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IV

*(Notices)*

# NOTICES FROM EUROPEAN UNION INSTITUTIONS AND BODIES

# COURT OF JUSTICE

(2007/C 82/01)

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

OJ C 69, 24.3.2007

**Past publications**

OJ C 56, 10.3.2007

OJ C 42, 24.2.2007

OJ C 20, 27.1.2007

OJ C 331, 30.12.2006

OJ C 326, 30.12.2006

OJ C 310, 16.12.2006

These texts are available on:
EUR-Lex: http://eur-lex.europa.eu

V

*(Announcements)*

# COURT PROCEEDINGS

# COURT OF JUSTICE

## Judgment of the Court (Third Chamber) of 15 February 2007 — Commission of the European Communities v Kingdom of the Netherlands

**(Case C-34/04)** ([1])

***(Failure of a Member State to fulfil obligations — Fishing licences — Regulation (EC) No 3690/93 — Vessels Wiron III and Wiron IV — Definitive transfer of those vessels to Argentina)***

(2007/C 82/02)

*Language of the case: Dutch*

### Parties

*Applicant:* Commission of the European Communities (represented by: T. van Rijn and C. Diderich, Agents)

*Defendant:* Kingdom of the Netherlands (represented by: H.G. Sevenster, Agent)

### Re:

Failure of a Member State to fulfil its obligations — Article 5 of Council Regulation (EC) No 3690/93 of 20 December 1993 establishing a Community system laying down rules for the minimum information to be contained in fishing licences (OJ 1993 L 341, p. 93) — Failure to withdraw the fishing licences granted to the vessels *Wiron III* and *Wiron IV* following their definitive transfer to Argentina

### 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 71, 20.3.2004.

## Judgment of the Court (Grand Chamber) of 30 January 2007 — Commission of the European Communities v Kingdom of Denmark

**(Case C-150/04)** ([1])

***(Failure of a Member State to fulfil obligations — Freedom of movement for workers — Freedom to provide services — Free movement of capital — Freedom of establishment — Income tax — Pensions — Policy taken out with a pension institution in another Member State — Tax legislation — Limitation on the deductibility or exemption from taxable income of contributions paid into a pension scheme — Overriding reasons in the public interest — Effectiveness of supervision of taxation — Cohesion of the tax system — Symmetry of the tax system — Double taxation convention)***

(2007/C 82/03)

*Language of the case: Danish*

### Parties

*Applicant:* Commission of the European Communities (represented by: initially by S. Tams, and subsequently by R. Lyal and H. Støvlbæk, Agents)

*Defendant:* Kingdom of Denmark (represented by: J. Molde, Agent)

*Intervener in support of the defendant:* Kingdom of Sweden, (represented by: A. Kruse, Agent)

### Re:

Failure by a Member State to fulfil obligations — Infringement of Articles 39, 43, 49 and 56 EC — Tax legislation limiting income tax deductions for pension insurance contributions to schemes set up with undertakings in the Member State

**Operative part of the judgment**

*The Court:*

1. *Declares that, by introducing and maintaining in force a system for life assurance and pensions under which tax deductions and tax exemptions for payments are granted only for payments under contracts entered into with pension institutions established in Denmark, whereas no such tax relief is granted for payments made under contracts entered into with pension institutions established in other Member States, the Kingdom of Denmark has failed to fulfil its obligations under Articles 39 EC, 43 EC and 49 EC;*

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

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

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([1]) OJ C 190, 24.7.2004.

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**Judgment of the Court (Second Chamber) of 1 February 2007 — Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland**

**(Case C-199/04)** ([1])

***(Failure of a Member State to fulfil obligations — Directives 85/337/EEC and 97/11/EC — Assessment of the effects of certain projects on the environment — Material change in the use of any buildings or other land — Action inadmissible)***

(2007/C 82/04)

*Language of the case: English*

**Parties**

*Applicant:* Commission of the European Communities (represented by: C.-F. Durand and F. Simonetti, acting as Agents, and A. Howard, Barrister)

*Defendant:* United Kingdom of Great Britain and Northern Ireland (represented by: M. Bethell and E. O'Neill, acting as Agents, D. Elvin QC and J. Maurici, Barrister)

**Re:**

Failure of a Member State to fulfil obligations — Articles 2, 3, 4, 5, 6, 8 and 9 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 Council Directive 97/11/EC of 3 March 1997 (OJ 1997 L 73, p. 5) — Consents granted without an assessment

**Operative part of the judgment**

*The Court:*

1. *Dismisses the action as inadmissible;*

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

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([1]) OJ C 179, 10.7.2004.

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**Judgment of the Court (Third Chamber) of 15 February 2007 (reference for a preliminary ruling from the Bundesfinanzhof (Germany) — Centro Equestre da Lezíria Grande Lda v Bundesamt für Finanzen**

**(Case C-345/04)** ([1])

***(Freedom to provide services — Tax legislation — Corporation tax — Equestrian presentations and lessons organised in a Member State by a company established in another Member State — Deduction of operating expenses — Conditions — Direct economic connection to income received in the State in which the activity is pursued)***

(2007/C 82/05)

*Language of the case: German*

**Referring court**

Bundesfinanzhof (Germany)

**Parties to the main proceedings**

*Applicant:* Centro Equestre da Lezíria Grande Lda

*Defendant:* Bundesamt für Finanzen

**Re:**

Reference for a preliminary ruling — Bundesfinanzhof — Whether national legislation relating to income tax payable by non-residents which provides that tax is to be repaid where operating expenses which have a direct economic connection to income are higher than half of the income is compatible with Article 59 of the EC Treaty (now, after amendment, Article 49 EC)

**Operative part of the judgment**

*Article 59 of the EC Treaty (now, after amendment, Article 49 EC) does not preclude national legislation such as that at issue in the main proceedings in so far as that legislation makes repayment of corporation tax deducted at source on the income of a taxpayer with restricted tax liability subject to the condition that the operating expenses in respect of which a deduction is claimed for that purpose by that taxpayer have a direct economic connection to the income received from activities pursued in the Member State concerned, on condition that all the costs that are inextricably linked to that activity are considered to have such a direct connection, irrespective of the place and time at which those costs were incurred. By contrast, that article precludes such national legislation in so far as it makes repayment of that tax to that taxpayer subject to the condition that those same operating expenses exceed half of that income.*

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([1]) OJ C 273, 6.11.2004.

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**Judgment of the Court (Second Chamber) of 15 February 2007 (reference for a preliminary ruling from the Hof van beroep te Brussel (Belgium) — BVBA Management, Training en Consultancy v Benelux-Merkenbureau**

**(Case C-239/05)** ([1])

***(Trade marks — Directive 89/104/EEC — Application for registration of a trade mark for a range of goods and services — Examination of the sign by the competent authority — Taking account of all the relevant facts and circumstances — Jurisdiction of the national court seised of an action)***

(2007/C 82/06)

*Language of the case: Dutch*

**Referring court**

Hof van beroep te Brussel (Belgium)

**Parties to the main proceedings**

*Applicant:* BVBA Management, Training en Consultancy

*Defendant:* Benelux-Merkenbureau

**Objet**

Reference for a preliminary ruling — Hof van beroep te Brussel — Interpretation of Article 3 of First Council Directive 89/104 EEC of 21 December 1988 to approximate the laws of Member States relating to trade marks (OJ 1989 L 40, p. 1) — Application for registration of the trade mark 'The Kitchen Company' — Examination of the sign by the competent authority — Taking account of all the relevant facts and circumstances — Judgment in *Koninklijke KPN Nederland*

**Re:**

*First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks must be interpreted as meaning that:*

— *when refusing registration of a trade mark, the competent authority is required to state in its decision its conclusion for each of the individual goods and services specified in the application for registration, regardless of the manner in which that application was formulated. However, where the same ground of refusal is given for a category or group of goods or services, the competent authority may use only general reasoning for all of the goods or services concerned;*

— *it does not preclude national legislation which prevents the court reviewing the decision of the competent authority from ruling on the distinctive character of the mark separately for each of the individual goods and services specified in the trade mark application, where neither that decision nor that application related to categories of goods or services or goods or services considered separately;*

— *it does not preclude national legislation which prevents the court reviewing a decision of the competent authority from taking account of facts and circumstances which arose after that decision had been taken.*

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([1]) OJ C 217, 3.9.2005.

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**Judgment of the Court (First Chamber) of 1 February 2007 — Jose Maria Sison v Council of the European Union**

**(Case C-266/05 P)** ([1])

***(Appeal — Access to documents of the institutions — Regulation (EC) No 1049/2001 — Exceptions — Public interest — Public security — International relations — Documents which have served as the basis for a Council decision establishing restrictive measures directed against certain persons with a view to combating terrorism — Sensitive documents — Refusal of access — Refusal to disclose the identity of the States from which some of those documents emanate)***

(2007/C 82/07)

*Language of the case: English*

**Parties**

*Appellant:* Jose Maria Sison (represented by: J. Fermon, avocat)

*Other party to the proceedings:* Council of the European Union (represented by: M. Bauer and E. Finnegan, Agents)

**Re:**

Appeal against the judgment of the Court of First Instance (Second Chamber) of 26 April 2005 in Joined Cases T-110/03, T-150/03 and T-405/03 *Sison* v *Council*, by which the Court of First Instance dismissed an application for annulment of the Council's decision refusing the applicant's request for access to certain documents on which the Council relied when adopting Decision 2002/848/EC implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Decision 2002/460/EC (OJ 2002 L 295, p. 12)

**Operative part of the judgment**

*The Court:*

1. *Dismisses the appeal;*

2. *Orders Mr Sison to pay the costs.*

(1) OJ C 243, 1.10.2005.

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**Judgment of the Court (First Chamber) of 15 February 2007 (reference for a preliminary ruling from the Arios Pagos — Greece) — Athinaiki Chartopoiia AE v L. Panagiotidis and Others**

**(Case C-270/05)** (1)

***(Collective redundancies — Council Directive 98/59/EC — Article 1(1)(a) — Termination of the establishment's activities of the employer's own volition — Concept of 'establishment')***

(2007/C 82/08)

*Language of the case: Greek*

**Referring court**

Arios Pagos

**Parties to the main proceedings**

*Applicant:* Athinaiki Chartopoiia AE

*Defendant:* L. Panagiotidis and Others

*Intervener:* Geniki Sinomospondia Ergaton Elladas (GSEE)

**Re:**

Reference for a preliminary ruling — Arios Pagos — Interpretation of Article 1(2)(d) of Council Directive 75/129/EEC of 17 February 1975 (OJ 1975 L 48, p. 29), Article 2(4) of Council Directive 92/56/EEC of 24 June 1992 (OJ 1992 L 245, p. 3) and Article 4(4) of Council Directive 98/59/EC of 20 July 1998 (OJ 1998 L 225, p. 16), on the approximation of the laws of the Member States relating to collective redundancies — Employer's obligation to inform and consult with the workers' representatives — Scope of the derogating conditions governing dismissals where activities are terminated following a judicial decision

**Operative part of the judgment**

*Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies, in particular Article 1(1)(a), is to be interpreted as meaning that a production unit such as that at issue in the main proceedings comes within the concept of 'establishment' for the purposes of the application of that directive.*

(1) OJ C 217, 3.9.2005.

---

**Judgment of the Court (Second Chamber) of 15 February 2007 (reference for a preliminary ruling from the Efetio Patron — Greece) — I. Lechouritou, V. Karkoulias, G. Pavlopoulos, P. Bratsikas, D. Sotiropoulos, G. Dimopoulos v Dimosio tis Omospondiakis Dimokratias tis Germanias**

**(Case C-292/05)** (1)

***(Brussels Convention — First sentence of the first paragraph of Article 1 — Scope — Civil and commercial matters — Meaning — Action for compensation brought in a Contracting State, by the successors of the victims of war massacres, against another Contracting State on account of acts perpetrated by its armed forces)***

(2007/C 82/09)

*Language of the case: Greek*

**Referring court**

Efetio Patron

**Parties to the main proceedings**

*Plaintiffs:* I. Lechouritou, V. Karkoulias, G. Pavlopoulos, P. Bratsikas, D. Sotiropoulos, G. Dimopoulos

*Defendant:* Dimosio tis Omospondiakis Dimokratias tis Germanias

**Re:**

Reference for a preliminary ruling — Efetio Patron — Interpretation of Article 1 of the Brussels Convention — Scope of the Convention — Action brought by the victims of a war massacre against a Contracting State as being liable for the acts of its armed forces in wartime

**Operative part of the judgment**

*On a proper construction of the first sentence of the first paragraph of Article 1 of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by the Convention of 9 October 1978 on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, by the Convention of 25 October 1982 on the Accession of the Hellenic Republic and by the Convention of 26 May 1989 on the Accession of the Kingdom of Spain and the Portuguese Republic, 'civil matters' within the meaning of that provision does not cover a legal action brought by natural persons in a Contracting State against another Contracting State for compensation in respect of the loss or damage suffered by the successors of the victims of acts perpetrated by armed forces in the course of warfare in the territory of the first State.*

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([1]) OJ C 243, 1.10.2005.

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**Judgment of the Court (Fourth Chamber) of 8 February 2007 (reference for a preliminary ruling from the Hoge Raad der Nederlanden — Netherlands) — Investrand BV v Staatssecretaris van Financiën**

**(Case C-435/05)** ([1])

***(Sixth VAT Directive — Article 17(2) — Right to deduct — Costs related to advisory services obtained in the course of arbitration proceedings to establish the amount of a claim that forms part of a company's assets, but arose before its holder became liable to VAT)***

(2007/C 82/10)

*Language of the case: Dutch*

**Referring court**

Hoge Raad der Nederlanden (Netherlands)

**Parties to the main proceedings**

*Applicant:* Investrand BV

*Defendant:* Staatssecretaris van Financiën

**Re:**

Reference for a preliminary ruling — Hoge Raad der Nederlanden — Interpretation of Article 17(2) 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 (OJ 1977 L 145, p. 1) — Services paid for by a taxable person with a view to establishing the amount of a claim which arose before he became a taxable person — Deduction of the tax — Need for a direct and immediate link between the services and his activity as a taxable person or not

**Operative part of the judgment**

*Article 17(2) 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, is to be interpreted as meaning that the costs for advisory services which a taxable person obtains with a view to establishing the amount of a claim forming part of his company's assets and relating to a sale of shares prior to his becoming liable to VAT do not, in the absence of evidence establishing that the exclusive reason for those services is to be found in the economic activity, within the meaning of that directive, carried out by the taxable person, have a direct and immediate link with that activity and, consequently, do not give rise to a right to deduct the VAT charged on them.*

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([1]) OJ C 74, 25.3.2006.

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**Judgment of the Court (Second Chamber) of 8 February 2007 — Groupe Danone v Commission of the European Communities**

**(Case C-3/06 P)** ([1])

***(Appeal — Competition — Agreements, decisions and concerted practices — Fines — Guidelines on the method of setting fines — Leniency notice)***

(2007/C 82/11)

*Language of the case: French*

**Parties**

*Appellant:* Groupe Danone (represented by: A. Winckler and S. Sorinas Jimeno, lawyers)

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

**Re:**

Appeal against the judgment of the Court of First Instance (Fifth Chamber) of 25 October 2005 in Case T-38/02 *Groupe Danone* v *Commission*, whereby the Court of First Instance dismissed in part the action for annulment of Commission Decision 2003/569/EC of 5 December 2001 relating to a proceeding pursuant to Article 81 EC (OJ 2003 L 200, p. 1).

**Operative part of the judgment**

*The Court:*

1. *Dismisses the appeal;*

2. *Orders Groupe Danone to pay the costs.*

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([1]) OJ C 48 of 25.2.2006.

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## Judgment of the Court (Eighth Chamber) of 8 February 2007 — Commission of the European Communities v The Slovak Republic

**(Case C-114/06)** ([1])

***(Failure by a Member State to fulfil its obligations — Directive 96/48/EC — Trans-European networks — Interoperability of the trans-European high-speed rail system — Failure to transpose)***

(2007/C 82/12)

*Language of the case: Slovak*

**Parties**

*Applicant:* Commission of the European Communities (represented by: G. Zavvos and T. Kukal, acting as Agents)

*Defendant:* The Slovak Republic (represented by: R. Procházka, acting as Agent)

**Re:**

Failure by a Member State to fulfil its obligations — Failure to adopt, within the period prescribed, Council Directive 96/48/EC of 23 July 1996 on the interoperability of the trans-European high-speed rail system (OJ 1996 L 235, p. 6)

**Operative part of the judgment**

*The Court:*

1. *Declares that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 96/48/EC of 23 July 1996 on the interoperability of the trans-European high-speed rail system, the Slovak Republic has failed to fulfil its obligations under that directive.*

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

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([1]) OJ C 96 of 22.4.2006.

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## Judgment of the Court (Fifth Chamber) of 15 February 2007 (reference for a preliminary ruling from the Finanzgericht München — Germany) — Ruma GmbH v Oberfinanzdirektion Nürnberg

**(Case C-183/06)** ([1])

***(Common Customs Tariff — Combined Nomenclature — Tariff classification — Heading 8529 — Subheading 8529 90 40 — Keypad membrane for mobile telephones)***

(2007/C 82/13)

*Language of the case: German*

**Referring court**

Finanzgericht München (Germany)

**Parties in the main proceedings**

*Applicant:* RUMA GmbH

*Defendant:* Oberfinanzdirektion Nürnberg

**Re:**

Reference for a preliminary ruling — Finanzgericht München — Interpretation of Commission Regulation (EC) No 1789/2003 of 11 September 2003 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 2003 L 281, p. 1) — Heading 8538 — Mobile telephone keyboard membrane (keypad) which has non-conductive contact pins on the underside

**Operative part of the judgment**

*The Combined Nomenclature in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended by Commission Regulation (EC) No 1789/2003 of 11 September 2003, must be interpreted as meaning that keypad membranes of polycarbonate which have moulded keys on their upper side and non-conductive contact pins on their underside and are intended for incorporation into mobile telephones are covered by subheading 8529 90 40.*

([1]) OJ C 143, 17.6.2006.

