) (represented by: F. Carlin, Barrister, N. Niejahr, J. Dryllerakis, F. Spyropoulos and N. Korogiannakis, lawyers)

Re:

Application for annulment of the Commission's letter of 2 December 2004, informing the applicant of the decision to take no further action on its complaint concerning State aid allegedly granted by the Hellenic Republic to the Hyatt Regency consortium in connection with the Casino Mont Parnès public contract.

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *Athinaïki Techniki AE is ordered to pay all the costs.*

([1]) OJ C 106, 30.4.2005.

Order of the Court of First Instance of 10 October 2006 — Evropaiki Dinamiki v Commission of the European Communities

(Case T-106/05) ([1])

(Public service contracts — Call for tenders concerning technical assistance to improve the information and communication technology system in the State Institute of Statistics of the Republic of Turkey — Application rejected — Period for bringing proceedings — Confirmatory act — Inadmissibility)

(2006/C 326/124)

Language of the case: English

Parties

Applicant: Evropaiki Dinamiki — Proigmena Sistimata Tilepikinonion Pliroforikis kai Tilematikis AE (Athens, Greece) (represented by: N. Korogiannakis, lawyer,)

Defendant: Commission of the European Communities (represented by: C. Tufvesson and K. Kańska, acting as Agents)

Re:

Annulment of the Commission's decisions not to select the tender submitted by the applicant in the context of a call for tenders for the provision of technical assistance for the improvement of the system of Information and Communication Technologies (ICT) of the Turkish National Institute for Statistics and of the decisions rejecting the applicant's request to renew the decision not to short-list it.

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *The applicant shall pay the costs.*

(1) OJ C 115, 14.5.2005.

Order of the Court of First Instance of 12 October 2006 — Fermont v Commission

(Case T-307/05) (1)

(Preliminary issues — Objection of inadmissibility — Application initiating proceedings — Formal requirements — Inadmissibility)

(2006/C 326/125)

Language of the case: French

Parties

Applicant: Alain Fermont (Kraainem, Belgium) (represented by: L. Kakiese and N. Luzeyemo, lawyers)

Defendant: Commission of the European Communities (represented by: J. Currall and F. Dintilhac, Agents)

Re:

Action for damages seeking compensation for damage allegedly suffered by the applicant.

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *The applicant shall bear his own costs and pay those incurred by the Commission.*

(1) OJ C 121, 20.5.2006.

Order of the Court of First Instance of 17 October 2006 — Harry's Morato v OHIM — Ferrero Deutschland (MORATO)

(Case T-52/06) (1)

(Community trade mark — Opposition proceedings — Cancellation of the earlier trade mark — No need to adjudicate)

(2006/C 326/126)

Language of the case: Italian

Parties

Applicant: Harry's Morato SpA (Altavilla Vicentina, Italy) (represented by: N. Ferretti, G. Casucci and F. Trevisan, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: C. Negro and O. Montaldo, Agents)

Other party/parties to the proceedings before the Board of Appeal of OHIM, intervener before the Court of First Instance: Ferrero Deutschland GmbH (Frankfurt/Main, Germany) (represented by: M. Kefferpütz, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 16 December 2005 (Case R 600/2005-1), concerning opposition proceedings Harry's Morato SpA and Ferrero Deutschland GmbH.

Operative part of the order

1. *There is no longer any need to adjudicate on this case.*

2. *Each party shall bear its own costs.*

(1) OJ C 96, 22.4.2006.

Order of the President of the Court of First Instance of 26 October 2006 — European Association of Im — and Exporters of Birds and live Animals and Others v Commission of the European Communities

(Case T-209/06 R)

(Application for interim measures — Application for interim measures and suspension of enforcement — Admissibility — Urgency — None)

(2006/C 326/127)

Language of the case: Dutch

Parties

Applicants: European Association of Im — and Exporters of Birds and live Animals (West Maas en Waal, Netherlands), Vereniging van Im- en Exporteurs van Vogels en Hobbydieren (West Maas en Waal), Plomps Vogelhandel (Woerden, Netherlands) and Borgstein Birds & Zoofood Trading (West Maas en Waal) (represented by: J. Wouters, lawyer)

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

Re:

Application for, first, suspension of enforcement of Commission Decision 2006/522/EC of 25 July 2006 amending Decisions 2005/759/EC and 2005/760/EC as regards certain protection measures in relation to highly pathogenic avian influenza and movements of certain live birds into the Community (OJ 2006 L 205, p. 28), and, second, the grant of all other necessary interim measures.

Operative part of the order

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

2. *Costs are reserved.*

Action brought on 25 October 2006 — Leclercq v Commission

(Case T-299/06)

(2006/C 326/128)

Language of the case: English

Parties

Applicant: Sylvie Leclercq (represented by: S. Rodrigues, C. Bernard-Glanz, lawyers)

Defendant: Commission of the European Communities

Form of order sought

The applicant claims that the Court should:

— Declare the action admissible;

— Annul the Commission's decision of 27 July 2006, in that it refuses the applicant access to the Commission's documents sought;

— Order the defendant to pay the costs;

— Order the defendant, in respect of its non-contractual liability, to pay the applicant EUR 50 per day from the date of the contested decision.

Pleas in law and main arguments

By this action, the applicant seeks the annulment of the decision of 27 July 2006, adopted by the Secretary-General of the Commission, rejecting her confirmatory application for access to an extract from the databases containing information relating to the Commission's staff. The reasons for refusal put forward by the Commission were that the application was outside the scope of Regulation No 1049/2001 ([1]) on the ground that, in this case, it was not an application for access to an existing document held by the institution, within the meaning of that regulation.

In support of her action, the applicant relies on two pleas in law. The first alleges infringement of Article 3(a) of Regulation No 1049/2001 on the ground that, in the contested decision, the Commission excludes a database from the meaning of 'document'. The applicant claims that the Commission made a manifest error of assessment by making such exclusion which is not provided for by the regulation and goes against the broad interpretation which should be given, in the applicant's submission, to the meaning of 'document' in Regulation No 1049/2001.

The second plea in law alleges infringement of Article 4 of Regulation No 1049/2001 and of the duty to state reasons on the ground that the Commission did not state in the contested decision how the disclosure of the document sought would undermine a public or private interest so that it could be refused on the basis of one of the exceptions in Article 4 of the regulation.

The applicant claims that the Commission's conduct, which she alleges to be unlawful because contrary to Regulation No 1049/2001, is capable of giving rise to its non-contractual liability under the second paragraph of Article 288 EC. She therefore claims compensation for the losses, both pecuniary and non-pecuniary, which the Commission's conduct has caused her.

([1]) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43).

Action brought on 27 October 2006 — Lemaître Sécurité v Commission

(Case T-301/06)

(2006/C 326/129)

Language of the case: French

Parties

Applicant: Lemaître Sécurité SAS (La Walck, France) (represented by: D. Bollecker, lawyer)

Defendant: Commission of the European Communities

Form of order sought

The applicant claims that the Court should:

— Declare admissible the action for annulment brought by Lemaître Sécurité SAS against the Commission Decision of 28 August 2006 terminating the anti-dumping proceeding;

— Annul the decision of 28 August 2006 terminating the anti-dumping proceeding;

— Order the re-examination of the termination of the anti-dumping proceeding for safety footwear;

— Monitor compliance with the judgement of the Court of First Instance of the European Communities under Article 233 EC;

— Order the Commission to pay the costs.

Pleas in law and main arguments

By Decision 2006/582/EC of 28 August 2006 ([1]), the Commission decided to terminate the anti-dumping proceeding concerning imports of footwear with a protective toecap originating in the People's Republic of China and India, after the main complainant withdrew its complaint in consequence of the Commission's letter of 5 July 2006 accepting, after an investigation it had conducted, that there had been dumping of safety footwear but refusing to impose anti-dumping duties on the ground that the European Community had no interest in imposing such duties. The applicant, a European producer of safety footwear claims that, because of the import of footwear from China and India, it is suffering economic and strategic loss in the absence of measures adopted to re-establish fair competition.

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

The first plea in law alleges a defective statement of reasons in that, in the applicant's submission, the Commission did not set out, clearly and unequivocally, the reasons why it refuses to adopt anti-dumping measures.

The second plea in law alleges breach of Article 9(1) of Regulation No 384/96 ([2]), combined with Articles 2 EC, 3(m) EC, 127(2) EC and 157(1) EC, in that the Commission did not, in this case, correctly evaluate the existence of a Community interest in adopting anti-dumping measures.

By its third plea in law, the applicant claims that, by expressly accepting that there had been dumping of safety footwear whilst refusing to adopt measures to correct it, the Commission infringed the principle of the protection of legitimate expectations.

([1]) OJ 2006 L 234, p. 33.

([2]) Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (OJ 1996 L 56, p. 1), as last amended by Regulation (EC) No 2117/2005 (OJ 2005 L 340, p. 17).

Action brought on 6 November 2006 — UniCredito Italiano v OHIM — Union Investment Privatfonds (Uniweb)

(Case T-303/06)

(2006/C 326/130)

Language in which the application was lodged: Italian

Parties

Applicant: UniCredito Italiano S.p.A. (Genoa, Italy) (represented by: G. Floridia and R. Floridia, 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: Union Investment Privatfonds GmbH

Form of order sought

— annul the decision of the Second Board of Appeal of OHIM of 5 September 2006, adopted in joined proceedings R 196/2005-2 and R 211/2005-2, relating to opposition proceedings No B490971 concerning Community trade mark application No 2.236.164.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: Word mark 'UNIWEB' (application for registration No 2.236.164), for services in Classes 35, 36 and 42.

Proprietor of the mark or sign cited in the opposition proceedings: Union Investment Privatfonds GmbH, previously Union Investment Gesellschaft GmbH.

Mark or sign cited in opposition: German word marks 'UNIFONDS' (No 991.995) and 'UNIRAK' (No 991.997) and German figurative mark 'UNIZINS' (No 2.016.954), to distinguish capital investments, as referred to in Class 36.

Decision of the Opposition Division: Opposition partially upheld, in so far as a likelihood of confusion is recognised 'only as regards services found to be similar'.

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

Pleas in law: The contested decision wrongly applied the theory of increased protection for so-called marks in a series, developed by the Court of First Instance in its judgment of 23 February 2006 in Case T-194/03 concerning the trade mark 'Bainbridge', because the two necessary conditions are not fulfilled: (a) the element common to the series of earlier marks must be distinctive; and (b) the earlier marks must be used and understood by the relevant public as signifying a multiplicity of products and/or services.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: The word mark 'Mozart' for goods in Class 30 (Community trade mark No 21 071).

Proprietor of the Community trade mark: The applicant.

Applicant for the declaration of invalidity: Chocoladefabriken Lindt & Sprüngli AG.