## Judgment of the Court (Seventh Chamber) of 1 February 2007 — Commission of the European Communities v Portuguese Republic

**(Case C-324/06)** ([1])

***(Failure by a Member State to fulfil its obligations — Directive 2004/116/EC — Inclusion of the yeast Candida guilliermondii in Annex I to Directive 82/471/ECC — Failure to adopt necessary measures)***

(2007/C 82/14)

*Language of the case: Portuguese*

**Parties**

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

*Defendant:* Portuguese Republic (represented by: L. Fernandes and F. Fraústo de Azevedo, acting as Agents)

**Re:**

Failure by a Member State to fulfil its obligations — Failure to adopt, within the period prescribed, all the measures necessary to comply with Commission Directive 2004/116/EC of 23 December 2004 amending the Annex to Council Directive 82/471/EEC as regards the inclusion of Candida guilliermondii (OJ 2004 L 379, p. 81)

**Operative part of the judgment**

*The Court:*

1. *Declares that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Commission Directive 2004/116/EC of 23 December 2004 amending the Annex to Council Directive 82/471/EEC as regards the inclusion of Candida guilliermondii, the Portuguese Republic has failed to fulfil its obligations under Article 2(1) of that directive;*

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

([1]) OJ C 224 of 16.9.2006.

## Order of the Court (Sixth Chamber) of 14 December 2006 — Herbert Meister v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

**(Case C-12/05 P)** ([1])

***(Appeal — Employment — Reassignment of a head of service as legal adviser to the Vice-President for Legal Affairs — Appeal in part manifestly inadmissible and in part manifestly unfounded)***

(2007/C 82/15)

*Language of the case: French*

**Parties**

*Appellant:* Herbert Meister (represented by: P. Goergen, lawyer)

*Other party to the proceedings:* Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: I. de Medrano Caballero, Agent)

**Re:**

Appeal against the judgment of the Court of First Instance (Third Chamber) of 28 October 2004 in Case T-76/03 *Meister* v *OHIM*, in which the Court of First Instance dismissed the action for annulment of OHIM's decision of 22 April 2002 appointing the appellant, in the interest of the service, with his post, as legal adviser to the Vice-President for Legal Affairs

**Operative part of the order**

1. *The appeal and cross-appeal are dismissed;*

2. *Mr Meister is ordered to pay the costs of the appeal;*

3. *The Office for Harmonisation in the Internal Market (Trade Marks and Designs) is ordered to pay the costs of the cross-appeal.*

([1]) OJ C 93, 16.4.2005.

## Order of the Court of 8 December 2006 — Polyelectrolyte Producers Group v Commission of the European Communities, Council of the European Union

**(Case C-368/05 P)** ([1])

***(Appeal — Council decision determining the Community's position — Decision of the EEA Joint Committee permitting the Kingdom of Norway to apply more stringent specific concentration limits for acrylamide than those applicable in the Community)***

(2007/C 82/16)

*Language of the case: English*

### Parties

*Applicant:* Polyelectrolyte Producers Group (represented by: K. Van Maldegem and C. Mereu, avocats)

*Other parties to the proceedings:* Council of the European Union (represented by: G. Curmi, J.-P. Hix and F. Florindo Gijón), Commission of the European Communities (represented by: J. Forman and M. Wilderspin, Agents)

### Re:

Appeal against the order of the Court of First Instance (Second Chamber) of 22 July 2005 in Case T-376/04 *Polyelectrolyte Producers Group* v *Council and Commission*, which declared inadmissible an action for, first, annulment of Decision of the EEA Joint Committee No 59/2004 of 26 April 2004 amending Annex II to the EEA Agreement (OJ 2004 L 277, p. 30) permitting Norway to apply more stringent concentration limits for acrylamide than those applicable in the Community, and also a declaration that the joint statement relating to the EEA Agreement regarding the review clauses in the field of dangerous substances, adopted at the meeting of the Joint Committee on 26 March 1999 (OJ 1999 C 185, p. 6), is unlawful and, second, an action for damages to obtain compensation for the loss allegedly suffered by the applicant following the adoption of the contested decision.

### Operative part of the order

1. *The appeal is dismissed.*

2. *Polyelectrolyte Producers Group is ordered to pay the costs.*

([1]) OJ C 10, 14.1.2006.

## Order of the Court of 22 January 2007 — Bart Nijs v Court of Auditors of the European Communities

**(Case C-373/05 P)** ([1])

***(Appeal — Officials — Decision not to promote an official to Grade LA 5 — Previous complaint — Identity of subject-matter and legal basis — Appeal manifestly unfounded)***

(2007/C 82/17)

*Language of the case: French*

### Parties

*Appellant:* Bart Nijs (represented by: F. Rollinger, lawyer)

*Other party to the proceedings:* Court of Auditors of the European Communities (represented by: T. Kennedy and G. Corstens, Agents)

### Re:

Appeal against the order of the Court of First Instance (Second Chamber) of 26 May 2005 in Case T-377/04 *Nijs* v *Court of Auditors*, in which the Court of First Instance dismissed as inadmissible the action for annulment of the decision of the Court of Auditors not to promote the appellant to the post of translator-reviser (LA 5) in the 2003 promotion exercise

### Operative part of the order

1. *The appeal is dismissed;*

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

([1]) OJ C 330, 24.12.2005.

## Order of the Court of 26 January 2007 — Elisabetta Righini v Commission of the European Communities

**(Case C-57/06 P)** ([1])

***(Appeal — Officials — Temporary staff — Classification by grade and step — Classification in a higher career bracket — Distortion of the facts — Defective statement of reasons — Appeal in part manifestly inadmissible and in part manifestly unfounded)***

(2007/C 82/18)

*Language of the case: French*

### Parties

*Appellant:* Elisabetta Righini (represented by E. Boigelot, avocat)

*Other party to the proceedings:* Commission of the European Communities (represented by V. Joris and C. Berardis-Kayser, acting as Agents, and D. Waelbroeck, avocat)

**Re:**

Appeal against the judgment of the Court of First Instance (Fifth Chamber) of 15 November 2005 in Case T-145/04 *Righini* v *Commission* dismissing the action for annulment of the Commission's decisions to classify the applicant on her entry into service in Grade A7/3 and, in so far as may be necessary, annulment of the decision of 21 January 2004 rejecting the applicant's complaint.

**Operative part of the order**

1. *The appeal is dismissed.*

2. *Ms Righini is ordered to pay the costs.*

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([1]) OJ C 74, 25.3.2006.

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**Order of the Court (Eighth Chamber) of 19 January 2007 (reference for a preliminary ruling from the Diikitiko Protodikio Tripolis, Greece) — Carrefour — Marinopoulos AE v Nomarkhiaki aftodiikisi Tripolis**

**(Case C-126/06)** ([1])

***(Free movement of goods — Article 28 EC — Quantitative restrictions — Measures having equivalent effect — Marketing of frozen bakery products)***

(2007/C 82/19)

*Language of the case: Greek*

**Referring court**

Diikitiko Protodikio Tripolis

**Parties to the main proceedings**

*Applicant:* Carrefour — Marinopoulos AE

*Defendant:* Nomarkhiaki aftodiikisi Tripolis

**Re:**

Reference for a preliminary ruling — Diikitiko Protodikio Tripolis — Interpretation of Art. 28 EC — Marketing of precooked bakery products ('bake-off' products) — Requirement of a licence

**Operative part of the order**

*Article 28 EC must be interpreted as precluding national legislation which makes the sale of 'bake-off' products subject to the same requirements as those applicable to the complete process of manufacturing and marketing bread and traditional bakery products.*

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([1]) OJ C 108, 6.5.2006.

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**Order of the Court of 12 December 2006 — Autosalone Ispra Snc v European Atomic Energy Community**

**(Case C-129/06 P)** ([1])

***(Appeal — Non-contractual liability of the European Atomic Energy Community — Overflowing drain — Misinterpretation of the evidence — Measures of inquiry)***

(2007/C 82/20)

*Language of the case: Italian*

**Parties**

*Appellant:* Autosalone Ispra Snc (represented by: B. Casu, lawyer)

*Other party to the proceedings:* European Atomic Energy Community, represented by the Commission of the European Communities (represented by: E. de March, Agent, and A. Dal Ferro, lawyer)

**Re:**

Appeal against the judgment of the Court of First Instance (Second Chamber) of 30 November 2005 in Case T-250/02 *Autosalone Ispra* v *Commission*, in which the Court of First Instance dismissed an application for a declaration that the Community was liable for the damage allegedly suffered by the applicant as a result of an overflowing drain the management and maintenance of which are the responsibility of the Joint Research Centre in Ispra — Breach of the procedural rules concerning the burden of proof

**Operative part of the order**

*The Court:*

1. *Dismisses the appeal;*

2. *Orders Autosalone Ispra Snc to pay the costs.*

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([1]) OJ C 108, 6.5.2006.

**Order of the Court (Seventh Chamber) of 26 January 2006 (reference for a preliminary ruling from the Handelsgericht Wien, Austria) — Auto Peter Petschenig GmbH v Toyota Frey Austria GmbH**

**(Case C-273/06)** ([1])

***(First subparagraph of Article 104(3) of the Rules of Procedure — Competition — Distribution agreement relating to motor vehicles — Block exemption — Regulation (EC) No 1475/95 — Article 5(3) — Termination by the supplier — Entry into force of Regulation (EC) No 1400/2002 — Need to reorganise the distribution network)***

(2007/C 82/21)

*Language of the case: German*

**Referring court**

Handelsgericht Wien

**Parties to the main proceedings**

*Applicant:* Auto Peter Petschenig GmbH

*Defendant:* Toyota Frey Austria GmbH

**Re:**

Reference for a preliminary ruling — Handelsgericht Wien — Interpretation of the first indent of the first subparagraph of Article 5(3) of Commission Regulation (EC) No 1475/95 of 28 June 1995 on the application of Article 85(3) of the Treaty to certain categories of motor vehicle distribution and servicing agreements (OJ 1995 L 145, p. 25) and Commission Regulation (EC) No 1400/2002 of 31 July 2002 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices in the motor vehicle sector (OJ 2002 L 203, p. 30) — Termination of a distribution agreement by the supplier on one year's notice on the ground that reorganisation of the whole or a substantial part of the network is needed owing to the entry into force of Regulation (EC) No 1400/2002

**Operative part of the order**

1. *The entry into force of Commission Regulation (EC) No 1400/2002 of 31 July 2002 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices in the motor vehicle sector does not in itself make it necessary to reorganise the distribution network of a supplier within the meaning of the first indent of the first subparagraph of Article 5(3) of Commission Regulation (EC) No 1475/95 of 28 June 1995 on the application of Article [81](3) of the Treaty to certain categories of motor vehicle distribution and servicing agreements. However, that entry into force may, in relation to the specific organisation of the distribution network of each supplier, necessitate changes that are so substantial that they constitute a real reorganisation of the network within the meaning of that provision.*

2. *The putting in place by a supplier after the entry into force of Regulation No 1400/2002 of a selective distribution system under which, first, the dealers are no longer restricted to a territory on which they may sell the contractual goods and, secondly, the authorised repairers may limit their activities to only providing repair and maintenance services is capable of constituting a reorganisation of the distribution network within the meaning of first indent of the first subparagraph of Article 5(3) of Regulation No 1475/95. It is for the national courts or arbitrators to determine whether that is the case, in the light of all the evidence in the specific case and, in particular, of the evidence submitted to this end by the supplier.*

([1]) OJ C 212, 2.9.2006.

**Order of the Court (Third Chamber) of 25 January 2007 (reference for a preliminary ruling of the Krajský súd v Prešove, Slovak Republic) — František Kovaľský v Mesto Prešov, Dopravný podnik Mesta Prešov, a.s.**

**(Case C-302/06)** ([1])

***(Reference for a preliminary ruling — Protocol to the Convention on the Protection of Human Rights and Fundamental Freedoms — Property law — Electrical installations on private land without compensation for the owners — Lack of jurisdiction of the Court)***

(2007/C 82/22)

*Language of the case: Slovak*

**Referring court**

Krajský súd v Prešove

**Parties**

*Applicant:* František Kovaľský

*Defendants:* Mesto Prešov, Dopravný podnik Mesta Prešov, a.s.

*Intevernors:* Zuzana Petrová, Ondrej Valla

**Re:**

Reference for a preliminary ruling — Krajský súd v Prešove — Interpretation of Article 6 EU and Article 1 of the Protocol to the Convention on the Protection of Human Rights and Fundamental Freedoms, signed in Paris on 20 March 1952 — Property law — National legislation under which electrical installations may be placed on private land without the owners being entitled to compensation

**Operative part of the order**

*The Court of Justice of the European Communities clearly has no jurisdiction to answer the questions referred by the Krajský súd v Prešove V by decisions of 2 May and 21 July 2006.*

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([1]) OJ C 249 of 14.10.2006.

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**Action brought on 13 December 2006 — Commission of the European Communities v Italian Republic**

**(Case C-503/06)**

(2007/C 82/23)

*Language of the case: Italian*

**Parties**

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

*Defendant:* Italian Republic

**Form of order sought**

— Declare that, since the Regione Liguria has adopted and applies rules concerning authorisation to derogate from the system of protection for wild birds which fail to satisfy the conditions laid down in Article 9 of Directive 79/409/EEC ([1]), the Italian Republic has failed to fulfil its obligations under Article 9 of that directive.

— order the Italian Republic to pay the costs.

**Pleas in law and main arguments**

Following receipt of a complaint, the Commission was apprised of the fact that the Regione Liguria had approved Law No 34 of October 2001 for the purpose of regulating procedures for the adoption of derogations from the system of protection for wild birds provided for under Article 9 of the abovementioned directive. That regional law was amended by Regional Law No 31 of 13 August 2002.

In the Commission's opinion, Regional Law No 34/2001, as amended, authorises the lawful hunting of bird species protected under that directive in so far it:

— identifies generally and in the abstract and without any time limitation the species which are subject to the derogation, whereas the derogation constitutes an exceptional regulatory measure to be adopted upon verification that certain conditions of a scientific nature are met;

— does not lay down an obligation, as regards individual derogation measures, to state one of the abstract reasons why it is possible to grant a derogation under Article 9 of the directive and does not lay down an obligation to explain the practical reason why a particular measure is dictated by the need relied upon as an abstract reason.

— it fails to provide that checks are to be made to ensure that no other satisfactory solutions are available or to provide any indication of the authority empowered to declare that the conditions under Article 9 of the directive are satisfied.

The fact that Regional Law No 34/2001, as amended, is incompatible with the directive is reflected in the specific measures authorising hunting, which fail to establish that no other satisfactory solutions are available and fail to mention either the abstract reason for which or the specific grounds on which the derogation is necessary.

On 31 October 2006, after the expiry of the period prescribed in the reasoned opinion, the Regione Liguria repealed Regional Law No 34/2001, as amended, by Regional Law No 35/2006 of 31 October 2006 and adopted Regional Law No 36/2006, which authorises hunting derogations that disclose the same incompatibilities with Article 9 of the abovementioned directive as those complained of above relating to the earlier regional legal framework.

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([1]) Council Directive 79/409/EEC of 2 April 1979 concerning the conservation of wild birds, OJ 1979 L 103, p. 1.

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**Reference for a preliminary ruling from the Tribunale di Genova (Italy) lodged on 18 January 2007 — Autostrada dei Fiori SpA, AISCAT, Associazione Nazionale dei Gestori delle Autostrade v Government of the Italian Republic, Ministry of Infrastructure and Transport, Ministry of the Economy and Finance and Azienda Nazionale Autonoma delle Strade (ANAS)**

**(Case C-12/07)**

(2007/C 82/24)

*Language of the case: Italian*

**Referring court**

Tribunale di Genova

**Parties to the main proceedings**

*Applicants:* Autostrada dei Fiori SpA AISCAT, Associazione Nazionale dei Gestori delle Autostrade

*Defendants:* The Government of the Italian Republic, Ministry of Infrastructure and Transport, Ministry of the Economy and Finance, Azienda Nazionale Autonoma delle Strade (ANAS)

**Questions referred**

1. Does the Court of Justice consider that a body, which takes the form of a joint-stock company and has the objects, functions and powers of intervention on the market which the Italian legislature has assigned to ANAS spa (as emerge — in particular — from the instrument setting up the new body, the company constitution approved by the Interministerial Decree of 18 December 2002 and the new legislation contained in subparagraphs 82 to 90 of Article 2 of the Decree-Law of 3 October 2006, converted into law with the amendments introduced by the Government's 'maxi-amendment' to subparagraph 1034 of Article 1 of the 2007 Financial Law), may be regarded as an undertaking, albeit a public undertaking, for the purposes of Community law, and as such subject to the rules on competition (Article 86 of the EC Treaty)?

2. Is legislation such as that at issue here, even as converted by Law No 286 of 2006, which — in contrast to the substantial power of expropriation accorded to a competing public undertaking such as ANAS spa — provides for a 'possible right to compensation', compatible with the fundamental right to property, which is protected by Community law?

3. Having regard to the legislation at issue, and in the light of the amendments introduced on its conversion into law and by the so-called 'maxi-amendment' to the 2007 Financial Law, does Community law and, in particular, the rules on competition and the internal market (Article 43 *et seq* and 81 *et seq* of the EC Treaty) preclude assigning to an undertaking, under full public ownership and having characteristics similar to those of ANAS spa, the administration — on a temporary basis but without stipulating an absolute time-limit — of public services or public infrastructure, without holding a competitive tendering procedure?

4. In relation to public procurement procedures, does Community law preclude a Member State from extending the regime provided for by the public procurement directives to 'vertical' transactions set in place by private-law undertakings which have been awarded concessions, with the Member State further reserving for itself the right to appoint the committees evaluating the tenders submitted by the concessionaires?

5. In so far as they accord advantages which are not accorded to private-law competitors, and in so far as they are not subject to separate accounting, do financial measures like those implemented in favour of ANAS under subparagraph 12 of Article 7 of Decree-Law No 138 of 2002 and subparagraph 1-quater of Article 7 of Decree-Law No 138 of 2002, as well as subparagraph 453 of Article 1 of the 2005 Financial Law (Law No 311 of 30 December 2004), which enable ANAS to receive loans on preferential terms from the *Cassa Depositi e Prestiti spa*, as well as measures similar to those contained in subparagraph 299(c) and subparagraph 453 of Article 1 of Law No 311 of 2004 (the 2005 Financial Law), and/or contained in subparagraph 2 of Article 76 of Law No 289 of 2003, under which ANAS receives substantial public contributions which are declared to be intended for infrastructure projects but stipulate no separate accounting requirement, constitute State aid which is prohibited by Article 87 *et seq* of the EC Treaty? In addition, does a measure such as that extending the concession period awarded to ANAS spa, enabling it to avoid the competitive tendering procedure, as well as a provision of the kind contained in subparagraphs 87 and 88 of Article 2 of Law No 286 of 2006 (converting Decree-Law No 262 of 2006), according to which ANAS spa automatically succeeds — albeit on a temporary basis but with no absolute time-limit — to private-law sub-concessions which have expired, constitute State aid?

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**Appeal brought on 22 January 2007 by Marguerite Chetcuti against the judgment of the Court of First Instance (Fourth Chamber) delivered on 8 November 2006 in Case T-357/04: Chetcuti v Commission**

**(Case C-16/07 P)**

(2007/C 82/25)

*Language of the case: French*

**Parties**

*Appellant:* Marguerite Chetcuti (represented by: M.-A. Lucas, avocat)

*Other party to the proceedings:* Commission of the European Communities

**Form of order sought**

— set aside the judgment of the Court of First Instance of the European Communities (Fourth Chamber) of 8 November 2006 in Case T-357/04 Chetcuti v Commission;

— grant the form of order sought by the appellant before the Court of First Instance and therefore:

  — annul the decision of the competition selection board of 22 June 2004 rejecting, on the basis of point III of competition notice COM/PA/04 of 6 April 2004, the appellant's candidature;

— annul the subsequent acts of the competition procedure, and in particular the list adopted by the selection board of candidates meeting the conditions fixed by the notice of competition, the Commission decision determining on that basis the number of posts to be filled, the list of suitable candidates adopted by the selection board on completion of its task, and the appointment decisions taken by the appointing authority on that basis;

— order the Commission to pay the costs at first instance;

— order the Commission to pay the costs of the proceedings before the Court of Justice.

**Pleas in law and main arguments**

The appellant puts forward a single plea in law in support of her appeal, alleging infringement by the Court of First Instance of the concept of internal competition within the meaning of Articles 4 and 29(1)(b) of the Staff Regulations in the version in force at the time of publication of the competition notice, of the objective assigned to recruitment by Article 27 and the first paragraph of Article 4 of those regulations, and of the principle of equal treatment or, at the very least, of the obligation to state reasons.

In that plea, the appellant asserts, in essence, that it is apparent from the case-law of the Court of Justice and the Court of First Instance that the expression 'competition internal to the institution' concerns all the persons in the service of the institution because of a connection under public law, including auxiliary staff, and that the Court of First Instance misconstrued that case-law and the meaning of the expression 'internal competition' by focusing on the main purpose of the competition, defined on the basis of subjective qualifications, rather than on its intrinsic nature, defined on the basis of objective conditions of admission to the competition stipulated in the competition notice.

The appellant claims next that, whilst it cannot be denied that the appointing authority has wide discretion when specifying in the competition notice the conditions of admissibility to that competition, that discretion must always be exercised according to the requirements of the posts to be filled and the interest of the service, so that the argument that auxiliary staff can be excluded on the basis that, unlike officials and temporary staff, they have not had to prove, at the time of their initial recruitment, that they are of the highest standard of ability, efficiency and integrity cannot be accepted. Proof of such qualities must be apparent simply from success in the pre-selection tests and selection tests provided for by the competition notice. The same is moreover true as regards proof of aptitude to carry out the tasks of the posts to be filled.

In the alternative, the appellant claims lastly that the judgment under appeal is inadequately reasoned in so far as the Court of First Instance did not respond to its argument that the competition notice contains an internal contradiction because that notice appears to exclude the candidatures of auxiliary staff, but to admit for the calculation of professional experience that acquired as a member of the auxiliary staff in certain function groups.

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**Reference for a preliminary ruling from the Tribunale Amministrativo Regionale per il Lazio (Italy) lodged on 25 January 2007 — Confcooperativa Friuli Venezia Giulia, Luigi Soini, Azienda Agricola Vivai Pinat Mario e figlio v Ministero delle Politiche Agricole, Alimentari e Forestali, Regione Friuli Venezia Giulia**

**(Case C-23/07)**

(2007/C 82/26)

*Language of the case: Italian*

**Referring court**

Tribunale Amministrativo Regionale per il Lazio (Italy)

**Parties to the main proceedings**

*Applicants:* Confcooperativa Friuli Venezia Giulia, Luigi Soini, Azienda Agricola Vivai Pinat Mario e Figlio

*Defendants:* Ministero delle Politiche Agricole, Alimentari e Forestali, Regione Friuli Venezia Giulia

**Questions referred**

1. Is the Treaty of Accession of the Republic of Hungary to the European Union (OJEC L 236 of 23 September 2003) to be interpreted as meaning, with regard to the names of wines produced in Hungary and in the European Community, that, with effect from 1 May 2004, only the provisions of Community legislation referred to in Regulation No 1493/99 [1] and Regulation No 753/2002 [2], as amended by Regulation No 1429/2004 [3], are applicable?

2. Does Article 52 of Regulation No 1493/99 constitute an adequate legal basis on which the European Commission may abolish the use of the name of a wine (in the present case, 'Tocai friulano') which derives from a vine variety that is lawfully entered in the appropriate registers of the Italian State and is referred to in relevant Community regulations?

3. Does the second subparagraph of Article 34(2) of the EC Treaty, which prohibits discrimination among producers and consumers of agricultural products within the European Community, prohibit discrimination against producers and users of just one wine name, namely that relating to the wine 'Tocai friulano', among the 122 names listed in Annex I to Regulation No 753/2002 (as amended by Regulation No 1429/2002), in so far as it prohibits the continued use of that name after 31 March 2007?

4. Is Article 19(2) of Commission Regulation No 753/2002, which provides authority for the use of the names of the vine varieties listed in Annex I to that regulation (as amended by Regulation No 1429/2004), to be interpreted as meaning that it is possible and lawfully permissible for there to be cases of homonymy among the names of vine varieties and geographical indications which refer to wines produced within the European Community?

5. If the answer to the fourth question is in the affirmative, does the second subparagraph of Article 34(2) of the EC Treaty, which prohibits discrimination among producers and consumers of agricultural products within the European Community, preclude the Commission from applying in one of its own regulations (753/2002) the criterion of homonymy in a manner deriving from the application of Annex I to that regulation, to the effect, that is to say, of recognising the legality of the use of many names of vine varieties which include names that are wholly or partly homonymous with an equal number of geographical indications, whilst refusing to accept as lawful the use of just one name of vine variety ('Tocai friulano'), which has been lawfully used for centuries in the European market?

6. Is Article 50 of Regulation No 1493/99 to be interpreted as meaning that, in implementing the provisions of Articles 23 and 24 of the TRIPS Agreement, and in particular the provision in Article 24(6) thereof, concerning homonymous names of wines, it is not possible for the Council of Ministers or the Member States (still less the European Commission) to adopt or approve measures such as Commission Regulation No 753/2002, which, with regard to homonymous names, afford different treatment to wine names having the same characteristics from the point of view of homonymity?

7. Is the effect of the express reference to Articles 23 and 24 of the TRIPS Agreement in recital 56 in the preamble to and Article 50 of Regulation No 1493/99 to make the provision in Article 24(6), which establishes the right of the States that are parties to that agreement to protect homonymous names, directly applicable within the Community legal order, in the light of the case-law of the Court of Justice?

(1) OJ 1999 L 179, p. 1.
(2) OJ 2002 L 118, p. 1.
(3) OJ 2004 L 263, p. 11.

## Reference for a preliminary ruling from the Tribunale Amministrativo Regionale Per Il Lazio (Italy) lodged on 25 January 2007 — Cantina Produttori Cormòns, Luigi Soini v Ministero delle Politiche Agricole, Alimentari e Forestali, Regione Friuli Venezia Giulia

**(Case C-24/07)**

(2007/C 82/27)

*Language of the case: Italian*

### Referring court

Tribunale Amministrativo Regionale Per Il Lazio

### Parties to the main proceedings

*Applicants:* Cantina Produttori Cormòns, Luigi Soini

*Defendants:* Ministero delle Politiche Agricole, Alimentari e Forestali, Regione Friuli Venezia Giulia

### Questions referred

1. Is the Treaty of Accession of the Republic of Hungary to the European Union (OJEC L 236 of 23 September 2003) to be interpreted as meaning, with regard to the names of wines produced in Hungary and in the European Community, that, with effect from 1 May 2004, only the provisions of Community legislation referred to in Regulation No 1493/99 (1) and Regulation No 753/2002 (2), as amended by Regulation No 1429/2004 (3), are applicable?

2. Does Article 52 of Regulation No 1493/99 constitute an adequate legal basis on which the European Commission may abolish the use of the name of a wine (in the present case, 'Tocai friulano') which derives from a vine variety that is lawfully entered in the appropriate registers of the Italian State and is referred to in relevant Community regulations?

3. Does the second subparagraph of Article 34(2) of the EC Treaty, which prohibits discrimination among producers and consumers of agricultural products within the European Community, prohibit discrimination against producers and users of just one wine name, namely that relating to the wine 'Tocai friulano', among the 122 names listed in Annex I to Regulation No 753/2002 (as amended by Regulation No 1429/2002), in so far as it prohibits the continued use of that name after 31 March 2007?

4. Is Article 19(2) of Commission Regulation No 753/2002, which provides authority for the use of the names of the vine varieties listed in Annex I to that regulation (as amended by Regulation No 1429/2004), to be interpreted as meaning that it is possible and lawfully permissible for there to be cases of homonymy among the names of vine varieties and geographical indications which refer to wines produced within the European Community?

5. If the answer to the fourth question is in the affirmative, does the second subparagraph of Article 34(2) of the EC Treaty, which prohibits discrimination among producers and consumers of agricultural products within the European Community, preclude the Commission from applying in one of its own regulations (753/2002) the criterion of homonymy in a manner deriving from the application of Annex I to that regulation, to the effect, that is to say, of recognising the legality of the use of many names of vine varieties which include names that are wholly or partly homonymous with an equal number of geographical indications, whilst refusing to accept as lawful the use of just one name of vine variety ('Tocai friulano'), which has been lawfully used for centuries in the European market?

6. Is Article 50 of Regulation No 1493/99 to be interpreted as meaning that, in implementing the provisions of Articles 23 and 24 of the TRIPS Agreement, and in particular the provision in Article 24(6) thereof, concerning homonymous names of wines, it is not possible for the Council of Ministers or the Member States (still less the European Commission) to adopt or approve measures such as Commission Regulation No 753/2002, which, with regard to homonymous names, afford different treatment to wine names having the same characteristics from the point of view of homonymity?

7. Is the effect of the express reference to Articles 23 and 24 of the TRIPS Agreement in recital 56 in the preamble to and Article 50 of Regulation No 1493/99 to make the provision in Article 24(6), which establishes the right of the States that are parties to that agreement to protect homonymous names, directly applicable within the Community legal order, in the light of the case-law of the Court of Justice?

(1) OJ 1999 L 179, p. 1.
(2) OJ 2002 L 118, p. 1.
(3) OJ 2004 L 263, p. 11.

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**Reference for a preliminary ruling from the Conseil d'Etat lodged on 26 January 2007 — Banque Féderative du Crédit Mutuel v Ministre de l'Économie, des Finances et de l'Industrie**

**(Case C-27/07)**

(2007/C 82/28)

*Language of the case: French*

**Referring court**

Conseil d'Etat

**Parties to the main proceedings**

*Applicant:* Banque Féderative du Crédit Mutuel

*Defendant:* Ministre de l'Économie, des Finances et de l'Industrie

**Question referred**

The add-back to the taxable income of a parent company established in France of 5 % of the tax credits attributed upon the distribution of profits by a subsidiary established in another Member State of the European Union where those distributed profits have been subject in that other State to a withholding tax, has no effect on the taxation level of the parent company if the latter is able to set off all the tax credits against the tax payable. Where the parent company did not decide to redistribute those profits to its own shareholders within five years, and in consequence is no longer able to use the fiscal advantage represented by those tax credits, can the taxation — additional to corporation tax — which results from the add-back of 5 % of the tax credits to its taxable income be regarded as permitted under Article 7(2) of Directive 90/435/EEC of 23 July 1990 (1), in view of the small amount of such a tax and the fact that it was established directly in conjunction with payment of tax credits, introduced in order to mitigate the economic double taxation of dividends, or must it be regarded as contrary to the objectives of Article 4 of the same Directive?

(1) Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member states (OJ 1990 L 225, p. 6).

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**Appeal brought on 26 January 2007 by NV Ter Lembeek International against the judgment delivered by the Court of First Instance (Fifth Chamber, Extended Composition) on 23 November 2006 in Case T-217/02 NV *Ter Lembeek International* v *Commission of the European Communities***

**(Case C-28/07 P)**

(2007/C 82/29)

*Language of the case: Dutch*

**Parties**

*Appellant:* NV Ter Lembeek International (represented by: J.-P. Vande Maele, F. Wijckmans and F. Tuytschaever, advocaten)

*Other party to the proceedings:* Commission of the European Communities

**Form of order sought**

— Declare the present appeal to be admissible and well founded and set aside the judgment in Case T-217/02 to the extent to which that judgment rejected the first part of the first plea in law;

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

**Pleas in law and main arguments**

1. The sole plea in law is to the effect that the Court of First Instance acted contrary to Article 87(1) EC in ruling in the judgment under appeal, on the basis of a misconstruction of the law, that there was favourable treatment of the appellant within the terms of Article 87(1) EC.

2. The sole plea consists of two parts:

   — Primarily: the judgment under appeal breaches Article 87 (1) EC in holding that that there was favourable treatment of the appellant within the terms of Article 87 (1) EC on the basis of a merely formalistic examination of Article 87(1) EC, rather than an economic appraisal.

   — In the alternative: the judgment under appeal breaches Article 87(1) EC in holding that that there was no overvaluation of the shares in issue and that the absence of overvaluation constituted favourable treatment within the terms of Article 87(1) EC.

## Action brought on 29 January 2007 — Commission of the European Communities v Kingdom of Spain

**(Case C-32/07)**

(2007/C 82/30)

*Language of the case: Spanish*

**Parties**

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

*Defendant:* Kingdom of Spain

**Form of order sought**

— Declare that, by failing to adopt all of the laws, regulations and administrative measures necessary to comply with Directive 2001/84/EC ([1]) of the European Parliament and of the Council of 27 September 2001 on the resale right for the benefit of the author of an original work of art, the Kingdom of Spain has failed to fulfil its obligations under that Directive.

— Order the Kingdom of Spain to pay the costs.

**Pleas in law and main arguments**

The period prescribed for the transposition into national law of Directive 2001/84/EC expired on 31 December 2005.

([1]) OJ 2001 L 272, p 32.

## Action brought on 31 January 2007 — Commission of the European Communities v Italian Republic

**(Case C-36/07)**

(2007/C 82/31)

*Language of the case: Italian*

**Parties**

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

*Defendant:* Italian Republic

**Forms of order sought**

— Declare that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Council Directive 2004/68/EC of 26 April 2004 laying down animal health rules for the importation into and transit through the Community of certain live ungulate animals, amending Directives 90/426/EEC and 92/65/EEC and repealing Directive 72/462/EEC ([1]), or by failing in any event to communicate those provisions to the Commission, the Italian Republic has failed to fulfil its obligations under Article 18 (1) of that directive;

— order the Italian Republic to pay the costs.

**Pleas in law and main arguments**

The time-limit for transposition of Directive 2004/68/EC expired on 20 November 2005.

([1]) OJ 2004 L 139, p. 321.

**Appeal brought on 1 February 2007 by Heuschen & Schrouff Oriëntal Foods Trading against the judgment delivered on 30 November 2006 by the Court of First Instance (Third Chamber) in Case T-382/04 *Heuschen & Schrouff Oriëntal Foods Trading* v *Commission of the European Communities***

**(Case C-38/07 P)**

(2007/C 82/32)

*Language of the case: Dutch*

**Parties**

*Appellant:* Heuschen & Schrouff Oriëntal Foods Trading (represented by: H. de Bie, advocaat)

*Other party to the proceedings:* Commission of the European Communities

**Form of order sought**

— Set aside the judgment delivered on 30 November 2006 by the Court of First Instance (Third Chamber) in Case T-382/04;

— Annul the decision of the European Commission of 17 June 2004 (REM 19/2002), in which the Commission held that remission of import duties was not justified in that particular case;

— Order the Commission to pay the costs.