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

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

Pleas in law: Infringement of the duty under Article 73 of Regulation (EC) No 40/94 [1] to state the reasons on which a decision is based, infringement by the Office of its duty under Article 74 (1) of Regulation No 40/94 to examine the facts of its own motion, infringement of the principle of good faith and infringement of Article 7(1)(c) of Regulation No 40/94.

[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 10 November 2006 — Reber v OHIM (Mozart)

(Case T-304/06)

(2006/C 326/131)

Language in which the application was lodged: German

Parties

Applicant: Paul Reber GmbH & Co. KG (Bad Reichenhall, Germany) (represented by: O. Spuhler, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Chocoladefabriken Lindt & Sprüngli AG (Kilchberg, Switzerland)

Form of order sought

The applicant claims that the Court should:

— annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market of 8 September 2006 in appeal case R 97/2005-2;

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

Action brought on 13 November 2006 — Air Products and Chemicals v OHIM — Messer Group (FERROMIX)

(Case T-305/06)

(2006/C 326/132)

Language in which the application was lodged: English

Parties

Applicant: Air Products and Chemicals Inc. (Allentown, USA) (represented by: S. Heurung, lawyer)

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

Other party to the proceedings before the Board of Appeal: Messer Group GmbH (Sulzbach, Germany)

Form of order sought

— Annul the decision of 12 September 2006 of the Second Board of Appeal of OHIM in joined Cases R 1270/2005-2 and R 1408/2005-2;

— reject the contested application for registration of the trade mark 'FERROMIX' CTM 3 190 063 in its entirety;

— send the decision of the Court of First Instance to OHIM;

— order Messer Group to pay all the costs and expenses.

Pleas in law and main arguments

Applicant for the Community trade mark: Messer Group GmbH

Community trade mark concerned: The word mark 'FERROMIX' for goods in classes 1 and 4 — application No 3 190 063

Proprietor of the mark or sign cited in the opposition proceedings: The applicant

Mark or sign cited: The Community word mark 'FERROMAXX' for goods in class 1

Decision of the Opposition Division: Opposition upheld in respect of all goods in class 1; opposition rejected in respect of all goods in class 4

Decision of the Board of Appeal: Appeal brought by the applicant (R 1270/2005-2) dismissed; appeal brought by Messer Group GmbH (R 1408/2005-2) upheld

Pleas in law: Violation of Article 8(1)(b) of Council Regulation No 40/94 as the Board of Appeal among others:

— overestimated the knowledge and awareness of non professional consumers of welding gas;

— erroneously assumed that the trade mark 'FERROMAXX' was inherently weak;

— did not pay sufficient attention to the fact that the goods in question are partially identical, partially highly similar; and

— failed to consider the overall impression of the marks as a whole.

Action brought on 13 November 2006 — Air Products and Chemicals v OHIM — Messer Group (INOMIX)

(Case T-306/06)

(2006/C 326/133)

Language in which the application was lodged: English

Parties

Applicant: Air Products and Chemicals Inc. (Allentown, USA) (represented by: S. Heurung, lawyer)

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

Other party to the proceedings before the Board of Appeal: Messer Group GmbH (Sulzbach, Germany)

Form of order sought

— Annul the decision of 12 September 2006 of the Second Board of Appeal of OHIM in joined Cases R 1226/2005-2 and R 1398/2005-2;

— reject the contested application for registration of the trade mark 'INOMIX' CTM 3 190 031 in its entirety;

— send the decision of the Court of First Instance to OHIM;

— order Messer Group to pay all the costs and expenses.

Pleas in law and main arguments

Applicant for the Community trade mark: Messer Group GmbH

Community trade mark concerned: The word mark 'INOMIX' for goods in classes 1 and 4 — application No 3 190 031

Proprietor of the mark or sign cited in the opposition proceedings: The applicant

Mark or sign cited: The Community word mark 'INOMAXX' for goods in class 1

Decision of the Opposition Division: Opposition upheld in respect of all goods in class 1; opposition rejected in respect of all goods in class 4

Decision of the Board of Appeal: Appeal brought by the applicant (R 1226/2005-2) dismissed; appeal brought by Messer Group GmbH (R 1398/2005-2) upheld

Pleas in law: Violation of Article 8(1)(b) of Council Regulation No 40/94 as the Board of Appeal among others:

— overestimated the knowledge and awareness of non professional consumers of welding gas;

— erroneously assumed that the trade mark 'INOMAXX' was inherently weak;

— did not pay sufficient attention to the fact that the goods in question are partially identical, partially highly similar; and

— failed to consider the overall impression of the marks as a whole.

Action brought on 13 November 2006 — Air Products and Chemicals v OHIM — Messer Group (ALUMIX)

(Case T-307/06)

(2006/C 326/134)

Language in which the application was lodged: English

Parties

Applicant: Air Products and Chemicals Inc. (Allentown, USA) (represented by: S. Heurung, lawyer)

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

Other party to the proceedings before the Board of Appeal: Messer Group GmbH (Sulzbach, Germany)

Form of order sought

— Annul the decision of 12 September 2006 of the Second Board of Appeal of OHIM in joined Cases R 1225/2005-2 and R 1397/2005-2;

— reject the contested application for registration of the trade mark 'ALUMIX' CTM 3 190 022 in its entirety;

— send the decision of the Court of First Instance to OHIM;

— order Messer Group to pay all the costs and expenses.

Pleas in law and main arguments

Applicant for the Community trade mark: Messer Group GmbH

Community trade mark concerned: The word mark 'ALUMIX' for goods in classes 1 and 4 — application No 3 190 022

Proprietor of the mark or sign cited in the opposition proceedings: The applicant

Mark or sign cited: The Community word mark 'ALUMIX' for goods in class 1

Decision of the Opposition Division: Opposition upheld in respect of all goods in class 1; opposition rejected in respect of all goods in class 4

Decision of the Board of Appeal: Appeal brought by the applicant (R 1225/2005-2) dismissed; appeal brought by Messer Group GmbH (R 1397/2005-2) upheld

Pleas in law: Violation of Article 8(1)(b) of Council Regulation No 40/94 as the Board of Appeal among others:

— overestimated the knowledge and awareness of non professional consumers of welding gas;

— erroneously assumed that the trade mark 'ALUMIX' was inherently weak;

— did not pay sufficient attention to the fact that the goods in question are partially identical, partially highly similar; and

— failed to consider the overall impression of the marks as a whole.

Action brought on 13 November 2006 — Buffalo Milke Automotive Polishing Products v OHIM — Werner & Mertz (Buffalo Milke Automotive Polishing Products)

(Case T-308/06)

(2006/C 326/135)

Language in which the application was lodged: English

Parties

Applicant: Buffalo Milke Automotive Polishing Products, Inc. (Pleasanton, USA) (represented by: F. de Visscher, E. Cornu and D. Moreau, lawyers)

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

Other party to the proceedings before the Board of Appeal: Werner & Mertz GmbH (Mainz, Germany)

Form of order sought

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation of the Internal Market of 8 September 2006 in case R 1094/2005-2;

— order the Office to pay the costs.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The figurative mark 'BUFFALO MILKE Automotive Polishing Products' for goods and services in classes 3, 18 and 25 — application No 2 099 018

Proprietor of the mark or sign cited in the opposition proceedings: Werner & Mertz GmbH

Mark or sign cited: The national figurative mark 'BÚFALO' for goods in class 3

Decision of the Opposition Division: Rejection of the opposition

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

Pleas in law: Infringement of Article 43 of Council Regulation No 40/94 and Rule 22 of Commission Regulation No 2868/95 as the Board of Appeal should not have taken into consideration the proof of use filed for the first time before it and outside the time limit set forth by the Opposition Division.

Action brought on 14 November 2006 — Budějovický Budvar v OHIM — Anheuser-Busch (BUD)

(Case T-309/06)

(2006/C 326/136)

Language in which the application was lodged: French

Parties

Applicant: Budějovický Budvar, národní podnik (České Budějovice, Czech Republic) (represented by F. Fajgenbaum, 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: Anheuser-Busch, Inc.

Form of order sought

— set aside the contested decision R 305/2005-2 of 1 September 2006 of the Second Board of Appeal of OHIM;

— reject application No 24 711 for registration of the word mark BUD for goods in Class 32;

— transmit the decision of the Court of First Instance of the European Communities to OHIM;

— order Anheuser-Busch to pay all the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Anheuser-Busch, Inc.

Community trade mark concerned: Word mark BUD for goods in Class 32 — application No 24 711

Proprietor of the mark or sign cited in the opposition proceedings: The applicant

Mark or sign cited in opposition: Right to the protected appellation of origin BUD for beer

Decision of the Opposition Division: Opposition rejected

Decision of the Board of Appeal: Appeal dismissed

Pleas in law: Infringement of Article 62(1) of Regulation No 40/94 ([1]) and Article 20 of the implementing regulation No 2868/95 ([2]) in that the Board of Appeal does not have jurisdiction to rule on the validity of the appellation of origin relied on by the applicant in its opposition. The applicant also submits that the sign BUD constitutes an appellation of origin protected in France and Austria. It also relies on incorrect application of Article 8(4) of Regulation No 40/94 in that the appellation of origin BUD in its view does indeed constitute a sign used in the course of trade.

([1]) Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1).
([2]) Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark (OJ 1995 L 303, p. 1).

Action brought on 17 November 2006 — Republic of Hungary v Commission of the European Communities

(Case T-310/06)

(2006/C 326/137)

Language of the case: Hungarian

Parties

Applicant(s): Republic of Hungary (represented by: J. Fazekas)

Defendant(s): Commission of the European Communities

Form of order sought

— Assignment of the case to the Grand Chamber of the Court of First Instance pursuant to Articles 14(1) and 51(1) of its Rules of Procedure.

— Annulment of the following provisions of Commission Regulation (EC) No 1572/2006 of 18 October 2006 amending Regulation (EC) No 824/2000 establishing procedures for the taking-over of cereals by intervention agencies and laying down methods of analysis for determining the quality ([1]) of cereals ('the Regulation'):

  — Article 1(1) insofar as it refers to maize;

  — Article 1(3), amending Article 9(b) of Regulation No 824/2000, insofar as it refers to maize;

  — the value relating to the specific weight required for maize appearing in line E of the table given in point 1 of the annex, and

  — Table III in point 2 of the annex insofar as it refers to maize.

— An order that the Commission of the European Communities pay the costs.

Pleas in law and main arguments

The applicant seeks the partial annulment of Article 1 of Regulation No 1572/2006 and the annex thereto because it considers that they are unlawful.

It relies on the following pleas in support of its application:

— The Commission has breached the legitimate expectations of the producers by introducing during the financial year a requirement relating to the specific weight of maize, and the principles of legal certainty and proportionality by allowing an inordinately short preparatory period between the date of publication and the date of entry into force and by failing to take account of the need for gradual adjustment.

— The Commission did not have the authority to lay down the requirement relating to the specific weight of maize.