**Pleas in law and main arguments**

The appellant challenges the judgment under appeal on the following grounds:

Breach of Article 239 of the Customs Code ([1]), in conjunction with Articles 899 to 909 inclusive of Commission Regulation (EEC) No 2454/93 ([2]) ('the implementing regulation') and inadequate reasoning of the Court's findings, or at least reasoning which cannot support those findings.

The test relating to the nature of the mistake, the appellant's professional experience and the degree of care which it exercised ought, when considered together, to lead to the conclusion that remission was inevitable. The Court of First Instance incorrectly based its judgment on the supposition that the legislation applicable in this case in regard to the classification of so-called rice paper in the tariff and statistical nomenclature and the common customs tariff under Council Regulation (EEC) No 2658/87 ([3]) was not complex. The appellant challenges the classification of unbaked rice paper as determined by the Court of First Instance, the Commission and the Netherlands customs authorities. The Court of First Instance, it submits, was wrong to conclude that Heuschen & Schrouff had extensive professional experience in the domain of imports and exports. In that connection the Court of First Instance incorrectly categorised Heuschen & Schrouff as being an experienced trader and thus as being well-versed in regard to import and export formalities. In the judgment under appeal, the Court of First Instance placed excessively high requirements with regard to the duty of care resting on Heuschen & Schrouff, even if it were an experienced trader. In addition, the Court of First Instance wrongly identified Heuschen & Schrouff with the direct representative which it had engaged.

([1]) Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ L 302, p. 1).
([2]) Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ L 253, p. 1).
([3]) Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, p. 1).

**Action brought on 1 February 2007 — Commission of the European Communities v Kingdom of Spain**

**(Case C-39/07)**

(2007/C 82/33)

*Language of the case: Spanish*

**Parties**

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

*Defendan:* Kingdom of Spain

**Form of order sought**

— Declare that the Kingdom of Spain has failed to fulfil its obligations under Council Directive 89/48/EEC ([1]) of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration by not adopting all the necessary measures to transpose that directive in connection with the profession of hospital pharmacist;

— order the Kingdom of Spain to pay the costs.

**Pleas in law and main arguments**

1. The Spanish diploma of 'hospital pharmacist' is a 'diploma' within the meaning of Directive 89/48/EEC, since:

   — it is a diploma awarded by the competent authority designated by Spanish law;

— the diploma shows post-secondary training of more than three years, since in order to obtain the diploma of Hospital Pharmacist it is necessary to be in possession of the university diploma of Licenciado en Farmacia, to have completed the training in the corresponding specialisation and to have passed an examination;

— the diploma shows that the holder has the necessary qualifications to follow the profession of hospital pharmacist in Spain.

2. In the same way, the profession of hospital pharmacist is a 'regulated profession' in Spain within the meaning of Directive 89/48/EEC.

3. Council Directive 85/433/EEC ([2]) of 16 September 1985 concerning the mutual recognition of diplomas, certificates and other evidence of formal qualifications in pharmacy, including measures to facilitate the right of establishment relating to certain activities in the field of pharmacy, is not applicable to the profession of hospital pharmacist.

4. Consequently, the Kingdom of Spain was required to transpose Directive 89/48/EEC in connection with the profession of hospital pharmacist. By not adopting the necessary measures in that regard, the Kingdom of Spain has failed to fulfil its obligations under that directive.

([1]) OJ L 19, p. 16.
([2]) OJ L 253, p. 37.

## Action brought on 1 February 2007 — Commission of the European Communities v Italian Republic

**(Case C-40/07)**

(2007/C 82/34)

*Language of the case: Italian*

### Parties

*Applicant:* Commission of the European Communities (represented by: D. Recchia, J.-B. Laignelot, Agents)

*Defendant:* Italian Republic

### Forms of order sought

— Declare that, by failing to adopt all 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 ([1]), the Italian Republic has failed to fulfil its obligations under Article 13(1) of that directive;

— order the Italian Republic to pay the costs.

### Pleas in law and main arguments

The time-limit for transposition of Directive 2001/42/EC expired on 21 July 2004.

([1]) OJ 2001 L 197, p. 30.

## Action brought on 2 February 2007 — Commission of the European Communities v Hellenic Republic

**(Case C-45/07)**

(2007/C 82/35)

*Language of the case: Greek*

### Parties

*Applicant:* Commission of the European Communities (represented by: K. Simonsson, M. Konstantinidis and F. Hoffmeister)

*Defendant:* Hellenic Republic

### Form of order sought

— declare that, by submitting to the International Maritime Organisation (IMO) on 18 March 2005 a proposal for 'Monitoring the compliance of ships and port facilities with the requirements of Chapter XI-2 of SOLAS and the ISPS Code', the Hellenic Republic has failed to fulfil its obligations under Articles 10, 71 and 80(2) of the Treaty establishing the European Community;

— order the Hellenic Republic to pay the costs.

### Pleas in law and main arguments

According to the Commission, the submission by the Hellenic Republic to the International Maritime Organisation of a proposal in respect of a matter covered by Regulation (EC) No 725/2004 ([1]) on enhancing ship and port facility security, without being authorised so to do by the Community, constitutes a breach of its obligations under Articles 10, 71 and 80(2) of the Treaty establishing the European Community.

The Commission submits that, since the adoption of Regulation No 725/2004, the Community has had exclusive competence with regard to entering into international obligations in the field of maritime security. Consequently, the Member States no longer have the power to present national views to the International Maritime Organisation on matters which fall within exclusive Community competence, unless they receive such authorisation from the Community.

(1) OJ L 129, 29.4.2004, p. 6.

## Action brought on 1 February 2007 — Commission of the European Communities v Italian Republic

**(Case C-46/07)**

(2007/C 82/36)

*Language of the case: Italian*

### Parties

*Applicant:* Commission of the European Communities (represented by: L. Pignataro-Nolin and M. van Beek, acting as Agents)

*Defendant:* Italian Republic

### Form of order sought

The applicant claims that the Court should:

— declare that, by maintaining in force a provision by which public employees are entitled to receive the old-age pension at different ages depending on whether they are male or female, the Italian Republic has failed to fulfil its obligations under Article 141 EC;

— order the Italian Republic to pay the costs.

### Pleas in law and main arguments

The Commission claims that the pension scheme managed by INPDAP (National Provident Institution for the Employees of Public Authorities) is a discriminatory occupational scheme contrary to Article 141 EC, since it provides that the general pensionable age for men is 65 and for women 60.

## Appeal brought on 2 February 2007 by Masdar (UK) Ltd against the judgment of the Court of First Instance (Fifth Chamber) delivered on 16 November 2006 in Case T-333/03: Masdar (UK) Ltd v The Commission of the European Communities

**(Case C-47/07 P)**

(2007/C 82/37)

*Language of the case: English*

### Parties

*Appellant:* Masdar (UK) Ltd (represented by: A. Bentley and P. Green, Barristers)

*Other party to the proceedings:* Commission of the European Communities

### Form of order sought

The applicant claims that the Court should:

— set aside in its entirety the judgment of the Court of First Instance of 16 November 2006 in Case T-333/03, MASDAR (U.K) Ltd. v Commission of the European Communities.

— order the Commission to pay to the Applicant:

(i) The sum of EUR 448,947.78 claimed by the Appellant in Case T-333/03, or failing this, the sum of EUR 249,314.35 or such other sum as the Court considers appropriate; and

(ii) Interest on the amount in (i);

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

### Pleas in law and main arguments

The Appellant submits that the judgment of the Court of First Instance ('CFI') should be set aside on the following grounds:

1. The CFI erred in law when it characterised the Appellant as merely having acted pursuant to its contractual obligations towards Helmico, as a result of which the CFI dismissed the Appellant's claims founded on unjust enrichment and *negotiorum gestio*. In doing so, the CFI failed to have regard to the Appellant's entitlement to terminate the sub-contracts as at 2 October 1998.

2. Irrespective of whether the Appellant acted pursuant to a contractual obligation towards Helmico or not, the CFI erred in law by failing to take into consideration (i) the fact that the Commission was not in the position of an ordinary contractor, but had powers of recovery which it could exercise pursuant to the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities (1) and (ii) how such powers were exercised by the Commission.

3. The CFI erred in law in holding that (i) the Appellant cannot be said to have acted benevolently, (ii) the Commission was able to manage the project itself, and (iii) there is a requirement that a person claiming under the principle of *negotiorum gestio* must necessarily act without the knowledge of the principal.

4. The CFI's findings on the pleas of unjust enrichment and *negotiorum gestio* on the one hand, and the plea of legitimate expectations on the other hand, are inconsistent.

5. In rejecting the Appellant's claim based on negligence or fault liability, the CFI erred in considering that insufficient argument had been adduced by the Appellant, given that the matter speaks for itself on the facts of this case in the particular circumstances where the Commission exercises powers of recovery under the Financial Regulation.

6. The CFI erred in holding (i) that there was no evidence before the Court to prove that the assurances relied upon by the Appellant were communicated at the meeting of 2 October 1998 and (ii) that it was highly unlikely that such assurances were communicated.

7. The CFI erred in law in holding that the Commission's failure to make a note of the meeting of 2 October 1998 established the informality of that meeting and, from this error, it erroneously discounted the possibility of the Commission having communicated such assurances by one means or another. Further, the CFI wrongly took into account the manner by which the assurances were conveyed, and erroneously failed to take into account the proper context, namely a context in which the Commission had committed itself to do no more than pay for work done pursuant to a properly constituted contractual specification, and for which the Commission already had a budget.

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([1]) OJ L 356, p. 1.

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**Reference for a preliminary ruling from the Cour d'Appel de Liège (Belgium) lodged on 5 February 2007 — Belgian State v Les Vergers du Vieux Tauves SA**

**(Case C-48/07)**

(2007/C 82/38)

*Language of the case: French*

**Referring court**

Cour d'Appel de Liège

**Parties to the main proceedings**

*Applicant:* Belgian State

*Defendant:* Les Vergers du Vieux Tauves SA

**Question referred**

Is the Law of 28 December 1992, which amended the wording of Article 202 of the 1992 Code of Taxation on Income by referring to Directive 90/435/EEC ([1]) and required that the beneficial owner of dividends have a holding of capital in the Company which distributed such dividend, in as much as that Law does not explicitly specify that the holding must be as full owner and therefore implicitly permits the interpretation made by the respondent, that the mere holding of a right of usufruct of shareholdings in the capital carries the right to tax exemption on such dividends, compatible with the provisions of that Directive concerning holdings in capital, and in particular with its Articles 3, 4 and 5?

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([1]) Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (OJ L 225, p. 6).

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**Reference for a preliminary ruling from the Arbeidshof te Brussel (Belgium) lodged on 6 February 2007 — Centrum voor gelijkheid van kansen en voor racismebestrijding v NV Firma Feryn**

**(Case C-54/07)**

(2007/C 82/39)

*Language of the case: Dutch*

**Referring court**

Arbeidshof te Brussel

**Parties to the main proceedings**

*Appellant:* Centrum voor gelijkheid van kansen en voor racismebestrijding

*Respondent:* NV Firma Feryn

**Questions referred**

— Is there direct discrimination within the meaning of Article 2(2)(a) of Council Directive 2000/43/EC [1] of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin where an employer, after putting up a conspicuous job vacancy notice, publicly states:

'I must comply with my customers' requirements. If you say "I want that particular product or I want it like this and like that", and I say "I'm not doing it, I'll send those people", then you say "I don't need that door". Then I'm putting myself out of business. We must meet the customers' requirements. This isn't my problem. I didn't create this problem in Belgium. I want the firm to do well and I want us to achieve our turnover at the end of the year, and how do I do that? — I must do it the way the customer wants it done!'?

— Is it sufficient for a finding of direct discrimination in the conditions for access to paid employment to establish that the employer applies directly discriminatory selection criteria?

— For the purpose of establishing that there is direct discrimination within the meaning of Article 2(2)(a) of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, may account be taken of the recruitment of exclusively indigenous fitters by an affiliated company of the employer in assessing whether that employer's recruitment policy is discriminatory?

— What is to be understood by 'facts from which it may be presumed that there has been direct or indirect discrimination' within the terms of Article 8(1) of the Directive? How strict must a national court be in assessing facts which give rise to a presumption of discrimination?

(a) To what extent do earlier acts of discrimination (public announcement of directly discriminatory selection criteria in April 2005) constitute 'facts from which it may be presumed that there has been direct or indirect discrimination' within the terms of Article 8(1) of the Directive?

(b) Does an established act of discrimination in April 2005 (public announcement in April 2005) subsequently give rise to a presumption of the continuation of a directly discriminatory recruitment policy? Having regard to the facts in the main proceedings, is it sufficient, in order to raise the presumption (that an employer operates and continues to pursue a discriminatory recruitment policy) that, in April 2005, in answer to the question whether, as an employer, he did not treat people from foreign and indigenous backgrounds in the same manner and was thus actually a bit racist, he publicly stated: 'I must comply with my customers' requirements. If you say "I want that particular product or I want it like this and like that", and I say "I'm not doing it, I'll send those people", then you say "I don't need that door". Then I'm putting myself out of business. We must meet the customers' requirements. This isn't my problem. I didn't create this problem in Belgium. I want the firm to do well and I want us to achieve our turnover at the end of the year, and how do I do that? — I must do it the way the customer wants it done!'?

(c) Having regard to the facts in the main proceedings, can a joint press release issued by an employer and the national body for combating discrimination, in which acts of discrimination are at least implicitly confirmed by the employer, give rise to such a presumption?

(d) Does the fact that an employer does not employ any fitters from ethnic minorities give rise to a presumption of indirect discrimination when that same employer some time previously had experienced great difficulty in recruiting fitters and, moreover, had also stated publicly that his customers did not like working with fitters from ethnic minorities?

(e) Is one fact sufficient in order to raise a presumption of discrimination?

(f) Having regard to the facts in the main proceedings, can a presumption of discrimination on the part of the employer be inferred from the recruitment of exclusively indigenous fitters by an affiliated company of that employer?

— How strict must the national court be in assessing the evidence in rebuttal which must be produced when a presumption of discrimination within the meaning of Article 8(1) of the Directive has been raised? Can a presumption of discrimination within the meaning of Article 8(1) of the Directive in question be rebutted by a simple and unilateral statement by the employer in the press that he does not or does not any longer discriminate and that fitters from ethnic minorities are welcome; and/or by a simple declaration by the employer that his company, excluding the sister company, has filled all vacancies for fitters and/or by the statement that a Tunisian cleaning lady has been taken on and/or, having regard to the facts in the main proceedings, can the presumption be rebutted only by actual recruitment of fitters from ethnic minorities and/or by fulfilling commitments given in the joint press release?

— What is to be understood by an 'effective, proportionate and dissuasive' sanction, as provided for in Article 15 of Directive 2000/43/EC?

Having regard to the facts in the main proceedings, does the abovementioned requirement of Article 15 permit the national court merely to declare that there has been direct discrimination?

Or does it, on the contrary, also require the national court to grant a prohibitory injunction, as provided for in national law? Having regard to the facts in the main proceedings, to what extent is the national court further required to order the publication of the forthcoming judgment as an effective, proportionate and dissuasive sanction?

(1) OJ L 180, p. 22.

**Reference for a preliminary ruling from the Högsta domstolen (Sweden) lodged on 12 February 2007 — Kerstin Sundelind Lopez v Miquel Enrique Lopez Lizazo**

**(Case C-68/07)**

(2007/C 82/40)

*Language of the case: Swedish*

**Referring court**

Högsta domstolen

**Parties to the main proceedings**

*Applicant:* Kerstin Sundelind Lopez

*Defendant:* Miquel Enrique Lopez Lizazo

**Question referred**

The respondent in a case concerning divorce is neither resident in a Member State nor a citizen of a Member State. May the case be heard by a court in a Member State which does not have jurisdiction under Article 3 (1) [of the Brussels II Regulation], even though a court in another Member State may have jurisdiction by application of one of the rules on jurisdiction set out in Article 3?

(1) Council Regulation (EC) No 2201/2003 of 27 November 2003, OJ L 338, p. 1.

**Action brought on 9 February 2007 — Commission of the European Communities v Italian Republic**

**(Case C-69/07)**

(2007/C 82/41)

*Language of the case: Italian*

**Parties**

*Applicant:* Commission of the European Communities (represented by: D. Rechhia and J.-B. Laignelot, acting as Agents)

*Defendant:* Italian Republic

**Forms of order sought**

— Declare that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC (1), the Italian Republic has failed to fulfil its obligations under Article 6 of that directive;

— order the Italian Republic to pay the costs.

**Pleas in law and main arguments**

The time-limit for transposition of Directive 2003/35/EC expired on 25 June 2005.

(1) OJ 2003 L 156, p. 17.

**Reference for a preliminary ruling from the Tribunal Superior de Justicia de Asturias (Spain), lodged on 9 February 2007 — José Manuel Blanco Pérez and Maria del Pilar Chao Gómez v Consejería de Salud y Servicios Sanitarios**

**(Case C-72/07)**

(2007/C 82/42)

*Language of the case: Spanish*

**Referring court**

Tribunal Superior de Justicia de Asturias (High Court of Justice of Asturias)

**Parties to the main proceedings**

*Applicant:* José Manuel Blanco Pérez, Maria del Pilar Chao Gómez

*Defendant:* Consejería de Salud y Servicios Sanitarios

**Questions referred**

1. Should Article 2 of Decree 72/2001 and the First Section of Chapter II of said Decree, pursuant to the provisions of Article 103 of Law 14/1986 (General Health) and of Article 88 of Law 25/1990 of 20 December (on medicinal products), be considered to be in breach of Article 43 of the Treaty establishing the European [Community]?
2. Should Annex III of the Resolution of the Department of Health and Health Care Services of the Government of the Principality of Asturias be considered to be in breach of Article 43 of the EC Treaty?