— In the event that it is considered that the Commission was empowered to lay down that requirement, the applicant submits that the defendant has exceeded its powers, given that it significantly altered the intervention regime for maize in practice under the pretext of amending the qualitative parameters for intervention.

— Even if it is considered that the Commission was empowered to lay down the requirement relating to the specific weight of maize, that institution made a manifest error of assessment, in that, by establishing a criterion for the average quality of maize, it did not take account of the fact that the maize produced in the Community is used mainly for animal fodder.

— The Commission has failed to fulfil its obligation under Article 253 EC to state the reasons on which legal acts are based.

— The Commission has infringed the internal rules of the Management Committee for Cereals in not respecting the time-limit laid down by those rules.

([1]) OJ L 290, 20.10.2006, p. 29.

Action brought on 7 November 2006– FMC Chemical and Arysta Lifesciences v EFSA

(Case T-311/06)

(2006/C 326/138)

Language of the case: English

Parties

Applicants: FMC Chemical SPRL (Brussels, Belgium) Arysta Lifesciences SAS (Nogueres, France) (represented by: C. Mereu, K. Van Maldegem, lawyers)

Defendant: European Food Safety Authority (EFSA)

Form of order sought

— Declare the present application admissible and well founded;

— annul the EFSA's Conclusion Report, titled 'Conclusion regarding the peer review of the pesticide risk assessment of the active substance Carbofuran';

— order the EFSA and/or the European Commission by way of incidental request in accordance with Articles 63 and 64 of the Court's Rules of Procedure, to produce the proposal regarding the (non) inclusion of Carbofuran in Annex I to Directive 91/414/EEC it intends to present to the Standing Committee on the Food Chain and Animal Health for a vote at its 22/24 November 2006 meeting, or any other meeting;

— declare the illegality and inapplicability vis-à-vis the applicants and the review of their Carbofuran dossiers of Article 20 of Commission Regulation (EC) No 1490/2002;

— order the defendant to compensate the applicants for the damages incurred as a result of the contested measure, and to hold at this stage by interlocutory statement that the defendant is obliged to compensate the applicants for the damages they incurred and to reserve the fixing of the amount of compensation either by agreement between the parties or by the Court in the absence of such agreement;

— order the defendant to pay the costs and expenses in these proceedings.

Pleas in law and main arguments

The application at stake is made pursuant to Article 230 EC for the annulment of the decision of the European Food Safety Authority ('EFSA') of 28 July 2006, concluding on the evaluation of the active substance Carbofuran under Directive 91/414/EEC ([1]) ('The Plant Protection Products Directive' or 'PPPD'), in so far as it fails to include or to consider critical new evidence on Carbofuran submitted by the applicants to the designated Belgian Rapporteur Member State and to the extent it introduces new data requirements based on the retroactive application of new guidance documents, which the applicants could not foresee, and for which it was scientifically not possible to conduct and submit new studies in time.

Specifically, the applicants claim that the contested measure represents the final procedural step in the administrative assessment of the substance under Commission Regulation (EC) No 451/2000 of 28 February 2000 ([2]) laying down the detailed rules for the implementation of the second and third stages of the work programme referred to in Article 8(2) of the PPPD, as amended by Commission Regulation 1490/2002 ([3]) for which the applicants submit they are the sole notifiers and main data submitters.

The applicants hereby also raise a plea of illegality against Article 20 of Regulation (EC) No 1490/2002, which provides for a mandatory involvement of EFSA in the review of active substances covered by the second stage of the review, and by requiring the EFSA to assess whether the substance in question may be expected to meet the safety requirements of the PPPD and be included in its Annex I. Precisely, the applicants contend that the above-mentioned regulation, which entered into force at a time when the applicants had completed their complete dossiers, cannot retroactively apply to the ongoing Carbofuran review and consequently the contested measure cannot serve as a basis for a Commission proposal regarding the inclusion of Carbofuran in Annex I of the PPPD.

Moreover, the applicants seek compensation for the damages caused to them as a result of the defendant's conduct during the Carbofuran evaluation process and in the adoption of the contested measure.

([1]) OJ 1991 L 230, p. 1.
([2]) OJ 2000 L 55, p. 25.
([3]) OJ 2002 L 224, p. 23.

Action brought on 17 November 2006– FMC Chemical v EFSA

(Case T-312/06)

(2006/C 326/139)

Language of the case: English

Parties

Applicant: FMC Chemical SPRL (Brussels, Belgium) (represented by: C. Mereu, K. Van Maldegem, lawyers)

Defendant: European Food Safety Authority (EFSA)

Form of order sought

— Declare the present application admissible and well founded;

— annul the EFSA's Conclusion Report, titled 'Conclusion regarding the peer review of the pesticide risk assessment of the active substance Carbosuflan';

— order the EFSA and/or the European Commission by way of incidental request in accordance with Articles 63 and 64 of the Court's Rules of Procedure, to produce the proposal regarding the (non) inclusion of Carbosuflan in Annex I to Directive 91/414/EEC it intends to present to the Standing Committee on the Food Chain and Animal Health for a vote at its 22/24 November 2006 meeting, or any other meeting;

— declare the illegality and inapplicability vis-à-vis the applicant and the review of their Carbosuflan dossiers of Article 20 of Commission Regulation (EC) No 1490/2002;

— order the defendant to compensate the applicants for the damages incurred as a result of the contested measure, and to hold at this stage by interlocutory statement that the defendant is obliged to compensate the applicants for the damages they incurred and to reserve the fixing of the amount of compensation either by agreement between the parties or by the Court in the absence of such agreement;

— order the defendant to pay the costs and expenses in these proceedings.

Pleas in law and main arguments

The pleas in law and the main arguments raised by the applicant are identical to those relied on in Case T-311/06, *FMC Chemical et Arysta Lifesciences v European Food Safety Authority*.

Action brought on 18 November 2006— Otsuka Chemical v EFSA

(Case T-313/06)

(2006/C 326/140)

Language of the case: English

Parties

Applicant: Otsuka Chemical Co, Ltd (Osaka, Japan) (represented by: K. Van Maldegem, C. Mereu, lawyers)

Defendant: European Food Safety Authority (EFSA)

Form of order sought

— Declare the present application admissible and well founded;

— annul the EFSA's Conclusion Report, titled 'Conclusion regarding the peer review of the pesticide risk assessment of the active substance Benfuracarb';

— order the EFSA and/or the European Commission by way of incidental request in accordance with Articles 63 and 64 of the Court's Rules of Procedure, to produce the proposal regarding the (non) inclusion of Benfuracarb in Annex I to Directive 91/414/EEC it intends to present to the Standing Committee on the Food Chain and Animal Health for a vote at its 22/24 November 2006 meeting, or any other meeting;

— declare the illegality and inapplicability vis-à-vis the applicants and the review of their Benfuracarb dossiers of Article 20 of Commission Regulation (EC) No 1490/2002;

— order the defendant to compensate the applicants for the damages incurred as a result of the contested measure, and to hold at this stage by interlocutory statement that the defendant is obliged to compensate the applicants for the damages they incurred and to reserve the fixing of the amount of compensation either by agreement between the parties or by the Court in the absence of such agreement;

— order the defendant to pay the costs and expenses in these proceedings.

Pleas in law and main arguments

The pleas in law and the main arguments raised by the applicant are identical to those relied on in Case T-311/06, *FMC Chemical et Arysta Lifesciences v European Food Safety Authority*.

Action brought on 17 November 2006 — Whirlpool Europe v Council

(Case T-314/06)

(2006/C 326/141)

Language of the case: English

Parties

Applicant: Whirlpool Europe Srl (Comerio, Italy) (represented by: M. Bronckers and F. Louis, lawyers)

Defendant: Council of the European Union

Form of order sought

— Declare the definitive regulation annulled insofar as the definition of the product concerned/like product does not include all large-volume refrigerator-freezer units with at least two external doors placed side-by-side;

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

Pleas in law and main arguments

The applicant, who is a domestic appliance producer in Europe of among others refrigerators, seeks the partial annulment of Council Regulation (EC) No 1289/2006 of 25 August 2006 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain side-by-side refrigerators originating in the Republic of Korea ([1]).

In support of its application, the applicant submits that the Community institutions violated Article 253 EC by providing inadequate and insufficient reasoning on the exclusion of three-door side-by-side refrigerators from the issue of product scope, especially in light of the circumstances of the case.

The applicant further submits that the Community institutions violated the applicant's right to be heard with regard to the last-minute exclusion of three-door side-by-side refrigerators from the scope of the product concerned.

Moreover, the applicant alleges that the Community institutions violated Article 15(2) of the Basic Regulation ([2]) by failing to consult the Advisory Committee on time on the exclusion of three-door side-by-side refrigerators from the scope of the product concerned.

Finally, the applicant claims that the Community institutions violated the Basic Regulation in their approach to defining the product scope on the basis of physical characteristics without regard to consumer perception.

([1]) OJ 2006 L 236, p. 11.
([2]) Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (OJ 1996 L 56, p. 1).

Action brought on 17 November 2006 — Ercros v OHIM — Degussa (TAI CROS)

(Case T-315/06)

(2006/C 326/142)

Language in which the application was lodged: German

Parties

Applicant: Ercros, SA (Barcelona, Spain) (represented by: R. Thierie, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Degussa AG (Düsseldorf, Germany)

Form of order sought

The applicant claims that the Court should:

— 'purely and simply' alter the contested decision (decision of the First Board of Appeal of OHIM of 20 September 2006 in appeal proceedings R 29/2006-1);

— grant the opposition and reject the application for figurative mark No 2 768 851 'TAICROS';

— order OHIM to pay the costs of the proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: Degussa AG.

Community trade mark concerned: The figurative mark 'TAI CROS' for goods in Class 1 (Application No 2 768 851).

Proprietor of the mark or sign cited in the opposition proceedings: The applicant.

Mark or sign cited in opposition: Spanish word marks 'CROS', Spanish word mark 'SOCIEDAD ANONIMA CROS', Spanish figurative marks 'CROS' and Spanish word mark 'ERCROS' for goods in Class 1.

Decision of the Opposition Division: Rejection of the opposition.

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]), since there is a likelihood of confusion between the two opposing marks.

([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 9 November 2006 — Commission v Premium

(Case T-316/06)

(2006/C 326/143)

Language of the case: French

Parties

Applicant: Commission of the European Communities (Brussels, Belgium) (represented by: E. Montaguti, Agent, assisted by J.-L. Fagnart and F. Longfils, lawyers)

Defendant: Premium SA

Form of order sought

— declare the application to be admissible and well founded, and, in consequence:

— order Premium SA to pay a principal amount of EUR 88 594,493, representing EUR 57 605,74 in respect of the contract ISAR A 2052 and EUR 30 988,74 in respect of the contract KAVAS-2 A2019;

— order Premium SA to pay the default interest due on the amount of EUR 57 605,74 for the ISAR contract (at the rate specified in the provisions of French law applicable to the contract);

— order Premium SA to pay the default interest due on the principal amount of EUR 30 988,74 for the KAVAS-2 contract (at the rate specified in the provisions of Danish law applicable to the contract);

— order Premium SA to pay the costs.

Pleas in law and main arguments

The European Community, represented by the European Commission, entered into two contracts with a consortium on 11 March 1992 and 29 December 1993, respectively. One of the members of that consortium was a company for which the defendant was an associated contractor. Those contracts concerned, respectively, the KAVAS-2 A2019 project ('Knowledge acquisition visualisation and assessment system') and the ISAR-AIM A2052 project ('Integration System Architecture'), carried out under a specific research and technological development programme in the field of information technologies (1990 to 1994) adopted by Council Decision 91/394/EC [1].

The contracts set out the amounts of the eligible costs for the projects on the basis of which the Community financial contribution was calculated. In accordance with the provisions of those contracts, all payments made by the Commission were to be regarded as advance payments pending approval in the final report. If the total financial contribution to be paid by the Commission were to prove lower than the payments already made, the contracting parties undertook to repay the difference to the Commission without delay. The contracts also provided that the contracting parties were jointly and severally liable for any failure to meet contractual obligations, except where one of them failed to submit financial information or provided financial information that was false or incomplete. In those cases, the party concerned was to incur full liability.

Under the contracts, the consortium was required to submit regular statements of expenditure, as well as regular reports on the progress of the works.

The financial audit carried out by the Commission in 1996 disclosed several items of non-eligible expenditure invoiced by Premium SA. In its comments on the audit report, the defendant stated that it considered the report's rejection of a number of costs to be unacceptable. Following an exchange of correspondence with the defendant, the Commission issued debit notes to Premium SA, which contested them. In so far as certain advance payments taken into consideration by the Commission in its first debit notes had not been transferred to Premium SA by the coordinator, the Commission issued new debit notes itemising the amounts actually overpaid, while maintaining its position vis-à-vis the findings of the audit report regarding the non-eligible expenditure invoiced by the defendant. The new notes were also contested by Premium SA.

Several times the Commission presented requests for payment again where earlier requests had elicited no reaction from the defendant. As a consequence, on the basis of the arbitration clauses contained in the contracts, the Commission has brought the present proceedings claiming that the Court should order Premium SA to reimburse part of the advance payment made by the Community, together with default interest, on the ground that the defendant has failed to substantiate by relevant argument its refusal to accept the Commission's position regarding the expenditure that the audit report found to be non-eligible.

[1] OJ 1991 L 218, p. 22.

Action brought on 23 November 2006 — Panrico S.L. v OHIM — HDN Development ('Krispy Kreme DOUGHNUTS')

(Case T-317/06)

(2006/C 326/144)

Language in which the application was lodged: Spanish

Parties

Applicant: Panrico S.L. (Unipersonal) (Santa Perpètua de Mogola, Barcelona, Spain) (represented by: D. Pellisé Irquiza, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: HDN Development Corporation

Form of order sought

— annul the decision of the First Board of Appeal of OHIM of 8 August 2006 in the appeal in Case R 0194/2005-1 relating to opposition proceedings No B 303 992 which refused Community trade mark application No 1 298 785;

— order the Office and HDN Development Corporation the applicant for Community trade mark No 1 298 785 to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: HDN Development Corporation.

Community trade mark concerned: Figurative mark with the words 'KRISPY KREME DOUGHNUTS' (Application No 1 298 785) for goods in Classes 25 and 30 and for services in Class 42.

Proprietor of the mark or sign cited in the opposition proceedings: The applicant.

Mark or sign cited in opposition: Spanish word marks 'DOGHNUTS' (No 1 288 926) and 'DONUT' (No 399 563) for goods in Class 30 and the figurative mark 'donuts' for goods in Class 25 and services in Class 42.

Decision of the Opposition Division: Opposition dismissed.

Decision of the Board of Appeal: Appeal dismissed.

Pleas in law: Incorrect application of Article 8(1)(b) and 5 of Regulation (EC) No 40/94 on the Community trade mark. The applicant submits, in that regard, that the Community trade mark which is the subject of these proceedings has as its main component the word 'DOUGHNUTS', which may be confused with the family of opposing marks DONUT-DONUTS-DOGHNUTS applied to the same goods and services, giving rise to a serious risk of confusion on the part of the Spanish public.

Action brought on 27 November 2006 — Moreira da Fonseca v OHIM — General Óptica (GENERAL OPTICA)

(Case T-318/06)

(2006/C 326/145)

Language in which the application was lodged: English

Parties

Applicant: Alberto Jorge Moreira da Fonseca L[da] (Santo Tirso, Portugal) (represented by: M. Oehen Mendes, lawyer)

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

Other party to the proceedings before the Board of Appeal: General Óptica SA (Barcelona, Spain)

Form of order sought

— Annul the decision of the First Board of Appeal of OHIM of 8 August 2006 notified to the applicant 4 October 2006, in cancellation proceedings No 827C (Case No R 947/2005-1) and consequently declare Community trade mark No 573 592 'GENERAL OPTICA' filed on 10 July 1997 and registered on 13 September 1999, as invalid, or in the alternative, revoked;

— order the defendant to pay the costs.

Pleas in law and main arguments

Registered Community trade mark subject of the application for a declaration of invalidity: The figurative mark 'GENERAL OPTICA' for services in class 42 (Opticians' services) — Community trade mark No 573 592

Proprietor of the Community trade mark: General Óptica SA

Party requesting the declaration of invalidity of the Community trade mark: The applicant

Trade mark right of the party requesting the declaration of invalidity: The earlier national trade name 'Generalóptica' for import and retail sale of optical, precision and photographic apparatus

Decision of the Cancellation Division: Rejection of the request for a declaration of invalidity

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of among others Article 8(1) and (4) of Council Regulation No 40/94 as there is a likelihood of confusion between the two signs and the applicant's sign is granted national protection.

Infringement of Rule 22 of Commission Regulation No 2868/95 as OHIM omitted its duty to ask the applicant to present evidence of the earlier use invoked.

Action brought on 27 November 2006 — Moreira da Fonseca v OHIM — General Óptica (GENERAL OPTICA)

(Case T-319/06)

(2006/C 326/146)

Language in which the application was lodged: English

Parties

Applicant: Alberto Jorge Moreira da Fonseca L[da] (Santo Tirso, Portugal) (represented by: M. Oehen Mendes, lawyer)

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

Other party to the proceedings before the Board of Appeal: General Óptica SA (Barcelona, Spain)

Form of order sought

— Annul the decision of the First Board of Appeal of OHIM of 8 August 2006 notified to the applicant 27 September 2006, in cancellation proceedings No 828C (Case No R 944/2005-1) and consequently declare Community trade mark No 2 436 798 'GENERAL OPTICA' filed on 5 November 2001 and registered on 20 November 2002, as invalid, or in the alternative, revoked;

— order the defendant to pay the costs.

Pleas in law and main arguments

Registered Community trade mark subject of the application for a declaration of invalidity: The figurative mark 'GENERAL OPTICA' for services in class 42 (Opticians' services) — Community trade mark No 2 436 798

Proprietor of the Community trade mark: General Óptica SA

Party requesting the declaration of invalidity of the Community trade mark: The applicant

Trade mark right of the party requesting the declaration of invalidity: The earlier national trade name 'Generalóptica' for import and retail sale of optical, precision and photographic apparatus

Decision of the Cancellation Division: Rejection of the request for a declaration of invalidity

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of among others Article 8(1) and (4) of Council Regulation No 40/94 as there is a likelihood of confusion between the two signs and the applicant's sign is granted national protection.

Infringement of Rule 22 of Commission Regulation No 2868/95 as OHIM omitted its duty to ask the applicant to present evidence of the earlier use invoked.

Action brought on 27 November 2006 — Moreira da Fonseca v OHIM — General Óptica (GENERAL OPTICA)

(Case T-320/06)

(2006/C 326/147)

Language in which the application was lodged: English

Parties

Applicant: Alberto Jorge Moreira da Fonseca L[da] (Santo Tirso, Portugal) (represented by: M. Oehen Mendes, lawyer)

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

Other party to the proceedings before the Board of Appeal: General Óptica SA (Barcelona, Spain)

Form of order sought

— Annul the decision of the First Board of Appeal of OHIM of 8 August 2006 notified to the applicant 27 September 2006, in cancellation proceedings No 829C (Case No R 946/2005-1) and consequently declare Community trade mark No 2 436 723 'GENERAL OPTICA' filed on 5 November 2001 and registered on 31 January 2003, as invalid, or in the alternative, revoked;

— order the defendant to pay the costs.

Pleas in law and main arguments

Registered Community trade mark subject of the application for a declaration of invalidity: The figurative mark 'GENERAL OPTICA' for services in class 42 (Opticians' services) — Community trade mark No 2 436 723

Proprietor of the Community trade mark: General Óptica SA

Party requesting the declaration of invalidity of the Community trade mark: The applicant

Trade mark right of the party requesting the declaration of invalidity: The earlier national trade name 'Generalóptica' for import and retail sale of optical, precision and photographic apparatus

Decision of the Cancellation Division: Rejection of the request for a declaration of invalidity

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of among others Article 8(1) and (4) of Council Regulation No 40/94 as there is a likelihood of confusion between the two signs and the applicant's sign is granted national protection.

Infringement of Rule 22 of Commission Regulation No 2868/95 as OHIM omitted its duty to ask the applicant to present evidence of the earlier use invoked.

Action brought on 27 November 2006 — Moreira da Fonseca v OHIM — General Óptica (GENERAL OPTICA)

(Case T-321/06)

(2006/C 326/148)

Language in which the application was lodged: English

Parties

Applicant: Alberto Jorge Moreira da Fonseca L[da] (Santo Tirso, Portugal) (represented by: M. Oehen Mendes, lawyer)

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

Other party to the proceedings before the Board of Appeal: General Óptica SA (Barcelona, Spain)

Form of order sought

— Annul the decision of the First Board of Appeal of OHIM of 8 August 2006 notified to the applicant 27 September 2006, in cancellation proceedings No 830C (Case No R 945/2005-1) and consequently declare Community trade mark No 573 774 'GENERAL OPTICA' filed on 10 July 1997 and registered on 10 September 1999, as invalid, or in the alternative, revoked;

— order the defendant to pay the costs.

Pleas in law and main arguments

Registered Community trade mark subject of the application for a declaration of invalidity: The figurative mark 'GENERAL OPTICA' for services in class 42 (Opticians' services) — Community trade mark No 573 774

Proprietor of the Community trade mark: General Óptica SA

Party requesting the declaration of invalidity of the Community trade mark: The applicant

Trade mark right of the party requesting the declaration of invalidity: The earlier national trade name 'Generalóptica' for import and retail sale of optical, precision and photographic apparatus

Decision of the Cancellation Division: Rejection of the request for a declaration of invalidity

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of among others Article 8(1) and (4) of Council Regulation No 40/94 as there is a likelihood of confusion between the two signs and the applicant's sign is granted national protection.