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## Action brought on 13 February 2007 — Commission of the European Communities v Republic of Malta

**(Case C-79/07)**

(2007/C 82/43)

*Language of the case: Maltese*

**Parties**

*Applicant:* Commission of the European Communities (represented by: M. Condou Durande and K. Xuereb, Agents)

*Defendant:* Republic of Malta

**The applicant claims that the Court should:**

— declare that, by failing to adopt the laws, regulations or administrative provisions necessary to comply with Council Directive 2003/110/EC of 25 November 2003 on assistance in cases of transit for the purposes of removal by air ([1]) or, in any event, by failing to notify such provisions to the Commission, the Republic of Malta has failed to fulfil its obligations under that Directive.

— order the Republic of Malta to pay the costs.

**Pleas in law and main arguments**

The period within which the directive had to be transposed expired on 6 December 2005.

([1]) OJ L 321, p. 26.

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## Reference for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 15 February 2007 — Comisión del Mercado de las Telecomunicaciónes v Administración del Estado

**(Case C-82/07)**

(2007/C 82/44)

*Language of the case: Spanish*

**Referring court**

Tribunal Supremo (Spain)

**Parties to the main proceedings**

*Appellant:* Comisión del Mercado de las Telecomunicaciónes

*Respondent:* Administración del Estado

**Questions referred**

1. Do Article 3(2) and Article 10(1) of Directive 2002/21/EC ([1]), in conjunction with Recital 11, require Member States to allocate to separate authorities 'regulatory functions' on the one hand and 'operational' functions on the other, in relation to assigning national numbering resources and managing national numbering plans?
2. Where a Member State, on transposing Directive 2002/21/EC into its national law, has charged a specific authority with assigning national numbering resources and managing national numbering plans, may it at the same time reduce that authority's powers in that sphere, conferring them on other authorities or on its own State administration, with the result that management of those resources is in reality shared between various authorities?

([1]) 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).

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## Action brought on 15 February 2007 — Commission of the European Communities v Italian Republic

**(Case C-86/07)**

(2007/C 82/45)

*Language of the case: Italian*

**Parties**

*Applicant:* Commission of the European Communities (represented by: M. Condou-Durande and E. De Persio, Agents)

*Defendant:* Italian Republic

**Forms of order sought**

— Declare that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Council Directive 2003/110/EC of 25 November 2003 on assistance in cases of transit for the purposes of removal by air ([1]), or by failing in any event to communicate those provisions to the Commission, the Italian Republic has failed to fulfil its obligations under that directive;

— order the Italian Republic to pay the costs.

**Pleas in law and main arguments**

The time-limit for transposition of Directive 2003/110/EC expired on 5 December 2005.

([1]) OJ 2003 L 321, p. 26.

## Action brought on 15 February 2007 — Commission of the European Communities v Republic of Malta

**(Case C-87/07)**

(2007/C 82/46)

*Language of the case: Maltese*

**Parties**

*Applicant:* Commission of the European Communities (represented by: M. Condou Durande and K. Xuereb, Agents)

*Defendant:* Republic of Malta

**The applicant claims that the Court should:**

— declare that, by failing to adopt the laws, regulations or administrative provisions necessary to comply with Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification ([1]) or, in any event, by failing to notify such provisions to the Commission, the Republic of Malta has failed to fulfil its obligations under that Directive.

— order the Republic of Malta to pay the costs.

**Pleas in law and main arguments**

The period within which the directive had to be transposed expired on 3 December 2005.

([1]) OJ L 251, p. 12.

## Action brought on 19 February 2007 — Commission of the European Communities v Italian Republic

**(Case C-91/07)**

(2007/C 82/47)

*Language of the case: Italian*

**Parties**

*Applicant:* Commission of the European Communities (represented by: M. Condou-Durande and E. De Persio, acting as Agents)

*Defendant:* Italian Republic

**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 comply with Council Directive 2003/86/EC ([1]) of 22 September 2003 on the right to family reunification, or at any rate by not informing the Commission thereof, the Italian Republic has failed to fulfil its obligations under that directive;

— order the Italian Republic to pay the costs.

**Pleas in law and main arguments**

The time for transposing Directive 2003/86/EC expired on 3 October 2005.

([1]) OJ 2003 L 251, p. 12.

**Reference for a preliminary ruling from the Hoge Raad der Nederlanden, lodged on 21 February 2007 — Adidas AG and Adidas Benelux BV v Marca Mode, C&A Nederland, H&M Hennes & Mauritz Netherlands BV and Vendex KBB Nederland BV**

**(Case C-102/07)**

(2007/C 82/48)

*Language of the case: Dutch*

**Referring court**

Hoge Raad der Nederlanden

**Parties to the main proceedings**

*Appellants:* Adidas AG and Adidas Benelux BV

*Respondents:* Marca Mode, C&A Nederland, H&M Hennes & Mauritz Netherlands BV and Vendex KBB Nederland BV

**Questions referred**

1. In the determination of the extent to which protection should be given to a trade mark formed by a sign which does not in itself have any distinctive character or by a designation which corresponds to the description in Article 3(1)(c) of Directive 89/104/EEC [1], but which has become a trade mark through the process of becoming customary and has been registered, should account be taken of the general interest in ensuring that the availability of given signs is not unduly restricted for other traders offering the goods or services concerned (the requirement of availability)?

2. If the answer to Question 1 is in the affirmative: does it make any difference whether the signs which are referred to therein and which are to be held available are seen by the relevant public as being signs used to distinguish goods or merely to embellish them?

3. If the answer to Question 1 is in the affirmative: does it, further, make any difference whether the sign contested by the holder of a trade mark is devoid of distinctive character, within the terms of Article 3(1)(b) of Directive 89/104/EEC, or contains a designation, within the terms of Article 3(1)(c) of the Directive?

[1] 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).

**Action brought on 21 February 2007 — Commission of the European Communities v Italian Republic**

**(Case C-104/07)**

(2007/C 82/49)

*Language of the case: Italian*

**Parties**

*Applicant:* Commission of the European Communities (represented by: M. Condou-Durande and E. De Persio, acting as Agents)

*Defendant:* Italian Republic

**Form of order sought**

— Declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 2003/109/EC [1] of 25 November 2003 concerning the status of third-country nationals who are long-term residents or, in any event, by failing to communicate them to the Commission, the Italian Republic has failed to fulfil its obligations under that directive;

— order the Italian Republic to pay the costs.

**Pleas in law and main arguments**

The period prescribed for transposition of Directive 2003/109/EC into domestic law expired on 23 January 2006.

[1] OJ 2004 L 16, p. 44.

**Order of the President of the Court of 18 January 2007 — Commission of the European Communities v Kingdom of Spain**

**(Case C-47/05)** [1]

(2007/C 82/50)

*Language of the case: Spanish*

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

[1] OJ C 82, 2.4.2005.

**Order of the President of the Court of 22 December 2006 — Commission of the European Communities v Kingdom of Spain**

**(Case C-53/06)** ([1])

(2007/C 82/51)

*Language of the case: Spanish*

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

([1]) OJ C 74, 25.3.2006.

**Order of the President of the Court of 14 December 2006 — Commission of the European Communities v Republic of Austria**

**(Case C-93/06)** ([1])

(2007/C 82/54)

*Language of the case: German*

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

([1]) OJ C 86, 8.4.2006.

**Order of the President of the Third Chamber of the Court of 7 February 2007 — Commission of the European Communities v French Republic**

**(Case C-79/06)** ([1])

(2007/C 82/52)

*Language of the case: French*

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

([1]) OJ C 86, 8.4.2006.

**Order of the President of the Court of 8 November 2006 — Bausch & Lomb Inc. v Office for Harmonisation in the Internal Market (Trade Marks and Designs) Biofarma SA**

**(Case C-95/06 P)** ([1])

(2007/C 82/55)

*Language of the case: English*

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

([1]) OJ C 108, 6.5.2006.

**Order of the President of the Fifth Chamber of the Court of 30 January 2007 — Commission of the European Communities v Republic of Austria**

**(Case C-91/06)** ([1])

(2007/C 82/53)

*Language of the case: German*

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

([1]) OJ C 96, 22.4.2006.

**Order of the President of the Fourth Chamber of the Court of 1 February 2007 — Commission of the European Communities v Federal Republic of Germany**

**(Case C-109/06)** ([1])

(2007/C 82/56)

*Language of the case: German*

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

([1]) OJ C 108, 6.5.2006.

**Order of the President of the Court of 30 November 2006 — Commission of the European Communities v Kingdom of Belgium**

**(Case C-110/06)** ([1])

(2007/C 82/57)

*Language of the case: French*

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

([1]) OJ C 86, 8.4.2006.

**Order of the President of the Court of 30 January 2007 — Commission of the European Communities v French Republic**

**(Case C-222/06)** ([1])

(2007/C 82/58)

*Language of the case: French*

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

([1]) OJ C 165, 15.7.2006.

**Order of the President of the Court of 1 February 2007 — Commission of the European Communities v Kingdom of the Netherlands**

**(Case C-259/06)** ([1])

(2007/C 82/59)

*Language of the case: Dutch*

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

([1]) OJ C 178, 29.7.2006.

**Order of the President of the Court of 15 February 2007 — Commission of the European Communities v Hellenic Republic**

**(Case C-299/06)** ([1])

(2007/C 82/60)

*Language of the case: Greek*

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

([1]) OJ C 212, 2.9.2006.

**Order of the President of the Court of 18 January 2007 — Commission of the European Communities v Kingdom of Spain**

**(Case C-326/06)** ([1])

(2007/C 82/61)

*Language of the case: Spanish*

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

([1]) OJ C 224, 16.9.2006.

**Order of the President of the Court of 24 January 2007 — Commission of the European Communities v Portuguese Republic**

**(Case C-370/06)** ([1])

(2007/C 82/62)

*Language of the case: Portuguese*

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

([1]) OJ C 261, 28.10.2006.

**Order of the President of the Court of 29 January 2007 — Commission of the European Communities v Republic of Finland**

**(Case C-377/06)** ([1])

(2007/C 82/63)

*Language of the case: Finnish*

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

([1]) OJ C 261, 28.10.2006.

**Order of the President of the Court of 5 February 2007 (reference for a preliminary ruling from the Tribunal Supremo — Spain) — Entidad de Gestión de Derechos de los Productores Audiovisuales (Egeda) v Al Rima, S.A**

**(Case C-395/06)** ([1])

(2007/C 82/64)

*Language of the case: Spanish*

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

([1]) OJ C 294, 2.12.2006.

# COURT OF FIRST INSTANCE

## Judgment of the Court of First Instance of 6 February 2007 — CAS v Commission

**(Case T-23/03)** ([1])

***(Association Agreement between the EEC and the Republic of Turkey — Remission of import duty — Fruit juice concentrate from Turkey — Community Customs Code — Movement certificates — Special situation — Rights of the defence)***

(2007/C 82/65)

*Language of the case: German*

**Parties**

*Applicant:* CAS SpA (Verona, Italy) (represented by: D. Ehle, lawyer)

*Defendant:* Commission of the European Communities (represented by: X. Lewis, Agent, and M. Nuñez Müller, lawyer)

**Re:**

Application for annulment in part of the Commission's decision of 18 October 2002 (REC 10/01) concerning an application for remission of import duties

**Operative part of the judgment**

*The Court:*

1. *Dismisses the action;*

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

([1]) OJ C 83, 5.4.2003.

## Judgment of the Court of First Instance of 7 February 2007 — Clotuche v Commission

**(Case T-339/03)** ([1])

***(Officials — Reassignment of a Director as a Principal Adviser — Interest of the service — Equivalence of posts — Reorganisation of Eurostat — Action for annulment — Action for damages)***

(2007/C 82/66)

*Language of the case: French*

**Parties**

*Applicant:* Gabrielle Clotuche (Brussels, Belgium) (represented by: P.-P. Van Gehuchten, J. Sambon, G. Demez and P. Reyniers, lawyers)

*Defendant:* Commission of the European Communities (represented by: J. Currall and H. Krämer, agents)

**Re:**

First, an application for annulment of the Commission's decision of 9 July 2003 to reassign the applicant from a post as Director to a post as Principal Adviser and of the Commission's decision of 1 October 2003 reorganising Eurostat, in so far as it does not include any measure reassigning the applicant as a Director, and, secondly, an application for compensation for the non-material harm suffered.

**Operative part of the judgment**

*The Court:*

1. *orders the Commission to pay the applicant the sum of EUR one by way of damages for breach of administration;*

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

3. *orders the Commission to bear its own costs inclusive of those of the proceedings for interim relief before the Court of First Instance, and one fifth of the costs incurred by the applicant inclusive of those of the proceedings for interim relief before the Court of First Instance;*

4. *orders the applicant to bear four fifths of its own costs inclusive of those of the proceedings for interim relief before the Court of First Instance.*

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([1]) OJ C 289, 29.11.2003.

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**Judgment of the Court of First Instance of 7 February 2007 — Caló v Commission**

**(Joined Cases T-118/04 and T-134/04)** ([1])

***(Officials — Reassignment of a Director as a Principal Adviser — Interest of the service — Equivalence of posts — Reorganisation of Eurostat — Appointment to a position as Director — Vacancy notice — Duty to state reasons — Assessment of the candidates' merits — Action for annulment — Action for damages)***

(2007/C 82/67)

*Language of the case: French*

**Parties**

*Applicant:* Giuseppe Caló (Luxembourg, Luxembourg) (represented by: S. Orlandi, A. Coolen, J.-N. Louis and E. Marchal, lawyers)

*Defendant:* Commission of the European Communities (represented by: J. Currall and H. Krämer, agents)

**Re:**

First, an application for annulment of the Commission's decision of 9 July 2003 to reassign the applicant from a post as Director to a post as Principal Adviser, of the Commission's decision of 1 October 2003 reorganising Eurostat, in so far as it confirms the applicant's reassignment, and an application for compensation for the non-material harm allegedly suffered by the applicant; secondly, an application for annulment of the Commission's decision of 30 March 2004 appointing Mr N. to the post of Director of the Eurostat directorate 'Agriculture, fisheries, structural funds and environment statistics' and rejecting the applicant's candidature for that post.

**Operative part of the judgment**

*The Court:*

1. *in Case T-118/04, orders the Commission to pay the applicant the sum of EUR one by way of damages for breach of administration;*

2. *in Case T-134/04, orders the Commission to pay the applicant the sum of EUR 5 000 by way of damages for breach of administration;*

3. *dismisses the actions as to the remainder;*

4. *in Case T-118/04, orders the Commission to bear its own costs inclusive of those of the proceedings for interim relief before the Court of First Instance, and one fifth of the costs incurred by the applicant inclusive of those of the proceedings for interim relief before the Court of First Instance;*

5. *in Case T-118/04, orders the applicant to bear four fifths of its own costs inclusive of those of the proceedings for interim relief before the Court of First Instance;*

6. *in Case T-134/04, orders the Commission to pay all of the costs inclusive of those of the proceedings for interim relief before the Court of First Instance.*

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([1]) OJ C 118, 30.4.2004.

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**Judgment of the Court of First Instance of 6 February 2007 — Camurato Carfagno v Commission**

**(Case T-143/04)** ([1])

***(Staff case — Officials — Reporting procedure — Career development report — 2001/2002 appraisal procedure — Action for annulment — Plea of illegality — Manifest error of assessment)***

(2007/C 82/68)

*Language of the case: French*

**Parties**

*Applicant:* Antonietta Camurato Carfagno (Brussels, Belgium) (represented by: C. Mourato, lawyer)

*Defendant:* Commission of the European Communities (represented by: V. Joris and M. Velardo, agents)

**Re:**

Application for annulment of the decision of 9 April 2003 drawing up the definitive version of the applicant's career development report in respect of the period from 1 July 2001 to 31 December 2002.

**Operative part of the judgment**

*The Court:*

1. *Annuls the decision of 9 April 2003 drawing up the definitive version of the applicant's career development report in respect of the period from 1 July 2001 to 31 December 2002;*

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

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([1]) OJ C 190, 24.7.2004.

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## Judgment of the Court of First Instance of 7 February 2007 — Gordon v Commission

**(Case T-175/04)** ([1])

***(Officials — Action for annulment — Career development report — Total and permanent invalidity — No longer any legal interest in bringing proceedings — No need to adjudicate — Actions for damages — Inadmissibility)***

(2007/C 82/69)

*Language of the case: English*

**Parties**

*Applicant:* Donal Gordon (Brussels, Belgium) (represented by: initially M. Byrne, solicitor, and subsequently J. Sambon and P.-P. Van Gehuchten and P. Reyniers, lawyers)

*Defendant:* Commission of the European Communities (represented by: J. Currall and H. Krämer, Agents)

**Re:**

Action, first, for annulment of the decision of 11 December 2003 rejecting the complaint concerning the decision of 28 April 2003 confirming the applicant's career development report for the period from 1 July 2001 to 31 December 2002, and, secondly, for compensation for the damage suffered by the applicant.

**Operative part of the judgment**

*The Court:*

1. *Declares that there is no longer any need to rule on the application for annulment;*

2. *Dismisses the action for damages as inadmissible;*

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

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([1]) OJ C 179, 10.7.2004.