Infringement of Rule 22 of Commission Regulation No 2868/95 as OHIM omitted its duty to ask the applicant to present evidence of the earlier use invoked.

Action brought on 21 November 2006 — Espinosa Labella and Others v Commission

(Case T-322/06)

(2006/C 326/149)

Language of the case: Spanish

Parties

Applicants: Manuel Espinosa Labella and Others (Almería, Spain) (represented by: J. Rovira, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— declaration that the inclusion of SIC ES 166 0014 'Artos de El Ejido' in the decision adopted by the Commission concerning the Mediterranean region is null and void, and an order 'Artos de El Ejido' to be removed from the list of 'sites of Community importance' contained in that decision;

— alternatively, a declaration that the inclusion of the farms situated in the municipality of El Ejido north of Santa María del Águila in the SIC is null and void or, to the same effect, a declaration that the inclusion of the farms situated between the greenhouses to the north of Santa María del Águila in the SIC 'Artos de El Ejido' is null and void;

— order the Commission to pay the costs.

Pleas in law and main arguments

This action is brought against Commission Decision 2006/613/EC of 19 July 2006 adopting, pursuant to Council Directive 92/43/EEC, the list of sites of Community importance for the Mediterranean biogeographical region [1], in so far as it declares ES61 0014 'Artos de El Ejido' a site of Community importance, either in its entirety or, alternatively, in so far as it includes in that list specific farms belonging to the applicants.

In support of their claims the applicants submit:

— that the defendant has not carried out a proper assessment of the Kingdom of Spain's proposal to include 'Artos de El Ejido' in the list of sites of Community importance in the Mediterranean biogeographical area, contrary to the provisions of Article 4 of Directive 92/43/EC. The applicants state, in that respect, that as soon as they became aware of that proposal, they complained on a number of occasions to the staff at the Commission Directorate General for the Environment, claiming:

— extensive anthropisation of the land concerned making it unsuitable as an appropriate habitat for wild flora and fauna;

— failure to define the SIC which it purports to designate or, in the alternative, failure to define the SIC appropriately by means of the boundaries of private properties and not the natural characteristics of the land;

— lack of any scientific basis for the protection of designated species on farms situated in areas of industrial agriculture or intensive agriculture in greenhouses.

As regards the SIC at issue, the affected area was not correctly selected as the national authorities have not provided the full scientific data required. However, although the Spanish authorities have failed to provide such data, the Commission was obliged to do so. In that regard, the applicants submit that the reasoning on which a decision is based, which designates an area as deserving protection, must be accompanied by a substantial amount of scientific evidence which must satisfy the criteria laid down in Annex III of the directive.

— By accepting the fact that there was no public hearing in the proceedings to include 'Artos de El Ejido' in the list of SICs and by not replying to the applicants' letters, the defendant has infringed basic procedural rules thereby depriving the applicants of their rights.

(1) OJ L 259, of 21.09.2006, p. 1.

Action brought on 21 November 2006 — FRESYGA v Commission

(Case T-323/06)

(2006/C 326/150)

Language of the case: Spanish

Parties

Applicant: Fresyga (Almería, Spain) (represented by: J. Rovira Daudí, lawyer)

Defendant: Commission of the European Communities

Form of order sought by the applicant

— a declaration that this action for annulment is admissible and that the Decision of 19 July 2006 adopting, pursuant to Council Directive 92/43/EEC, the list of sites of Community importance for the Mediterranean biogeographical region is in part invalid, in so far as it affects ES6110006, and that that SCI should be removed from its sphere of application;

— or, in the alternative, a declaration that the Decision of 19 July 2006 adopting, pursuant to Council Directive 92/43/EEC, the list of sites of Community importance for the Mediterranean biogeographical region is in part invalid, in so far as the property 'Coto de Padilla' situated in the municipal (1) district of Níjar, with an area of 8 500 000 square metres must be removed from SCI ES6110006;

— an order that the Commission should pay the costs.

Pleas in law and main arguments

This action challenges the Commission Decision of 19 July 2006 adopting, pursuant to Council Directive 92/43/EEC, the list of sites of Community importance for the Mediterranean biogeographical region, in that it declares the ES6110014 'Ramblas de Jergal, Tabernas y Sur de Sierra Alhamilla' to be a Site of Community Interest in its entirety or, in the alternative, in so far as that list includes property belonging to the applicant.

The pleas in law and main arguments are similar to those put forward in Case T-322/06 *Manuel Espinosa and Others* v *Commission*.

The applicant claims, in particular, that in the period elapsing between the proposal and the approval of SCI ES6110006 the Commission did not undertake any assessment of the social or economic features of the area, or of the state of protection of the pieces of land, in spite of the requests to that end made by the municipality of Níjar, but instead merely accepted the proposal made by the Regional Council of Andalucia without evaluating whether that land was suitable.

(1) OJ L 259, 21.09.2006, p. 1.

Action brought on 23 November 2006 — Município de Gondomar v Commission

(Case T-324/06)

(2006/C 326/151)

Language of the case: Portuguese

Parties

Applicant: Município de Gondomar (Gondomar, Portugal) (represented by: J.L. da Cruz Vilaça, D. Choussey and L. Pinto Monteiro, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— a declaration that the decision of the Commission of the European Communities C(2006) 3782 of 16 August 2006 on the cancellation of the financial assistance granted by the Cohesion Fund for Project No 95/10/61/07 — Redevelopment of Grande Porto/Sul — Subsistema de Gondomar (Portugal) by Commission Decision C (95) 3281 of 18 December 1995, cancelling the total amount of the assistance of EUR 7 778 535 allocated to the project and ordering the applicant to reimburse the sum of EUR 6 222 828, is vitiated by manifest errors of assessment, is contrary to Regulation No 1164/94 (1) and to the principles of proportionality and legal certainty and, in consequence,

— principally, annulment of the contested decision or,

— in the alternative, annulment in part of the contested decision and a declaration that the applicant is entitled to the whole of the Cohesion Fund financing, except for the sum of EUR 537 863;

— an order that the Commission should bear its own costs and also those of the applicant.

Pleas in law and main arguments

This action seeks annulment of the contested decision pursuant to Article 230 EC, in so far as that decision cancels the total amount of the assistance of EUR 7 778 535 allocated to Project No 95/10/61/017 and orders the applicant to reimburse the sum of EUR 6 222 828.

In the contested decision, the Commission claims that the applicant committed irregularities, with regard to Regulation No 1164794 and Commission Decision C (95) 3281 which granted the European Community financing for the project. Those irregularities relate in essence to payments made outside the period of eligibility, unjustified expenditure and the fact that the applicant has not completed the works within the period fixed.

First, the applicant maintains that the contested decision is not based on sufficient reasons and that it is contrary to the principle of legal certainty. That is because the Commission on several occasions based the contested decision on unclear criteria and rejected some of the applicant's arguments without providing grounds for its conclusions.

Second, the applicant claims that the contested decision is vitiated by manifest errors of assessment of the facts, in that:

— due justification has been produced for all amounts put forward by the applicant;

— the Commission has displayed a lack of clarity in determining the amounts to be justified, not having also examined the evidence presented by the applicant to justify that expenditure;

— the Commission has rejected the applicant's explanations without establishing the exact legal basis of that rejection;

— the Commission has misinterpreted the facts and the documents put before it, for the sole purpose of showing fraudulent intent on the applicant's part when there was never any such intent.

Third, the applicant considers that the cancellation of the amount of the aid, in those circumstances, constitutes an infringement of Regulation No 1164/94, in that: (i) all the objectives of that regulation and of Commission Decision C (95) 3281 were attained and (ii) Article H of Annex II was infringed.

Last, the applicant alleges that, having regard to the completion of the project and the lack of any fraudulent intent, the contested decision runs counter to the principle of proportionality and to Article 5 EC.

(1) Council Regulation (EC) No 1164/94 of 16 May 1994 establishing a Cohesion Fund.

Action brought on 24 November 2006 — Boston Scientific v OHIM — Terumo (CAPIO)

(Case T-325/06)

(2006/C 326/152)

Language in which the application was lodged: English

Parties

Applicant: Boston Scientific Ltd (Christ Church, Barbados) (represented by: P. Rath and W. Festl-Wietek, lawyers)

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

Other party to the proceedings before the Board of Appeal: Terumo Kabushiki Kaisha (Tokyo, Japan)

Form of order sought

— Annul the decision of the Second Board of Appeal of OHIM of 14 September 2006, served to the representatives of the plaintiff on 18 September 2006, in Case R 61/2006-2;

— order OHIM to pay the costs of the proceedings before the Court and Board of Appeal.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The word mark 'CAPIO' for goods in class 10 — application No 2 554 434

Proprietor of the mark or sign cited in the opposition proceedings: Terumo Kabushiki Kaisha

Mark or sign cited: The national and Community word marks 'CAPIOX' and 'CAPIOX PULSE' for goods in class 10

Decision of the Opposition Division: Rejection of the opposition in its entirety

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

Pleas in law: Infringement of Article 43 of Council Regulation No 40/94 and Rule 22 of Commission Regulation No 2868/95 as Terumo failed to prove sufficient use of its trade mark, and of Article 8(1)(b) of the Council regulation as the conflicting trade marks are not likely to be confused.

Action brought on 21 November 2006 — Total v OHIM — Peterson (Beverly Hills Formula TOTAL PROTECTION)

(Case T-326/06)

(2006/C 326/153)

Language in which the application was lodged: English

Parties

Applicant: Total SA (Courbevoie, France) (represented by: S. Aldred, Solicitor)

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

Other party to the proceedings before the Board of Appeal: Eric Peterson (London, United Kingdom)

Form of order sought

— The decision of the Fourth Board of Appeal dated 5 September 2006 shall be annulled.

— The Court either directs the Board or the Office to refuse Mr Peterson's Community trade mark application No 2 988 228, or at its discretion remit the opposition to the Board for reconsideration.

— The applicant receives an award of costs in respect of the opposition, a reversal of the award of costs made in the Board's Decision, and an award of costs in respect of this Application.

Pleas in law and main arguments

Applicant for the Community trade mark: Eric Peterson

Community trade mark concerned: The figurative mark 'Beverly Hills Formula TOTAL PROTECTION' for goods in class 3 — application No 2 988 228

Proprietor of the mark or sign cited in the opposition proceedings: The applicant

Mark or sign cited: The national word mark 'TOTAL' for goods in classes 3, 10 and 21

Decision of the Opposition Division: Rejection of the opposition in its entirety

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 40/94 in that the Board of Appeal found a lack of similarity between the two marks concerned and of Article 63 (2) of the regulation as the Board of Appeal didn't notify any of the observations submitted by Eric Peterson to the applicant.

Action brought on 22 November 2006 — Altana Pharma v OHIM — Avensa (PNEUMO UPDATE)

(Case T -327/06)

(2006/C 326/154)

Language in which the application was lodged: German

Parties

Applicant: Altana Pharma AG (Konstanz, Germany) (represented by: H. Becker, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Avensa AG (Zug, Switzerland)

Form of order sought

The applicant claims that the Court should:

— annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 11 September 2006 (Case R 668/2005-2);

— order the Office for Harmonisation in the Internal Market (Trade Marks and Designs) to dismiss opposition No B 575 524 brought by the opponent;

— in the alternative, order the Office for Harmonisation in the Internal Market (Trade Marks and Designs) to make a fresh decision on opposition No B 575 524 brought by the opponent in the light of the Court's opinion.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant.

Community trade mark concerned: The word mark 'PNEUMO UPDATE' for goods and services in Classes 5, 9, 16, 35, 38 and 41 (Application No 2 462 049).

Proprietor of the mark or sign cited in the opposition proceedings: Avensa AG.

Mark or sign cited in opposition: German word mark 'Pneumo' for goods in Class 5, the opposition being brought only against the registration in Class 5.

Decision of the Opposition Division: Opposition granted.

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

Pleas in law: The contested decision is not reasoned in a comprehensible manner and it infringes Article 8(1)(b) of Regulation (EC) No 40/94 [1], since there is no likelihood of confusion between the opposing marks. In addition, the applicant claims that the opposing mark is not in use.

[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 27 November 2006 — Enercon GmbH v OHIM

(Case T-329/06)

(2006/C 326/155)

Language of the case: German

Parties

Applicant: Enercon GmbH (Aurich, Germany) (represented by R. Böhm, lawyer)

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

Form of order sought

The applicant claims that the Court should:

— annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 8 September 2006 (Case R 0394/2006-1);

— order the defendant to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: The word mark 'E' for goods in Classes 7, 9 and 19 (application No 3 817 566)

Decision of the Examiner: Refusal of the application

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 7(1)(b) of Regulation (EC) No 40/94 [1] as it was held that the mark for which registration was sought lacked distinctive character and that its availability had to be preserved.

[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 27 November 2006 — Novartis v OHIM (BLUE SOFT)

(Case T-330/06)

(2006/C 326/156)

Language of the case: German

Parties

Applicant: Novartis AG (Basel, Switzerland) (represented by N. Hebeis, lawyer)

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

Form of order sought

The applicant claims that the Court should

— annul the decision of the First Board of Appeal of 14 September 2006 in Case R 270/2006-1;

— order the Office for Harmonisation in the Internal Market to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: The word mark 'BLUE SOFT' for goods in Class 9 (application No 3 007 846)

Decision of the Examiner: Refusal of the application

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: There is no absolute ground for refusal and therefore the mark for which registration is sought is capable of being protected. The sign as a whole is not purely descriptive and distinctive character is also present.

Action brought on 24 November 2006 — Evropaïki Dynamiki v EEA

(Case T-331/06)

(2006/C 326/157)

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 Environment Agency

Form of order sought

— Annul the decision of the EEA to evaluate the applicant's bid as not successful and award the contract to the successful contractor;

— order the EEA 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

In support of its claims the applicant argues that in the decision taken in the framework of the tendering procedure EEA/IDS/06/002 for the 'Provision of IT consultancy services' (OJ 2006 S 118-125101) communicated to the applicant by letter dated 14 September 2006 the European Environmental Agency ('EEA') failed to comply with its obligations foreseen in the Implementing rules and Directive 2004/18/EC as well as the principle of transparency by not disclosing to the participants in advance the weighting of the sub-criteria which were subsequently applied during the selection procedure.

Furthermore, the applicant claims that the EEA committed several manifest errors of assessment which resulted in the rejection of its bid.

The applicant requests that the decision of the EEA to reject its bid and award the contract to three other participants be annulled and that the defendant is ordered by the Court to pay all legal expenses related to the present proceedings even if the application is rejected.

Action brought on 29 November 2006 — Alcoa Trasformazioni v Commission

(Case T-332/06)

(2006/C 326/158)

Language of the case: English

Parties

Applicant: Alcoa Trasformazioni Srl (Portoscuso, Italy), (represented by: M. Siragusa, T. Müller-Ibord, F. M. Salerno and T. Graf, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— To annul the Commission Decision of 19 July 2006 ([1]), in so far as it relates to the applicant and the electricity tariffs payable by the applicant at Portovesme and Fusina or, in the alternative, to annul the decision to the extent that it treats these tariffs as unlawful new aid;

— to order the Commission to bear the costs of the present proceedings.

Pleas in law and main arguments

The application at stake is made pursuant to Article 230 EC for the annulment of Commission Decision of 19 July 2006 (hereinafter 'the 2006 Decision'), which qualified electricity tariffs applicable to the applicant's aluminium plants located in Portovesme in Sardinia and Fusina in the Veneto region as unlawful new aid and initiated formal proceedings against these tariffs pursuant to Article 88(2)EC.

The applicant submits that the 2006 decision is erroneous and unlawful in that it departs from the Commission's own previous decision holding that the tariffs in question do not constitute state aid and disregards the procedure that the Commission should follow in such a case. More specifically, the applicant raises three pleas in law:

First, the applicant submits that by opening formal proceedings against the tariffs in question and by qualifying them as unlawful new aid the Commission committed a manifest error of assessment and infringed Article 88(2) because (i) there was no basis for finding that the tariffs provide an advantage resulting in state aid and (ii) the Commission did not conduct any meaningful assessment on whether the tariffs effectively provide such an advantage to the applicant. Moreover, the applicant puts forward that, as confirmed by 'the 1996 Decision', the tariffs correspond to the prices that one would expect a rational market operator to charge under normal market conditions and therefore do not create an advantage for the applicant resulting in aid. The 2006 Decision, by contrast, merely asserts that the tariffs create an advantage without conducting any such assessment. In so doing, the Commission allegedly ignored its own findings as set out in the previous decision and its own factual observations made in the present one, which confirm there is no such advantage. In addition, the applicant contends that the Commission infringed its obligation under Article 253EC to provide adequate reasoning.

Second, the applicant submits that the Commission violated principles of legal certainty and legitimate expectations by effectively revoking 'the 1996 Decision' and qualifying the tariffs as new state aid in clear contradiction with its previous findings. In the applicant's view, the Commission's initial conclusions continue to hold as long as the considerations on which the Commission's original decision was based do not materially change.

Third, the applicant claims the Commission infringed Article 88 EC and the procedural framework provided by this provision for *existing aid*, as well as Articles 1(b)(v) and 17-19 of Regulation (EC) 659/99 [2] and fundamental principles of EC law.

[1] OJ 2006 C 214, p. 5.
[2] Council Regulation (EC) No 659/1999, of 22 march 1999 (OJ 1999 L 83, p.1).

Action brought on 29 November 2006 — Commission v Northumbrian Water

(Case T-334/06)

(2006/C 326/159)

Language of the case: English

Parties

Applicant: Commission of the European Communities (represented by: R. Lyal, as agent)

Defendant: Northumbrian Water Ltd (Durham, United Kingdom)

Form of order sought

— Order the defendant, Northumbrian Water Ltd.:

  — to pay the Commission the sum of EUR 561 732,65, being the principal amount of EUR 443 307,67 together with EUR 10 922,84 as late payment interest calculated at the rate of 4.75 % on the original sum owed (EUR 456 159,71) for the period between 1 July 2002 and 31 December 2002, EUR 99 795,87 as late payment interest calculated on that original sum at the rate of 6.75 % for the period between 1 January 2003 and 28 March 2006 and EUR 17 790,00 as late payment interest calculated on the new principal sum at the rate of 6.75 % for the period between 29 March 2006 and 31 October 2006;

  — to pay EUR 81.98 per day by way of interest from 1 November 2006 until the date on which the debt is repaid in full;

  — to pay the costs of the present action.

Pleas in law and main arguments

The European Community, represented by the Commission, entered in 1997 into a contract with among others the defendant for the implementation of the project 'Generation of electricity by the LR-gasification of dried undigested sewage sludge' under the Community activities in the field of non-nuclear energy [1].

In 2000, the defendant informed the Commission that it had decided to terminate the contract because of increased costs. The Commission assessed the work done and considered that it corresponded to the design phase of the project. The Commission tried therefore without success to recover the advance payments received by the defendant exceeding the foreseen amount for the design phase, i.e. the first phase of the project.

In support of its application, the Commission submits that the General Conditions of the contract do not oblige it to pay more for the design phase than the amount provided for in the contract and that a transfer of the budgetary amounts between categories of expenditure is not possible between the different phases of the project.

[1] Council Decision 94/806/EC of 23 November 1994 adopting a specific programme for research and technological development, including demonstration, in the field of non-nuclear energy (1994 to 1998) (OJ L 334, p. 87).

Action brought on 22 November 2006 — Italy v Commission

(Case T-335/06)

(2006/C 326/160)

Language of the case: Italian

Parties

Applicant: Italian Republic (represented by: G. Aiello, Avvocato dello Stato)

Defendant: Commission of the European Communities

Form of order sought

— declare that the Commission has failed to act in that, after being formally called upon to act, in accordance with Article 232 EC, it unlawfully omitted to adopt exceptional measures to support the Italian market in poultrymeat, pursuant to Article 14 of Council Regulation No 2777/75, as regards the chicks that were destroyed for lack of battery brooder pens in the areas affected by avian influenza and subject to veterinary measures restricting free circulation in the period from December 1999 to September 2003;

— order the defendant to pay all fees and costs entailed by the proceedings.

Pleas in law and main arguments

The Italian Government has brought an action for failure to act before the Court of First Instance of the European Communities on account of the failure of the European Commission to adopt exceptional measures to support the Italian market in poultrymeat.

In support of its action, the Italian Government claims:

(1) breach of the principle of non-discrimination between Community producers, laid down in the second subparagraph of Article 34(2) EC, in that, after Italy had been granted exceptional measures in support only of the market in eggs, analogous measures for the market in poultrymeat were refused, with the result that Italian poultry producers suffered discrimination as compared with Dutch poultry producers, contrary to the second subparagraph of Article 34(2) of the EC Treaty;

(2) misuse of power and manifest error of assessment on the part of the Commission which, by refusing to adopt exceptional measures to support the market also in respect of the day-old chicks destroyed for lack of battery brooder pens, exceeded the powers conferred on it by the basic regulation on the common organisation of the market in poultrymeat and committed an error of assessment regarding the situation of the Italian poultry market, as well as regarding the information available to it concerning the production structure;

(3) infringement and misinterpretation of Article 14 of Regulation No 2777/75 in that the unjustified refusal of the Commission to grant exceptional measures to support the market in respect of the day-old chicks destroyed for lack of battery brooder pens was based on an incorrect interpretation of Article 14 of Regulation No 2777/75;

(4) breach of the principles of sound administration, impartiality, fairness and transparency.