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## Judgment of the Court of First Instance of 15 February 2007 — Indorata-Serviços e Gestão v OHIM (HAIR-TRANSFER)

**(Case T-204/04)** ([1])

***('Community trade mark — Application for Community trade mark HAIRTRANSFER — Absolute grounds for refusal — Descriptive character — Article 7(1)(c) of Regulation (EC) No 40/94')***

(2007/C 82/70)

*Language of the Case: German*

**Parties**

*Applicant:* Indorata-Serviços e Gestão, Lda (Funchal, Portugal) (represented by T. Wallentin, lawyer)

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

**Subject-matter**

Appeal against the decision of the Second Board of Appeal of the OHIM of 1 April 2004 (Case R 435/2003-2) concerning an application for registration of the word mark HAIRTRANSFER as a Community trade mark.

**Operative part**

1) *The appeal is dismissed.*

2) *Indorata-Serviços e Gestão, L[da] is ordered to pay the costs.*

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([1]) JO C 217 du 28.8.2004.

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## Judgment of the Court of First Instance of 6 February 2007 — Wunenberger v Commission

**(Joined Cases T-246/04 and T-71/05)** ([1])

***(Officials — Staff Reports — Reporting exercises 1997/1999 and 1999/2001 — Career development report — 2001/2002 appraisal procedure — Action for annulment — Admissibility — Action for damages — Rights of the defence)***

(2007/C 82/71)

*Language of the case: French*

**Parties**

*Applicant:* Jacques Wunenberger (Zagreb, Croatia) (represented by: É. Boigelot, lawyer)

*Defendant:* Commission of the European Communities (represented by: G. Berscheid, H. Krämer and C. Berardis-Kayser, Agents)

**Re:**

First, actions for annulment of the applicant's draft staff reports for the periods 1997/1999 and 1999/2001 and the applicant's Career Development Report for the 2001/2002 appraisal procedure and, second, claims for damages for the alleged harm.

**Operative part of the judgment**

*The Court:*

1. *Annuls the decision of 11 September 2003 definitively approving the applicant's Career Development Report for the period 1 July 2001 to 21 December 2002;*

2. *Orders the Commission to pay the applicant the amount of EUR 2 500, in addition to the amount of EUR 2 500 already granted by the Appointing Authority, for the delay in drawing up the staff reports for the periods 1997/1999 and 1999/2001, and the symbolic amount of EUR 1 for the delay in drawing up the Career Development Report for the period 2001/2002;*

3. *Dismisses the remainder of the actions;*

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

(1) OJ C 217, 28.8.2004.

## Judgment of the Court of 13 February 2007 — Mundipharma v OHIM-Altana Pharma (RESPICUR)

**(Case T-256/04 P)** (1)

***(Community trade mark — Opposition proceedings — Application for Community word mark RESPICUR — Earlier national word mark RESPICORT — Relative grounds for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94 — Proof of use of the earlier mark — Article 43(2) and (3) of Regulation No 40/94)***

(2007/C 82/72)

*Language of the case: German*

**Parties**

*Applicant:* Mundipharma AG (Basle, Switzerland) (represented by F. Nielsen, lawyer)

*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented initially by B. Müller and subsequently by G. Schneider, Agents)

*Other the other party to the proceedings before the Board of Appeal of OHIM, intervener before the Court of First Instance:* Altana Pharma AG (Konstanz, Germany) (H. Becker, lawyer)

**Re:**

Action for annulment against the decision of the Second Board of Appeal of OHIM of 19 April 2004 (Case R 1004/2002-2) relating to opposition proceedings involving Munidpharma AG and Altana Pharma AG.

**Operative part of the judgment**

*The Court:*

1. *Annuls the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 19 April 2004 (Case R 1004/2002-2);*

2. *Orders OHIM to bear its own costs and to pay those incurred by the applicant, except for those relating to the intervention;*

3. *Orders the applicant to bear its costs relating to the intervention;*

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

(1) OJ C 217, 28.8.2004.

## Judgment of the Court of First Instance of 8 February 2007 — Boucek v Commission

**(Case T-318/04)** (1)

***(Officials — Open competition — Non-admission to written test — Tardy submission of application)***

(2007/C 82/73)

*Language of the case: German*

**Parties**

*Applicant:* Vladimir Boucek (Prague, Czech Republic) (represented by: L. Krafttová, lawyer)

*Defendant:* Commission of the European Communities (represented by: G. Berscheid and H. Krämer)

**Re:**

Action for annulment of the decision of the selection board in open competition EPSO/A/2/03 refusing the applicant admittance to the written test of the competition on the ground that he had not submitted his complete application within the time-limit prescribed.

**Operative part of the judgment**

*The Court:*

1. *Dismisses the action;*

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

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([1]) OJ C 273, 6.11.2004.

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**Judgment of the Court of First Instance of 13 February 2007 — Ontex v OHIM — Curon Medical (CURON)**

**(Case T-353/04)** ([1])

***(Community trade mark — Opposition proceedings — Application for the Community word mark CURON — Opposition by the proprietor of the Community word mark EURON — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94)***

(2007/C 82/74)

*Language of the case: English*

**Parties**

*Applicant:* Ontex NV (Buggenhout, Belgium) (represented by: M. Du Tré, lawyer)

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

*Other party to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance:* Curon Medical Inc. (Sunnyvale, California, United States) (represented by: C. Algar and J. Cohen, solicitors, and T. Ludbrook, barrister)

**Re:**

Action brought against the decision of the Second Board of Appeal of OHIM of 5 July 2004 (Case R 22/2004-2), relating to opposition proceedings between Ontex NV and Curon Medical, Inc.

**Operative part of the judgment**

*The Court:*

1. *Dismisses the action;*

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

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([1]) OJ C 273, 6.11.2004.

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**Judgment of the Court of First Instance of 13 February 2007 — Petralia v Commission**

**(Case T-354/04)** ([1])

***(Officials — Temporary agents — Scientific service — Classification in grade)***

(2007/C 82/75)

*Language of the case: Italian*

**Parties**

*Applicant:* Gaetano Petralia (Brussels, Belgium) (represented by: C. Forte, lawyer)

*Defendant:* Commission of the European Communities (represented by: J. Currall and C. Loggi, Agents)

**Re:**

Annulment of the Commission's decision of 7 October 2003 definitively classifying the applicant in grade B5, step 3, and the decision of 13 May 2004 dismissing the applicant's claim.

**Operative part of the judgment**

*The Court:*

1. *Dismisses the action;*

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

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([1]) OJ C 262, 23.10.2004.

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**Judgment of the Court of First Instance of 14 February 2007 — Simões Dos Santos v OHIM**

**(Case T-435/04)** ([1])

***(Staff case — OHIM officials and temporary staff — Reports and promotion — Merit points reset at zero and their total recalculated — Transitional arrangements — Action for annulment — Plea of illegality — Non-retroactivity — Principles of legality and legal certainty — Legal basis — Legitimate expectations — Equal treatment)***

(2007/C 82/76)

*Language of the case: French*

**Parties**

*Applicant:* Manuel Simões Dos Santos (Madrid, Spain) (represented by: A. Creus Carreras, lawyer)

*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: I. de Medrano Caballero, agent, and D. Waelbroeck, lawyer)

**Re:**

Application for annulment, first, of OHIM's decision of 7 July 2004 rejecting the applicant's complaint of 11 March 2004 and, secondly, of OHIM's decision of 15 December 2003 establishing the cumulative total of the applicant's merit points under the 2003 promotion procedure and of the Joint Evaluation Board's opinion of 12 December 2003.

**Operative part of the judgment**

*The Court:*

1. *annuls OHIM's decision of 15 December 2003 definitively allocating merit points under the 2003 promotion procedure to the applicant and OHIM's decision of 7 July 2004 rejecting the applicant's complaint of 11 March 2004 in so far as they entail a finding that the balance of the applicant's merit points has disappeared, as acknowledged by decision PERS-PROM-39-03rev1 on promotion, of 30 March 2004;*

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

3. *orders OHIM to pay the costs.*

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([1]) OJ C 6, 8.1.2005.

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## Judgment of the Court of First Instance of 6 February 2007 — Aktieselskabet af 21. november 2001 v OHIM — TDK Kabushiki Kaisha (TDK)

**(Case T-477/04)** ([1])

***(Community trade mark — Opposition proceedings — Application for Community word mark TDK — Earlier Community figurative mark TDK — Earlier national word or figurative marks TDK — Relative ground for refusal — Reputation — Taking unfair advantage of the distinctive character or the reputation of the earlier mark — Article 8(5) of Regulation (EC) No 40/94)***

(2007/C 82/77)

*Language of the case: English*

**Parties**

*Applicant:* Aktieselskabet af 21. november 2001 (Brande, Denmark) (represented by C. Barret Christiansen, lawyer)

*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by S. Laitinen and G. Schneider, Agents)

*Other party to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance:* TDK Kabushiki Kaisha (TDK Corp.) (Tokyo, Japan) (represented by A. Norris, Barrister)

**Re:**

ACTION brought against the decision of the First Board of Appeal of OHIM of 7 October 2004 (Case R 364/2003-1) concerning opposition proceedings between TDK Kabushiki Kaisha (TDK Corp.) and Aktieselskabet af 21 november 2001.

**Operative part of the judgment**

*The Court:*

1. *Dismisses the action;*

2. *Orders the applicant, Aktieselskabet af 21. november 2001 to pay the costs.*

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([1]) OJ C 69, 19.3.2005.

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## Judgment of the Court of First Instance of 15 February 2007 — Bodegas Franco-Españolas v OHIM — Companhia Geral da Agricultura das Vinhas do Alto Douro (ROYAL)

**(Case T-501/04)** ([1])

***(Community trade mark — Opposition proceedings — Application for the Community word mark ROYAL — Earlier Community word mark ROYAL FEITORIA — Relative ground for refusal — No likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94)***

(2007/C 82/78)

*Language of the case: Spanish*

**Parties**

*Applicant:* Bodegas Franco-Españolas, SA (Logroño, Spain) (represented by: E. López Camba, lawyer)

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

*Other party to the proceedings before the Board of Appeal of OHIM:* Companhia Geral da Agricultura das Vinhas do Alto Douro, SA (Real Companhia Velha) (Vila Nova de Gaia, Portugal) (represented by: D. Martins Pereira, lawyer)

**Re:**

Action brought against the decision of the First Board of Appeal of OHIM of 25 October 2004 (Case R 513/2002-1), relating to opposition proceedings between Companhia Geral da Agricultura das Vinhas do Alto Douro, SA (Real Companhia Velha) and Bodegas Franco-Españolas, SA.

**Operative part of the judgment**

*The Court:*

1. *Annuls the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 25 October 2004 (Case R 513/2002-1);*

2. *Orders OHIM to pay the costs.*

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([1]) OJ C 45, 19.2.2005.

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## Judgment of the Court of First Instance of 14 February 2007 — Seldis v Commission

**(Case T-65/05)** ([1])

***(Officials — Probationary officials — Scientific or technical service — Appointment of a temporary agent following a competition — Classification in grade and step)***

(2007/C 82/79)

*Language of the case: French*

**Parties**

*Applicant:* Thomas Seldis (Amsterdam, Netherlands) (represented by: S. Orlandi, X. Martin, A. Coolen, J.-N. Louis and É. Marchal, lawyers)

*Defendant:* Commission of the European Communities (represented by: V. Joris and K. Herrmann, Agents)

**Re:**

Action for annulment the Commission's decision of 5 April 2004 to appoint the applicant a probationary official in so far as it classifies him in grade A7, step 5.

**Operative part of the judgment**

*The Court:*

1. *Dismisses the action;*

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

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([1]) OJ C 106, 30.4.2005.

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## Judgment of the Court of First Instance of 8 February 2007 — Quelle v OHIM — Nars Cosmetics (NARS)

**(Case T-88/05)** ([1])

***(Community trade mark — Opposition proceedings — Application for the figurative Community trade mark NARS — Earlier figurative national marks including the word element MARS — Relative ground for refusal — Likelihood of confusion — Absence of similarity between the signs — Article 8(1)(b) of Regulation (EC) No 40/94)***

(2007/C 82/80)

*Language of the case: English*

**Parties**

*Applicant:* Quelle AG (Fürth, Germany) (represented by: H. Lindner, lawyer)

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

*Other party to the proceedings before the Board of Appeal of OHIM, intervener before the Court of First Instance:* Nars Cosmetics, Inc. (New York, United States) (represented by: M. de Justo Bailey, lawyer)

**Re:**

Action for annulment of the decision of the Second Board of Appeal of OHIM of 17 December 2004 (Case R 379/2004-2) relating to opposition proceedings between Quelle AG and Nars Cosmetics, Inc.

**Operative part of the judgment**

*The Court:*

1. *Dismisses the action;*

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

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([1]) OJ C 155, 25.6.2005.

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## Judgment of the Court of First Instance of 7 February 2007 — Kustom Musical Amplification v OHIM (Shape of a guitar)

**(Case T-317/05)** ([1])

***(Community trade mark — Three-dimensional mark — Shape of a guitar — Absolute ground for refusal — Infringement of the rights of the defence — Statement of reasons — Article 73 of Regulation (EC) No 40/94)***

(2007/C 82/81)

*Language of the case: English*

**Parties**

*Applicant:* Kustom Musical Amplification Inc., (Cincinnati, Ohio, United States) (represented by: M. Edenborough, Barrister, and T. Bamford, Solicitor)

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

**Re:**

Action brought against the decision of the Second Board of Appeal of OHIM of 7 June 2005 (Case R 1035/2004-2) concerning an application for registration of a three-dimensional mark in the shape of a guitar as a Community trade mark.

**Operative part of the judgment**

*The Court:*

1. *Annuls the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 7 June 2005 (Case R 1035/2004-2);*

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

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([1]) OJ C 271, 29.10.2005.

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## Order of the Court of First Instance of 25 January 2007 — Rijn Schelde Mondia France v Commission

**(Case T-55/05)** ([1])

***(Action for annulment — Common Customs Tariff — Application for remission of import duties — Measure adversely affecting a person — Inadmissibility)***

(2007/C 82/82)

*Language of the case: French*

**Parties**

*Applicant:* Rijn Schelde Mondia France SA (Rouen, France) (represented by: F. Citron, lawyer)

*Defendant:* Commission of the European Communities (represented by: X. Lewis and J. Hottiaux, acting as Agents)

**Re:**

Action for annulment of the Commission decision allegedly contained in the letter of 7 October 2004 concerning the application for remission of import duties (File REM 22/01).

**Operative part of the order**

1. *The action is dismissed as inadmissible.*

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

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([1]) OJ C 93 of 16.4.2005.

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## Order of the President of the Court of First Instance of 29 January 2007 — Olimpiaki Aeroporia Ipiresies v Commission

**(Case T-423/05 R)**

***(Interim measures — Suspension of operation — State aid — Urgency)***

(2007/C 82/83)

*Language of the case: Greek*

**Parties**

*Applicant:* Olimpiaki Aeroporia Ipiresies AE (Athens, Greece) (represented by P. Anestis, S. Mavroghenis, S. Jordan, D. Geradin, lawyers, and T. Soames, Solicitor)

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

**Re:**

Application for the suspension of operation of Article 2(1) in combination with Article 1(2) to (4) of the Commission's decision concerning State aid (C 11/2004 (ex NN 4/2003) — Olympic Airways — Restructuring and privatisation) of 14 September 2005.

**Operative part of the order**

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

2. *Costs are reserved.*

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## Order of the Court of First Instance of 26 January 2007 — Theofilopoulos v Commission

**(Case T-91/06)** ([1])

***(Action for compensation — Application for return of letters of guarantee — Court of First Instance not having jurisdiction — Inadmissibility of action — Action clearly devoid of legal foundation)***

(2007/C 82/84)

*Language of the case: Greek*

**Parties**

*Applicant:* Nikolaos Theofilopoulos (Athens, Greece) (represented by P. Miliarakis, lawyer)

*Defendant:* Commission of the European Communities (represented by L. Ström van Lier and I. Chatzigiannis, agents)

**Subject-matter**

Action for compensation and application seeking the return of letters of guarantee.

**Operative part**

1) *The action is dismissed.*

2) *Mr Nikolaos Theofilopoulos is ordered to pay the costs.*

([1]) OJ C 190 of 12.8.2006.

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## Order of the Court of First Instance of 24 January 2007 — MIP Metro v OHIM — MetroRED Telecom (MetroRED)

**(Case T-124/06)** ([1])

***(Community trade mark — Opposition proceedings — No need to adjudicate)***

(2007/C 82/85)

*Language of the case: English*

**Parties**

*Applicant:* MIP Metro Group Intellectual Property GmbH & Co. KG (Düsseldorf, Germany) (represented by: R. Kaase, lawyer)

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

*Other party to the proceedings before the Board of Appeal of OHIM:* MetroRED Telecom Group Ltd (Hamilton, Bermuda)

**Re:**

Action brought against the decision of the Second Board of Appeal of OHIM of 16 February 2006 (Case R 266/2005-2), relating to opposition proceedings between MIP Metro Group Intellectual Property GmbH & Co. KG and MetroRED Telecom Group Ltd.

**Operative part of the judgment**

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

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

([1]) OJ C 143, 17.6.2006.

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## Action brought on 17 January 2007 — Torres v OHIM

**(Case T-16/07)**

(2007/C 82/86)

*Language in which the application was lodged: Spanish*

**Parties**

*Applicant:* Torres (Barcelona, Spain) (represented by: E. Armijo Chávarri, M. Baz de San Ceferino, A. Castán Pérez Gómez, lawyers)

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

*Other party to the proceedings before the Board of Appeal of OHIM:* Sociedad Cooperativa del Campo San Ginés

**Form of order sought**

— The annulment of the decision of 6 November 2006 of the 2nd Board of Appeal of OHIM issued in case R36/2006-2 with costs awarded against OHIM

**Pleas in law and main arguments**

*Applicant for a Community trade mark:* Sociedad Cooperativa del Campo San Ginés

*Community trade mark concerned:* Word mark 'TORRE DE BENITEZ' for products in class 33 (application No. 2.438.018)

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

*Mark or sign cited in opposition:* International or national trade marks under the word mark 'Torres' for products in class 33, numerous other Community, international and national trade marks

*Decision of the Opposition Division:* Rejection of the opposition

*Decision of the Board of Appeal:* Rejection of the appeal

*Pleas in law:* Infringement of Article 8(1)(b) of Regulation (EC) 40/94 ([1]) given that there is a likelihood of confusion between the trade marks at issue

([1]) Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark.

## Action brought on 16 January 2007 — Miguel Torres, S.L. v OHIM

**(Case T-17/07)**

(2007/C 82/87)

*Language in which the application was lodged: Spanish*

**Parties**

*Applicant:* Miguel Torres, S.L. (Barcelona, Spain) (represented by: E. Armijo Chávarri, M. Baz de San Cerefino, A. Castán Pérez-Goméz, 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:* Bodegas Navarro López, S.L

**Form of order sought**

— The annulment of the decision of the 1st Board of Appeal of OHIM of 26 September 2006 issued in case no R1407/2005-1 with costs awarded against OHIM

**Pleas in law and main arguments**

*Applicant for a Community trade mark:* Bodegas Navarro Lopéz, S.L.

*Community trade mark concerned:* Word mark 'CITA DEL SOL' for products and services within classes 33 and 39 (application No. 2.712.982)

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

*Mark or sign cited in opposition:* Community word mark 'VIÑA SOL' (mark no 462.523) and national word marks 'VIÑA SOL' for products within class 33, label 'TORRES VIÑA SOL' for products within class 33, national word mark 'SOL' for products within class 33.

*Decision of the Opposition Division:* Rejection of objection

*Decision of the Board of Appeal:* Rejection of appeal

*Pleas in law:* Infringement of Article 8(1)(b) of Regulation (EC) No 40/94 ([1]) given that there is a likelihood of confusion between the marks at issue.

([1]) Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark.

## Action brought on 6 February 2007 — ThyssenKrupp Stainless v Commission

**(Case T-24/07)**

(2007/C 82/88)

*Language of the case: German*

**Parties**

*Applicant:* ThyssenKrupp Stainless AG (Duisburg, Germany) (represented by: M. Klusmann and S. Thomas)

*Defendant:* Commission of the European Communities

**Form of order sought**

— annul the contested decision;

— in the alternative, annul Article 2 of the operative part of that decision;

— in the further alternative, reduce the amount of the fine imposed on the applicant in the contested decision;

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

**Pleas in law and main arguments**

The applicant challenges Commission Decision C(2006) 6765 final of 20 December 2006 in Case COMP/39.234 — Alloy surcharge re-adoption. In the contested decision, which concerns the reopening of the proceeding in Case IV/35.814 — Alloy surcharge, a fine was imposed on the applicant for infringement of Article 65(1) CS by Thyssen Stahl GmbH (previously Thyssen Stahl AG) in that it agreed an alteration to the reference values used to calculate the alloy surcharge and applied that alteration.

The applicant raises ten pleas in law in support of its action:

— infringement of the principle of *nulla poena sine lege*, since, in the absence of transitional provisions, the Commission had no power to apply retroactively the CS Treaty which expired in 2002;

— unlawful application of Regulation (EC) No 1/2003 ([1]), since it grants entitlement only to apply Articles 81 EC and 82 EC, but not the CS Treaty;

— infringement of the principal of *res iudicata*, since the Court of Justice has already given final judgment in the case to the effect that on the merits the applicant is not liable for the infringement of Thyssen Stahl AG which was alleged against it and attributed to it once more in the contested decision;

— lack of responsibility of the applicant by way of a private declaration of assumption of liability, since such a declaration is declaratory at most;

— infringement of the principle of legal certainty since the basis for the penalty and the basis for the attribution of liability are insufficiently certain;

— infringement of the principle of *ne bis in idem*, because a fine has been imposed on the applicant already in the first proceedings on the same facts, a matter on which the Court has given final judgment;

— the infringement is time barred;

— infringement of the right of access to the file;

— infringement of the right to be heard due to incomplete objections; and

— miscalculation of the fine in the light of the 1996 Leniency Notice ([2]).

([1]) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1).
([2]) Commission Notice of 18 July 1996 on the non-imposition or reduction of fines in cartel cases (OJ 1996 C 207, p. 4).

## Action brought on 7 February 2007 — LIPOR v Commission

**(Case T-26/07)**

(2007/C 82/89)

*Language of the case: Portuguese*

**Parties**

*Applicant:* LIPOR — Serviço Intermunicipalizado de Gestão de Resíduos do Grande Porto (Gondomar, Portugal) (represented by: P. Pinheiro, M. Gorjão-Henriques and F. Quintela, lawyers)

*Defendant:* Commission of the European Communities

**Form of order sought**

— Annulment in part of Article 1 of Commission Decision C(06)5008 of 17 October 2006, addressed to the Portuguese State, in so far as it considers that the total assistance granted by the Cohesion Fund under Commission decisions Nos C(93)3347/3 of 7 December 1993, C(94)3721 final/3 of 21 December 1994 and C(96)3923 final of 17 December 1996, reproduced in Decision C(98)2283/f, must be regarded as reduced by EUR 1 511 591 and of the decision to order reimbursement of that amount to the Member State;

— annulment of Article 1 of the contested decision in so far as it orders a financial correction of 100 % in relation to the contracts concluded by the applicant with the IDAD (Instituto do Ambiente e Desenvolvimento, Environment and Development Institute) for breach of the principle of proportionality, and in so far as it orders the Member State to reimburse EUR 458 683;

— an order that the Commission should pay the costs of the proceedings, including the applicant's costs;

— as a subsidiary matter, annulment in part of Article 1 of the contested order for breach of the principle of proportionality, with regard to the contracts concluded by the applicant with Hidroprojecto;

— again as a subsidiary matter, the applicant requests that the Court of First Instance, if it should consider that Lipor has not satisfied all the requirements of Directive 92/50/EC, should order the Commission, because of breach of the principle of proportionality, to fix at 100 % the financial correction relating to the financing of the contracts with Hidroprojecto.

**Pleas in law and main arguments**

In support of its action the applicant alleges errors of law, manifest errors of assessment, insufficient and inaccurate reasoning and breach of the principle of proportionality.

So far as the contract concluded by the applicant with Hidroprojecto in 1989 is concerned, the applicant claims that the Commission erred in its assessment of the value of Block D of the contract.

With regard to the contract concluded by the same bodies in 1997, the applicant claims that the Commission erred in its assessment, not understanding that those contracts were, in part, the realisation of the 1989 contract and, in part, extensions of that contract which proved necessary as the project developed. It also criticises the Commission for having considered that the contracts ought to have been awarded by open tendering procedure. In the applicant's view, even if it were to be held that those contracts were independent of the 1989 contract and that they crossed the threshold value fixed by Directive 92/50 for award by open tender, the exception provided for by Article 11 of that directive was applicable to them.

In respect of the contracts of 28 March and 28 April 1995, also concluded by the same bodies, the applicant claims that the Commission made an error of assessment in regarding them as a single contract and as an extension of the 1989 contract and in asserting that the award of the procurement contract ought to have been preceded by a call for tenders. It argues that there are in fact two contracts concluded on different dates. One of them was concluded following a restricted invitation to tender and the other did not cross the value threshold that would have made it subject to the tendering procedure. In any case, both were concluded in accordance with Portuguese law at a time when Directive 92/50 had not yet been transposed into domestic law.

Finally, with regard to the contracts concluded by the applicant with IDAD in 1999, the applicant, although admitting that the Commission could consider them together in order to determine their respective values and whether they were subject to the rules governing public procurement contracts, explains the reasons which led it to enter into separate contracts and claims that IDAD is a public body and, as such, a contracting authority for the purposes of Directive 92/50. Consequently, it takes the view that the Commission ought to have taken those reasons into account and not ordered a financial correction of 100 %. According to the applicant, that correction runs counter to the principle of proportionality.

## Action brought on 5 February 2007 — Denka International v Commission

**(Case T-30/07)**

(2007/C 82/90)

*Language of the case: English*

**Parties**

*Applicant:* Denka International BV (Barneveld, The Netherlands) (represented by: K. Van Maldegem, C. Mereu, lawyers)

*Defendant:* Commission of the European communities

**Form of order sought**

— annulment of Article 2(b) and Annex II of Commission Directive 2006/92/EC; and

— order the defendant to pay all costs and expenses in these proceedings, as well as interests thereof.

**Pleas in law and main arguments**

By means of its application, the applicant seeks partial annulment of Commission Directive 2006/92/EC [1], of 9 November 2006, amending Annexes to Council Directives 76/895/EEC, 86/362/EEC and 90/642/EEC as regards maximum residue levels for dichlorvos (hereinafter the 'the MRL Directive' or 'the contested measure') and in particular its Article 2(b) and Annex II thereof.

The applicant claims that these provisions modify the maximum residue level for the substance at stake from the previously applicable 2 mg/kg to a new threshold value of 0.01 mg/kg based on an underlying assessment of the applicant's dossier conducted under the related assessment of Directive 91/414/EEC (hereinafter, 'PPPD') that is procedurally, scientifically and legally flawed.

Procedurally, the applicant submits that the contested measure was adopted in violation of the procedural safeguards set out in Article 8 of Regulation 451/2000 and the *auditum alteram partem* principle or principle to a fair hearing, while it also infringes the duty to state reasons (Article 235 EC). In addition, the applicant claims that through the adoption of the contested measure the Commission misused its powers, as it achieved the same objective as a decision of non-inclusion without having recourse to such decision.

From a substantive legal standpoint, the contested measure is allegedly based on a manifest error of assessment and violates, according to the applicant (i) Article 4(1)(f) of Directive 91/414/EEC, (ii) Article 5 of the MRL Directive, as well as (iii) fundamental principles of Community law, namely (a) legitimate expectations and legal certainty, (b) Article 211 EC and the principle of sound administration, and (c) the principle of proportionality.

(1) Commission Directive 2006/92/EC of 9 November 2006 amending annexes to Council Directives 76/895/EEC, 86/362/EEC and 90/642/EEC as regards maximum levels for captan, dichlorvos, ethion and folpet (OJ, L 311, p. 31).

## Action brought on 12 February 2007 — Hellenic Republic v Commission of the European Communities

**(Case T-33/07)**

(2007/C 82/91)

*Language of the case: Greek*

### Parties

*Applicant:* Hellenic Republic (represented by: I. Khalkias and G. Kanellopoulos)

*Defendant:* Commission of the European Communities

### Form of order sought

— annul the contested Commission decision or alter it in accordance with the matters set out more specifically below;

— order the Commission to pay the costs.

### Pleas in law and main arguments

In its action challenging Commission Decision C(2006) 5993 final of 14 December 2006 (OJ 2006 L 355, p. 96) by which the Commission excluded from Community financing certain expenditure incurred by the Member States — in the present case the Hellenic Republic — in the context of clearing expenditure of the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), the Hellenic Republic puts forward the following pleas for annulment.

By the first, general, plea of annulment, which relates to all the corrections, the applicant submits that the defendant infringed an essential procedural requirement which is laid down in subparagraph (a) [sic] of the third subparagraph of Article 8(1) of Regulation (EC) No 1663/95 (1), in respect of the failure to conduct a bilateral discussion with the Greek authorities on the assessment of the gravity of the infringements attributed to them and the loss suffered by the European Community, and, in the alternative, the Commission lacked power *ratione temporis* to impose corrections.

More specifically, in the olive oil sector, the applicant submits that the defendant exceeded the limits of the discretion enjoyed by it, because it doubled the correction from 5 % to 10 % although no worsening — but, on the contrary, an improvement — of the control system had been noted. Also, in the applicant's submission the defendant erred in its interpretation of Community provisions and in the assessment of the facts, infringing the principle of proportionality.

In relation to the cotton sector, the applicant puts forward as a plea for annulment incorrect assessment of the facts, incorrect reasoning, the lack of a legal basis for imposing the correction, the incorrect interpretation and application of Article 12(1) of Regulation (EEC) No 1201/89 (2) and infringement of the principle of legal certainty because the duration of the procedure for allocating expenditure exceeded 10 years.

In relation to the grape sector, the applicant puts forward the argument that the defendant misinterpreted the guidelines for corrections in setting the figure of 10 % for inadequate secondary controls, and that the defendant gave an inadequate statement of reasons for the decision as regards the correction for currants.

In relation to citrus fruit, the applicant submits that the defendant mistakenly relied upon, and did not provide a sufficient statement of reasons in respect of, the stated deficiencies in administrative controls, infringing the principle of proportionality; in the alternative it erred in its interpretation and temporal application of Annex 16 to document 17933/2000 with regard to the classification of the checks in question as basic.

Finally, with regard to the late payments, the applicant pleads that there was an incorrect assessment of the facts because of the imposition of a double correction in respect of budget item B01-1210-160, incorrect interpretation and application of Article 4(2) of Regulation (EC) No 296/96 (3) in relation to the basis for calculation of the 4 % reserve, and an incorrect assessment and insufficient statement of reasons so far as concerns the exceptional circumstances and special management conditions that were put forward.

(1) Commission Regulation (EC) No 1663/95 of 7 July 1995 laying down detailed rules for the application of Council Regulation (EEC) No 729/70 regarding the procedure for the clearance of the accounts of the EAGGF Guarantee Section (OJ No L 158, 8.7.1995, p. 6).

(2) Commission Regulation (EEC) No 1201/89 of 3 May 1989 laying down rules implementing the system of aid for cotton (OJ No L 123, 4.5.1989, p. 23).

(3) Commission Regulation (EC) No 296/96 of 16 February 1996 on data to be forwarded by the Member States and the monthly booking of expenditure financed under the Guarantee Section of the Agricultural Guidance and Guarantee Fund (EAGGF) and repealing Regulation (EEC) No 2776/88 (OJ No L 39, 17.2.1996, p. 5).

## Action brought on 7 February 2007 — Goncharov v OHIM — DSB (DSBW)

**(Case T-34/07)**

(2007/C 82/92)

*Language in which the application was lodged: German*

### Parties

*Applicant:* Karen Goncharov (Moscow, Russian Federation) (represented by: G. Hasselblatt und A. Späth, 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:* DSB (Copenhagen, Denmark)

### Form of order sought

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trademarks and Designs) (OHIM) of 4 December 2006 (Case R 1330/2005-2);

— Order OHIM to pay its own costs and those of the applicant;

— Order DSB, should it intervene in the proceedings, to pay its own costs.

### Pleas in law and main arguments

*Applicant for a Community trade mark:* Karen Goncharov.

*Community trade mark concerned:* The word mark DSBW for services in Classes 39, 41, 43 and 44 (Application No 2 852 143).

*Proprietor of the mark or sign cited in the opposition proceedings:* DSB

*Mark or sign cited in opposition:* The word mark DSB (Community trade mark No 2 292 290) for services in Classes 35-37, 39, 41 and 42, whereas the opposition was directed against registration in Classes 39, 41 and 43.

*Decision of the Opposition Division:* Rejection of Opposition.

*Decision of the Board of Appeal:* Annulment of the contested decision and grant of the appeal.

*Pleas in law:* The Board of Appeal wrongly finds that the registration of the mark DSBW is precluded by Article 8(1) (b) of Regulation 40/94; ([1]) there is no likelihood of confusion between the 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 12 February 2007 — Leche Celta, S.L. v OHIM

**(Case T-35/07)**

(2007/C 82/93)

*Language in which the application was lodged: Spanish*

### Parties

*Applicant:* Leche Celta, S.L. (Puentedeume, La Coruna, Spain) (represented by: J.A. Calderón Chavero, T. Villate Consonni and A. Yanez Manglano, 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:* Celia, SA

### Form of order sought

— The annulment of the decision of the 1st Board of Appeal of OHIM issued on 5 December 2006 in case R-294/2006-4

— Consequently, the annulment of that part of the decision of 21 December 2005 in proceedings B657132 which rejects the objection lodged on behalf of the applicant, and allows the application for the contested mark within class 29 for milk and milk products, edible oils and fats

— Granting of the claim of the applicant, and an order that Opposition Division reject the registration of the relevant mark in these specific products

— If OHIM defends the action, an order for costs against it in the present proceedings; and dismissal of its claims

### Pleas in law and main arguments

*Applicant for a Community trade mark:* Celia, SA

*Community trade mark concerned:* Figurative mark 'Celia' for products and services within classes 16, 29 and 38 (application No. 2.977.221)

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

*Mark or sign cited in opposition:* National word mark 'CELTA' for products within class 29

*Decision of the Opposition Division:* Rejection of the objection

*Decision of the Board of Appeal:* Rejection of the appeal

*Pleas in law:* Infringement of Article 8(1)(b) of Regulation (EC) No 40/94 [1] given that there is a likelihood of association and a likelihood of confusion between the marks at issue.

[1] Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark.

**Action brought on 12 February 2007 — Zipcar v OHIM — Canary Islands Car (ZIPCAR)**

**(Case T-36/07)**

(2007/C 82/94)

*Language in which the application was lodged: English*

**Parties**

*Applicant:* Zipcar, Inc. (Cambridge, USA) (represented by: M. Elmslie, Solicitor, and N. Saunders, Barrister)

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

*Other party to the proceedings before the Board of Appeal:* Canary Islands Car SL (Lanzarote, Spain)

**Form of order sought**

— Annul the decision of the Second Board of Appeal dated 30 November 2006 in its entirety and remit the application to the Office for Harmonisation in the Internal Market (Trade Marks and Designs) to allow it to proceed;

— order that the Office pay the applicant's costs.