Action brought on 28 November 2006 — UniCredito Italiano v OHIM –Union Investment Privatfonds (UniCredit Wealth Management)

(Case T-337/06)

(2006/C 326/161)

Language in which the application was lodged: Italian

Parties

Applicant: UniCredito Italiano SpA (Genoa, Italy) (represented by: G. Floridia and R. Floridia, lawyers)

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: Union Investment Privatfonds GmbH

Form of order sought

— annulment of the contested decision

Pleas in law and main arguments

Applicant for a Community trade mark: UniCredito Italiano

Community trade mark concerned: Word mark 'UniCredit Wealth Management' (registration application No 2.330.066) for goods and services in Classes 16, 35, 36, 41 and 42

Proprietor of the mark or sign cited in the opposition proceedings: Union Investment Privatfonds GmbH

Mark or sign cited in opposition: German word marks 'UNIFONDS' (No 991.995) and 'UNIRAK' (No 991.997) and figurative mark 'UNIZINS' (No 2.016.954) for services in Class 36 (capital investment)

Decision of the Opposition Division: Opposition allowed in part in so far as there was held to be a likelihood of confusion as regards capital investments

Decision of the Board of Appeal: to dismiss the action

Pleas in law: Misapplication of the theory of the extended protection of what are known as serial marks as formulated by the Court of First Instance in Case T-194/03 *Il Ponte Finanziaria* v *OHIM* [2006] ECR II-0000 (*Bainbridge*)

Action brought on 30 November 2006 — Greece v Commission

(Case T-339/06)

(2006/C 326/162)

Language of the case: Greek

Parties

Applicant: Hellenic Republic (represented by: I. Khalkias and S. Papaïoannou)

Defendant: Commission of the European Communities

Form of order sought

— annul or alter the contested Commission decision in so far as it concerns the financial allocation for the restructuring and conversion of vineyards in Greece, in order that the correct statistical information which the applicant transmitted to the Commission on 22 September 2006 be taken into account and the sums be allocated to Greece.

Pleas in law and main arguments

The Hellenic Republic challenges Commission Decision C(2006) 4348 final of 4 October 2006 (OJ 2006 L 275, p. 62) fixing, for the 2006 financial year and in respect of a certain number of hectares, the definitive financial allocations to Member States for the restructuring and conversion of vineyards under Regulation (EC) No 1493/1999. The Hellenic Republic seeks the annulment or alteration of the decision in so far as the decision relates to Greece because, in its submission, the Commission:

(a) infringed the obligation of cooperation which governs relations between it and the Member States by failing to take account of the information which was transmitted to it by the applicant;

(b) infringed the principle of good faith and of proper administration, not acknowledging a clear computer error of which it was notified in good and due time by means of the subsequent correction;

(c) infringed the principle of equity and of proportionality, given that the loss of funds for Greece (EUR 1 129 015) is out of proportion with the allegedly belated correction of the computing error in the information originally forwarded; and finally

(d) infringed the principle that a beneficial result should be achieved, given that the restructuring and conversion of vineyards (Articles 11, 13 and 14 of Regulation (EC) No 1493/1999 [1]) and Articles 16 and 17 of Regulation (EC) No 1227/2000 [2]) constitute an important measure for the qualitative upgrading of Community vineyards and the unjustified reduction of Greece's financial allocation prejudices that Community objective.

[1] OJ 1999 L 179, p. 1.
[2] OJ 2000 L 143, p. 1.

Action brought on 30 November 2006 — Stradivarius España v OHIM — Ricci (Stradivari 1715)

(Case T-340/06)

(2006/C 326/163)

Language in which the application was lodged: Spanish

Parties

Applicant: Stradivarius España (Arteixo, La Coruña, Spain) (represented by: G. Marín Raigal and P. López Ronda, 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: Cristina Ricci

Form of order sought

— annul the decision of the First Board of Appeal of OHIM of 7 September 2006 in Case R 1024/2005-1 and, allowing the appeal lodged against Decision No 2205/2005 of the Opposition Division, reject Community trade mark application No 2.269.256 (figurative mark Stradivari 1715) and order the applicant for a Community trade mark to pay the costs of both sets of proceedings;

— order OHIM to bear its own costs and to pay those incurred by the applicant in the present action;

— if necessary, order the intervener to bear her own costs and to pay those incurred by the applicant in these proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: Cristina Ricci.

Community trade mark concerned: Figurative mark 'Stradivari 1715' (application for registration No 2.269.256) for products in classes 14, 16 and 18.

Proprietor of the mark or sign cited in the opposition proceedings: The applicant.

Mark or sign cited in opposition: Figurative mark 'Stradivarius', for products in classes 14 and 16 (No 1.246.164) and 18 (No 506.469).

Decision of the Opposition Division: Opposition dismissed.

Decision of the Board of Appeal: Appeal dismissed.

Pleas in law: Incorrect application of Article 8(1)(b) and (5) of Regulation (EC) No 40/94 on the Community Trade Mark.

Action brought on 1 December 2006 — Compagnie générale de Diététique v OHIM (GARUM)

(Case T-341/06)

(2006/C 326/164)

Language in which the application was lodged: French

Parties

Applicant: Compagnie générale de Diététique SAS (Caen, France) (represented by: J.-J. Evrard and T. de Haan, lawyers)

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

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order OHIM to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: The word mark 'GARUM' for goods in Class 29 (application No 3501939)

Decision of the Examiner: Refusal of the application

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 7(1)(b) of Council Regulation No 40/94 ([1]) in that, contrary to the finding by the Board of Appeal of OHIM in the contested decision, its mark is not descriptive in relation to the goods designated and having regard to the relevant public.

([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 1 December 2006 — Angiotech Pharmaceuticals v OHIM (VASCULAR WRAP)

(Case T-342/06)

(2006/C 326/165)

Language of the case: English

Parties

Applicant: Angiotech Pharmaceuticals, Inc. (Vancouver, Canada) (represented by: T. Clark, Barrister)

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

Form of order sought

— Annul decision R 751/2006-2 of the Second Board of Appeal, dated 20 September 2006, and remit the application to the Office of Harmonisation in the Internal Market to allow it to proceed; or

— in the alternative, if the Court finds that the application should only be allowed to proceed in relation to some of the goods the subject of the application, it should annul the decision of the Second Board of Appeal in relation to those goods only and remit the application to proceed before the Office in accordance with that finding;

— order that the Office pay the applicant's costs.

Pleas in law and main arguments

Community trade mark concerned: the word mark 'VASCULAR WRAP' for goods and services in classes 5 and 10 (dressings, bandages, coatings, compositions and medical devices for surgical application) — application number 4220811.

Decision of the examiner: Refusal of the application

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 7(1)(b) and 7(1)(c) of Council Regulation 40/94.

Order of the Court of First Instance of 16 October 2006 — Kat and Others v Council and Commission

(Case T -530/93, T-531/93, T-533/93, T-1/94, T-3/94, T-4/94, T-11/94, T-53/94, T-71/94, T-73/94, T-87/94, T-91/94, T-102/94, T-103/94, T-106/94, T-120/94, T-121/94, T-123/94, T-124/94, T-253/94 and T-372/94) ([1])

(2006/C 326/166)

Language of the case: Dutch

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

([1]) OJ C 334, 9.12.2003.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Judgment of the Civil Service Tribunal (First Chamber) of 14 November 2006 — Chatziioannidou v Commission

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

(Officials — Pensions — Pension rights acquired before entry into the service of the Communities — Transfer to the Community scheme — Calculation of years of pensionable service — Article 11(2) of Annex VIII to the Staff Regulations — Failure to apply, because of the introduction of the euro, the provisions relating to the monetary conversion of the sum transferred)

(2006/C 326/167)

Language of the case: French

Parties

Applicant: Eleni Chatziioannidou (Auderghem, Belgium) (represented by: S. A. Pappas, lawyer)

Defendant: Commission of the European Communities (represented by: D. Martin and K. Herrmann, Agents)

Re:

Application for annulment of the Commission's decision concerning the transfer of pension rights acquired in Greece to the Community scheme.

Operative part of the judgment

1. *The decisions of the Commission of the European Communities of 30 November 2004 and 20 February 2005 calculating the applicant's years of pensionable service following the transfer to the Community scheme of the actuarial equivalent of the pension rights she had acquired in Greece are annulled.*

2. *The Commission of the European Communities is ordered to pay the costs.*

([1]) OJ C 10, 14.01.2006, p. 25 (case initially registered before the Court of First Instance of the European Communities under number T-387/05 and transferred to the European Union Civil Service Tribunal by order of 15.12.2005).

Judgment of the Civil Service Tribunal (First Chamber) of 14 November 2006 — Villa and Others v Parliament

(Case F-4/06) ([1])

(Pension — Transfer of pension rights — Calculation of the premium already obtained)

(2006/C 326/168)

Language of the case: French

Parties

Applicants: Renata Villa (Senningerberg, Luxembourg) and Others (represented by: G. Bouneou, F. Frabetti, lawyers)

Defendant: European Parliament (represented by: J.F. De Wachter and M. Mustapha-Pacha, Agents)

Re:

Application for annulment of the decisions of 8 February 2005 whereby the appointing authority of the European Parliament refuses to reimburse the applicants the excess premium, resulting from the difference between the rights acquired during the years of when they were affiliated to the Italian scheme and the number of annuities transferred to the Community scheme following a new calculation of the transfer of their pension rights.

Operative part of the judgment

1. *The action is dismissed.*

2. *The parties shall bear their own costs.*

([1]) OJ C 74, 25.03.2006, p. 34.

Action brought on 29 September 2006 — Spee v Europol

(Case F-121/06)

(2006/C 326/169)

Language of the case: Dutch

Parties

Applicant: David Spee (Rijswijk, Netherlands) (represented by: D. C. Coppens, lawyer)

Defendant: European Police Office (Europol)

Form of order sought

— Annul Europol's decision of 5 July 2006;

— Order Europol to grant two incremental points to the applicant with effect from 1 November 2005;

— Order Europol to pay the costs.

Pleas in law and main arguments

The applicant challenges the decision to grant him only an increase in salary corresponding to one of the incremental points referred to in Article 29 of the Staff Regulations applicable to Europol employees, when, in his opinion, he was entitled to an increase corresponding to two increments.

He submits that Europol took into consideration not only the assessment provided for in Article 29 of the Staff Regulations of Europol, but also the assessment provided for in Article 28 of those same Regulations. By acting in that way, the administration retroactively applied the document of 24 March 2006 'Policy on the Determination of Salary Scale and Incremental Points of Europol Staff' in breach of the principle of legal certainty.

Furthermore, the applicant claims that, even if the administration was entitled to take into consideration the two assessments, the method applied is arithmetically incorrect and disadvantageous for the worker.

Action brought on 23 October 2006 — Timmer v Court of Auditors

(Case F-123/06)

(2006/C 326/170)

Language of the case: French

Parties

Applicant: Marianne Timmer (Saint Sauves d'Auvergne, France) (represented by: F. Rollinger, lawyer)

Defendant: European Court of Auditors

Forms of order sought

— annulment of all the applicant's staff reports drawn up by M.L.;

— annulment of the connected and/or subsequent decisions, including that appointing M.L.;

— an order for the payment of compensation for the material damage corresponding to the loss of income which the applicant has suffered in relation to the situation she would have been in if she had been promoted each time that she theoretically could have been during the period of her work under M.L.'s orders;

— an order for the payment of EUR 250 000 compensation for pain and suffering and for the effects which the unlawful treatment referred to above had on the applicant's health;

— an order for the defendant to pay the costs.

Pleas in law and main arguments

In support of her action, the applicant first submits that her career has been hampered, to the point of excluding her from the service, in order to allow her superior to continue in the unlawful exercise of his/her duties. The delay in bringing the action is due to the fact that the applicant learnt that the decisions on her career were unlawful only on the discovery of new facts which affected the validity of her staff reports, namely, in particular: (i) a twofold failure by her superior to observe Article 11a of the Staff Regulations; (ii) that her superior's length of service was insufficient when he/she was appointed; (iii) illegalities in connection with competition CC/LA/18/82; (iv) the unlawful filling of a post that the applicant could have filled; (v) her superiors' personal interest; (vi) the omission of disciplinary measures.

The applicant also alleges, first, a complete failure to give reasons for the decisions concerning her which were adopted by the General Secretariat of the Court of Auditors and, secondly, illegalities in the disciplinary procedures followed by that that institution.

The applicant adds that the contested decision is vitiated by a manifest error of assessment as regards the nature of her illness, which indeed deteriorated due to her return to work and the stress linked to her carrying out her professional duties.

Action brought on 3 November 2006 — H v Council

(Case F-127/06)

(2006/C 326/171)

Language of the case: French

Parties

Applicant: H (represented by: S. Orlandi, A. Coolen, J.-N. Louis and E. Marchal, lawyers)

Defendant: Council of the European Union

Forms of order sought

— annul the Council's decision of 15 March 2006 automatically to retire the applicant on 31 March 2006 in so far as it allows her an invalidity pension pursuant to the first paragraph of Article 78 of the Staff Regulations;

— order the defendant to pay the costs.

Pleas in law and main arguments

The applicant, who was retired with effect from 30 April 2003 due to her invalidity, was reintegrated on 1 November 2004. Following a number of absences due to illness, the Council once again retired her and granted her the invalidity allowance provided for in the first paragraph of Article 78 of the Staff Regulations, with effect from 1 April 2006.

In support of her action, the applicant claims that the Invalidity Committee did not rule on the origin of her illness or on a possible causal link between the deterioration of her illness and her working conditions. In those circumstances, the Council did not have the necessary information to determine whether the applicant was entitled to the allowance provided for by the first paragraph of Article 78 of the Staff Regulations or the one provided for in the fifth paragraph of that article. The Council's choice, less favourable to the applicant, is unlawful.

Action brought on 16 November 2006 — Salvador Roldán v Commission

(Case F-129/06)

(2006/C 326/172)

Language of the case: English

Parties

Applicant: Rocío Salvador Roldán (Brussels, Belgium) (represented by: F. Tuytschaever and H. Burez, lawyers)

Defendant: Commission of the European Communities

Form of order sought

The applicant claims that the Tribunal should:

— annul the Decision of the Appointing Authority in response to the complaint lodged by the applicant (No R/320/06) of 18 August 2006;

— order the defendant to pay the applicant the amounts corresponding to the expatriation allowance to which she is entitled, with effect from 1 April 2006, together with a default interest of 7 % from the date each amount fell due until the actual date of payment;

— order the defendant to pay the costs.

Pleas in law and main arguments

The application is based upon two pleas in law:

1) The applicant contests the Commission's conclusion according to which she does not comply with the condition provided for in the second indent of Article 4(1)(a) of Annex VII to the Staff Regulations for the payment of the expatriation allowance. The applicant claims that the contested decision incorrectly holds that she habitually resided in Belgium during the reference period. In particular, in her opinion, the provision of services by the applicant to an international law firm established in Belgium does not entail the consequence that she had established lasting ties in that Member State.

2) The applicant submits that the contested decision should be annulled because it breaches the principle of non-discrimination. First, she raises a plea of illegality of the second indent of Article 4(1)(a) of Annex VII to the Staff Regulations. She argues that this provision unduly makes a difference between, on the one hand, officials who performed, in the same Member State in which they were recruited by a European institution, duties in the service of another State or of an international organisation and, on the other hand, officials, such as the applicant, whose situations are also characterised by a lack of lasting ties with the Member State they used to work in before being recruited by a European institution. Second, the applicant claims that the Commission applied the abovementioned provision in a discriminatory manner, in so far as it did not take into account the personal circumstances of the applicant demonstrating that she had not intended to establish lasting ties in Belgium.

Action brought on 13 November 2006 — Sotgia v Commission

(Case F-130/06)

(2006/C 326/173)

Language of the case: French

Parties

Applicant: Stefano Sotgia (Dublin, Ireland) (represented by: T. Bontinck and J. Feld, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— annul the individual decision concerning a transfer from temporary staff status to official status taking effect on 16 April 2006, notified on 2 May 2006;

— order the defendant to pay the costs.

Pleas in law and main arguments

The applicant, after having worked at the Commission for several years as a member of temporary staff in Grade A5, then A*11, was successful in open competition EPSO/A/18/04 to draw up a reserve list for administrators in career bracket A7/A6. As a result, he was appointed as an official in the same post he had occupied as a member of the temporary staff and classified in Grade A*6, step 2, in accordance with Annex XIII of the Staff Regulations.

In support of his action, the applicant invokes infringement of Articles 31 and 62 of the Staff Regulations and Articles 5 and 2 of Annex XIII to the Staff Regulations.

The applicant moreover submits infringement of the principle of the protection of legitimate expectations, the principle of the protection of acquired rights and the principle of equal treatment.

Action brought on 24 November 2006 — Steinmetz v Commission

(Case F-131/06)

(2006/C 326/174)

Language of the case: French

Parties

Applicant: Robert Steinmetz (Luxembourg, Luxembourg) (represented by: J. Choucroun, lawyer)

Defendant: Commission of the European Communities

Form of order sought by the applicant

— annul the Commission's decision of 21 February 2006 not to give full effect to an agreement binding on the parties;

— order the Commission to pay the applicant token compensation of EUR 1 for the non-material damage suffered as a result of the contested decision;

— order the defendant to pay the costs.

Pleas in law and main arguments

The applicant concluded an agreement with the Commission intended to bring to an end by amicable settlement the dispute brought before the Court of First Instance of the European Communities in Case T-155/05 ([1]).

The applicant alleges that the Commission failed to give full effect to the terms of the agreement.

In support of his action, he alleges in particular breach by the Commission of the principle of legality, the principle of *pacta sunt servanda*, the principle of the protection of legitimate expectations, the duty to have regard to the welfare of officials and the principle of sound administration.

([1]) OJ C 155, 25.06.2006, p. 26.

Action brought on 29 November 2006 — Bordini v Commission

(Case F-134/06)

(2006/C 326/175)

Language of the case: French

Parties

Applicant: Giovanni Bordini (Dover, United Kingdom) (represented by: L. Levi, C. Ronzi and I. Perego, lawyers)

Defendant: Commission of the European Communities

Forms of order sought

— annul the decision of 25 January 2006 by which the appointing authority refused to recognise that the applicant was resident in the United Kingdom and, in consequence, refused to apply the weighting for the United Kingdom to his pension;

— order the defendant to pay interest — on the basis of a rate two points higher than the rate fixed by the European Central Bank, and applicable during the period concerned, for major refinancing operations — on the amounts payable by virtue of retroactive application of the United Kingdom weighting to the applicant's pension with effect from 1 April 2004;

— order the defendant to pay the costs.

Pleas in law and main arguments

In support of his application, the applicant argues, first, that the contested decision is contrary to the principle of the obligation to state reasons, in so far as it is framed in terms so vague that it is not possible to understand the underlying reasoning.

The applicant additionally invokes infringement of Article 82 of the former Staff Regulations and Article 20 of Annex XIII to the new Staff Regulations; a manifest error of assessment of the facts giving rise to an error in law; breach of the principle of proportionality; and failure to respect the right to privacy.

Lastly, the applicant submits that the Commission was in breach of the duty to have regard for the welfare of officials and of the principle of sound administration.

Action brought on 27 November 2006 — Lafleur-Tighe v Commission

(Case F-135/06)

(2006/C 326/176)

Language of the case: French

Parties

Applicant: Virgine Lafleur-Tighe (Makati, Philippines) (represented by: S. Rodrigues and C. Bernard-Glanz, lawyers)

Defendant: Commission

Form of order sought

— annul the decision of the appointing authority placing the applicant in grade 13, step 1, on the date of her recruitment as a contractual agent, in so far as that decision is to be inferred from the contract of employment signed on 22 December 2005;

— indicate to the appointing authority the effects entailed by annulment of the contested decision, in particular, the fact that the applicant's work experience since 1993, when she obtained her Bachelor's degree, must be taken into account and that she must be re-graded as grade 14 with retroactive effect from 22 December 2005;

— order the defendant to pay the costs.

Pleas in law and main arguments

The applicant argues, first, that the appointing authority committed a manifest error of assessment in requiring her to produce a certificate attesting to the equivalence of her Bachelor's degree of comparable authority to the decision issued by the Government of the French Community in Belgium in respect of her Master's degree.

Secondly, the applicant maintains that the appointing authority infringed the principle of equal treatment and non-discrimination in so far as it refused to take into account the certificate issued by the National Qualifications Authority of Ireland attesting to the equivalence of that qualification.

Order of the Civil Service Tribunal of 22 November 2006 — Larsen v Commission

(Case F-11/06) ([1])

(2006/C 326/177)

Language of the case: French

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

([1]) OJ C 74, 25.3.2006, p. 35.

Order of the Civil Service Tribunal of 20 November 2006 — Andersson and Others v Commission

(Case F-69/06) ([1])

(2006/C 326/178)

Language of the case: French

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

([1]) OJ C 190, 12.8.2006, p. 35.

III

(Notices)

(2006/C 326/179)

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

OJ C 310, 16.12.2006

Past publications

OJ C 294, 2.12.2006

OJ C 281, 18.11.2006

OJ C 261, 28.10.2006

OJ C 249, 14.10.2006

OJ C 237, 30.9.2006

OJ C 224, 16.9.2006

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