**Pleas in law and main arguments**

*Applicant for the Community trade mark:* The applicant

*Community trade mark concerned:* The word mark 'ZIPCAR' for goods and services in classes 9, 39 and 42 — application No 3 139 375

*Proprietor of the mark or sign cited in the opposition proceedings:* Canary Islands Car SL

*Mark or sign cited:* The national word mark 'CICAR' for services in class 39

*Decision of the Opposition Division:* Opposition upheld in relation to the contested services in class 39

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

*Pleas in law:* Violation of Article 8(1)(b) of Council Regulation No 40/94 as there was no likelihood of confusion and the Board of Appeal failed to reach proper conclusions about both the nature of the average consumer of the relevant services and the nature of the relevant market.

**Action brought on 16 February 2007 — Mohamed El Morabit v Council of the European Union**

**(Case T-37/07)**

(2007/C 82/95)

*Language of the case: Dutch*

**Parties**

*Applicant:* Mohamed El Morabit (Amsterdam, Netherlands) (represented by: U. Sarikaya, lawyer)

*Defendant:* Council of the European Union

**Form of order sought**

— Annul the contested decision of the Council.

**Pleas in law and main arguments**

The applicant contests the Council decision placing him on the list of persons, groups and entities that are subject to the restrictive measures provided for in Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism [1].

The applicant submits that, although he has been found guilty by a court of participating in a criminal organisation with a terrorist aim, he has appealed against the judgment. He submits that there is a real chance that he will be acquitted on appeal. The Council's decision is therefore premature.

[1] OJ 2001 L 344, p. 70.

## Action brought on 16 February 2007 — Shell Petroleum and Others v Commission

**(Case T-38/07)**

(2007/C 82/96)

*Language of the case: English*

### Parties

*Applicants:* Shell Petroleum NV (The Hague, The Netherlands), Shell Nederland BV (The Hague, The Netherlands) and Shell Nederland Chemie BV (Rotterdam, The Netherlands) (represented by: T. Snoep and J. Brockhoff, lawyers)

*Defendant:* Commission of the European Communities

### Form of order sought

SPNV requests the Court:

— to annul the decision, in full, insofar as it is addressed to SPNV;

— in the alternative:

  — to annul Article 2(d) of the decision, or

  — to reduce the fine imposed as appropriate; and

— to order the Commission to pay the costs.

SNBV requests the Court:

— to annul the decision, in full, insofar as it is addressed to SNBV;

— in the alternative:

  — to annul Article 2(d) of the decision, or

  — to reduce the fine imposed as appropriate; and

— to order the Commission to pay the costs.

SNC requests the Court:

— to annul Article 2(d) of the decision or to reduce the fine imposed as appropriate; and

— to order the Commission to pay the costs.

### Pleas in law and main arguments

The applicants seek the annulment of Commission Decision C(2006) 5700 final of 29 November 2006 in Case COMP/F/38.638 — Butadiene Rubber and Emulsion Styrene Butadiene Rubber, by which the Commission found that the applicants, together with other undertakings, had infringed Article 81 EC and Article 53 of the Agreement on the European Economic Area by agreeing on price targets for the products, sharing customers by non-aggression agreements and exchanging commercial information relating to prices, competitors and customers.

In support of their application, the applicants submit that the Commission violated Article 81 EC and Articles 7 and 23(2) and (3) of Council Regulation No 1/2003 ([1]) by:

a) imputing the infringement also to Shell Petroleum NV and Shell Nederland BV even though the Commission acknowledges that only Shell Nederland Chemie BV participated directly in the infringement;

b) increasing the basic amount of the fine to be imposed on the applicants by 50 % for recidivism in breach of the principles of proportionality and legal certainty;

c) applying a multiplier for deterrence in breach of the principles of equal treatment and proportionality; and

d) setting the starting amount of the fine to be imposed on the applicants in breach of the Guidelines on the method of setting fines ([2]) and the principles of proportionality and equal treatment.

In the alternative, the applicants invoke a violation of the duty to state reasons under Article 253 EC.

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

([2]) Commission Notice of 14 January 1998 entitled 'Guidelines on the method of setting fines imposed pursuant to Article 15(2) of Regulation No 17 and Article 65(5) of the ECSC Treaty' (OJ 1998 C 9, p. 3).

## Action brought on 6 February 2007 — ENI v Commission

**(Case T-39/07)**

(2007/C 82/97)

*Language of the case: Italian*

### Parties

*Applicant:* ENI SpA (Rome, Italy) (represented by: Prof. G.M. Roberti and I Perego, lawyers)

*Defendant:* Commission of the European Communities

### Form of order sought

— annul that part of the contested decision which holds the applicant responsible for the conduct that is being penalised;

— annul or reduce the fine imposed under Article 2 of the decision;

— order the Commission to pay the costs.

**Pleas in law and main arguments**

The present action is brought against the same decision that is contested in Case T-38/07 *Shell Petroleum and Others* v *Commission*.

ENI considers the contested decision to be unlawful in that it imputes liability to it solely on the ground of its role as the head of the group which controls the entire share capital of the company that has been held liable for the alleged collusion complained of. In those circumstances, the applicant submits that:

— the Commission has based its decision essentially on an a presumption of strict liability connected to ownership structure that is not borne out and is contrary to the principles laid down by practice and in Community case-law relating to the application of Article 81 EC in connection with groups of companies. Such an approach also breaches the basic principle that liability and penalties must be specific to the offender and the principle of legality, being the result of clear errors of assessment of the factual material provided by ENI to rebut the Commission's presumption. In this connection, the Commission failed properly to state the reasons for its assessment, in breach of the requirement laid down in Article 253 of the EC Treaty.

— moreover, the contested decision does not even take into account the principle of the limited liability of capital companies to be found in company law that is common to the laws of all the Member States, to international legal practice and to Community law itself, an approach which, at the same time, appears to be inconsistent with the criteria laid down for the implementation of Community competition rules in cases involving succession/transfer. The contested decision similarly fails totally to provide reasons in respect of those issues.

ENI therefore seeks the annulment of or, at least, a considerable reduction in the fine imposed, given that the Commission:

— has failed to assess the impact on the market concerned of the offending conduct allegedly established;

— improperly established the aggravating circumstance of repeated infringement, referring, moreover, to decisions under Article 81 EC dating back many years which did not in any way concern the applicant, even by virtue of its role as head of a group.

— moreover, by erroneously excluding Syndial from the addressees of the contested decision, contrary to the criteria laid down by case-law, infringed Article 23 of Regulation No 1/2003, failing to take account of that company's turnover in that connection.

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**Appeal brought on 14 February 2007 by José António de Brito Sequeira Carvalho against the judgment of the Civil Service Tribunal delivered on 13 December 2006 in Case F-17/05, de Brito Sequeira Carvalho v Commission**

**(Case T-40/07 P)**

(2007/C 82/98)

*Language of the case: French*

**Parties**

*Appellant:* José António de Brito Sequeira Carvalho (Brussels, Belgium) (represented by O. Martins, lawyer)

*Other party to the proceedings:* Commission of the European Communities

**Form of order sought by the appellant**

— declare this appeal admissible and well founded;

— order the Commission to produce a file containing all the documents concerning the applicant in his administrative file held at the Investigation and Disciplinary Office of the Commission, the medical service and in any other place starting with the procedural documents pertaining to the original proceedings on 2 February 2001 relating to alleged evidence of defamatory acts attributed to the applicant;

— order the Commission to state the legal basis for the initiation of a medical assessment of the appellant's mental health by a Commission official immediately upon his appointment in an administrative investigation into the alleged defamation, and provide a list of documents from the original proceedings;

— annul the judgement of the Civil Service Tribunal of the European Union in Case F-17/05;

— declare the medical assessment which was substituted for the administrative proceedings still pending since 2001 to be illegal;

— declare that there has been a breach of the principle that a reasonable period of time should be observed in the proceedings, which have not yet been closed;

— declare, on the grounds of lack of jurisdiction, lack of reasoning and non-existence, the act of a Commission official of 18 June 2004 to be void and further declare that it is not imputable to the appellant;

— declare both that the Appointing Authority's act of 28 June 2004 is legally non-existent, and that it cannot be raised against the appellant, to whom it was never communicated;

— declare that a parallel file containing false information of a personal nature adversely affecting the appellant is kept by the Commission;

— declare the act of a doctor of 13 July 2004 prohibiting the appellant from access to the Commission's buildings void and illegal on the grounds that it is not a decision of the Appointing Authority;

— declare the act of a Commission official of 22 September 2004 purporting to extend the appellant's medical leave by six months and other subsequent acts referring to earlier documents by an official of the Appointing Authority of June 2004 void;

— the remainder of the claims before the first court;

— order the Commission to pay the costs.

**Pleas in law and main arguments**

In his appeal, the appellant claims that the Tribunal committed an error by founding its decision on an incorrect legal basis, namely Article 59 of the Staff Regulations on compulsory medical leave, whereas, the Commission infringed Article 86 of the Staff Rules and Annex IX, together with the texts which regulate the conduct of administrative investigations and disciplinary proceedings. Furthermore, the appellant argues that the Tribunal violated his rights of defence and infringed Article 6 of the European Convention on Human Rights and the principle of the right to a fair trial by hearing and determining the case on the basis of an incomplete file and by failing to give a ruling on the alleged existence of a parallel file. The appellant further claims that the Tribunal has infringed Article 8 of the European Convention on Human Rights by hearing and determining the case on the basis of false evidence. Furthermore, the appellant criticises the Tribunal for failing to adopt a position in the contested judgment on his application to reopen the proceedings. The applicant also submits that the Tribunal unlawfully refused to draw the legal inferences from the alleged lack of competence of the authority which issued the decision to place him on compulsory medical leave which the Tribunal should, the appellant argues, have declared non-existent on the ground of lack of competence and lack of reasoning.

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## Action brought on 16 February 2007 — IPK International — World Tourism Marketing Consultants v Commission

**(Case T-41/07)**

(2007/C 82/99)

*Language of the case: German*

**Parties**

*Applicant:* IPK International — World Tourism Marketing Consultants GmbH (Munich, Germany) (represented by: C. Pitschas, lawyer)

*Defendant:* Commission of the European Communities

**Form of order sought**

The applicant claims that the Court should

— annul the decision of the Commission of the European Communities of 4 December 2006 (C (2006) 6452) on the recovery of payments in the amount of EUR 318 000 together with default interest;

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

**Pleas in law and main arguments**

The applicant contests the Commission's decision C (2006) 6452 of 4 December 2006 on the recovery of advance payments received by the applicant for the ECODATA project before the cancellation of the decision to award the grant. The decision was made pursuant to Article 256 EC.

The cancellation of the decision to grant a subsidy for the creation of a databank on ecological tourism in Europe was made by decision of the Commission of 13 May 2005 and was challenged by the applicant before the Court of First Instance (see Case T-297/05).

The applicant argues in support of its claim that the contested decision is unlawful. It derives from an unlawful cancellation decision, the unlawfulness of which necessarily extends to the contested decision. Furthermore, the contested decision is a unilateral measure, although the legal claim arising from that decision is contractual in nature and can therefore be pursued only by means of a civil claim before the competent national courts of a Member State.

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## Action brought on 16 February 2007 — Dow Chemical and Others v Commission

**(Case T-42/07)**

(2007/C 82/100)

*Language of the case: English*

**Parties**

*Applicants:* The Dow Chemical Company (Midland, United Sates of America), Dow Deutschland Inc. (Schwalbach, Germany), Dow Deutschland Anlagengesellschaft mbH (Schwalbach, Germany), Dow Europe GmbH (Horgen, Switzerland) (represented by: D. Schroeder, P. Matthey, T. Graf, lawyers)

*Defendant:* Commission of the European Communities

**Form of order sought**

— The Dow Chemical Company respectfully requests the Court to annul the decision insofar as it relates to it;

— Dow Deutschland Inc. respectfully requests the Court to annul Article 1 of the decision insofar as it finds that Dow Deutschland Inc. infringed Articles 81 EC and 53 EEA from 1 July 1996;

— all applicants (and the Dow Chemical Company in the alternative) respectfully request the Court to substantially reduce their fines;

— all applicants respectfully request the Court

  — to order the Commission to pay the applicants' legal and other costs and expenses in relation to this matter as well as the costs incurred by the applicants in providing a bank guarantee *in lieu* of the applicants' fines pending judgment by this Court; and

  — to take any other measures that this Court considers appropriate.

**Pleas in law and main arguments**

By means of their application, the applicants seek partial annulment of Commission Decision C(2006) 5700 final of 29 November 2006 in Case COMP/F/38.638 — Butadiene Rubber and Emulsion Styrene Butadiene Rubber, by which the Commission found that the applicants, together with other undertakings had infringed Article 81 EC and Article 53 EEA by agreeing on price targets for the products, sharing customers by non-aggression agreements and exchanging sensitive commercial information relating to prices, competitors and customers in the Butadiene Rubber and Emulsion Styrene Butadiene Rubber sectors.

In support of their application, the applicants advance three principal pleas:

By the first plea, divided into three branches, The Dow Chemical Company (hereinafter 'TDCC') submits that the Commission erred in law; a) in finding that TDCC had committed an infringement based on the assumption that a wholly-owned subsidiary essentially follows the instructions given by the parent company without verifying whether the parent company had in fact exercised such power; b) in imposing a fine on it, holding it responsible for infringements committed by its subsidiaries; and c) without exercising its discretion, in deciding whether or not to address its decision to TDCC.

By the second plea, the Dow Deutschland Inc. and TDCC contend that the Commission erred in fact and law in determining the duration of Dow Deutschland Inc.'s participation in the infringement by choosing 1 July 1996 as the starting date of the infringement.

By the third plea, the applicants claim that the Commission made factual and legal errors in calculating the basic amount of the fines imposed on them. Precisely, errors were allegedly made in relation to the assessment of the gravity of the infringement, the differential treatment applied by the Commission to the starting amounts, the multiplier applied by the Commission in order for the fines to have sufficient deterrent effect and, finally, to the increase of the starting amount of the fines in view of the duration of the infringement.

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## Appeal brought on 14 February 2007 by Neophytos Neophytou against the judgment of the Civil Service Tribunal delivered on 13 December 2006 in Case F-22/05, Neophytou/Commission

**(Case T-43/07 P)**

(2007/C 82/101)

*Language of the case: English*

**Parties**

*Appellant:* Neophytos Neophytou (Itzig, Luxembourg) (represented by S. A. Pappas, lawyer)

*Other party to the proceedings:* Commission of the European Communities

**Form of order sought by the appellant**

— Cancel the appealed decision and, subsequently, the contested decision of the appointing authority;

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

**Pleas in law and main arguments**

By means of this appeal, the appellant is seeking to set aside the Civil Service Tribunal's conclusions in Case F-22/05 finding that, on one hand, the appellant's complaints made at the hearing were inadmissible and, on the other hand, that there was no infringement of the principle of non-discrimination.

In support of his first plea, the appellant contends that his argument concerning the composition of the selection board should have been admissible since it was based on new matters of fact which only came to light during the oral hearing according to the appellant. The latter claims, moreover, that the illegal constitution of an organ is a question of competence and thereby should have been examined ex officio. Accordingly, the appellant submits he should not have been bared from raising this new matter.

Also, the appellant argues that this complaint is directly connected to his second plea alleging infringement of the principle of non-discrimination on the grounds of unlawful composition of the selection board. On that basis, the appellant claims the Civil Service Tribunal did not properly implement the abovementioned principle, or at least failed to provide adequate reasoning for the particular features of the competition at stake; while it misunderstood his pleas and failed to address a number of them.

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## Action brought on 16 February 2007 — Kaučuk v Commission

**(Case T-44/07)**

(2007/C 82/102)

*Language of the case: English*

### Parties

*Applicant:* Kaučuk a.s. (Kralupy nad Vltavou, Czech Republic) (represented by: M. Powell and K. Kuik, solicitors)

*Defendant:* Commission of the European Communities

### Form of order sought

— Annul Articles 1 to 3 of the contested decision in whole or in part insofar as they are addressed to the applicant;

— alternatively, annul Article 2 of the contested decision insofar as it imposes a fine of EUR 17.55 million on Kaučuk and fix a substantially lower fine; and

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

### Pleas in law and main arguments

The applicant seeks the partial annulment of Commission Decision C(2006) 5700 final of 29 November 2006 in Case COMP/F/38.638 — Butadiene Rubber and Emulsion Styrene Butadiene Rubber, by which the Commission found that the applicant, together with other undertakings, had infringed Article 81 EC and Article 53 of the Agreement on the European Economic Area by agreeing on price targets for the products, sharing customers by non-aggression agreements and exchanging commercial information relating to prices, competitors and customers.

In support of its application, the applicant submits that the Commission:

— erred in law by imputing the conduct of its sales intermediary Tavorex, an independent legal entity, to the applicant;

— erred by failing to prove to the requisite legal standard that Tavorex was involved in a single and continuous infringement from November 1999 until November 2002;

— committed a manifest error of appreciation by finding the same facts sufficient to prove Tavorex's involvement but insufficient to prove the involvement of another producer;

— erred in law by applying EC competition law to the applicant and Tavorex without establishing a sufficient connection between the applicant/Tavorex, the activity concerned and the territory of the European Communities contrary to the case law on extraterritorial application of EC competition law;

— committed a manifest error of law and appreciation in finding that the applicant, through Tavorex, committed an infringement regarding butadiene rubber, a product the applicant neither produces nor sells;

— failed to establish, for the purposes of setting the fine, whether the applicant, through Tavorex, committed the infringement intentionally or negligently; and

— committed a manifest error of law and appreciation by failing to apply its Fining Guidelines.

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## Action brought on 16 February 2007 — Unipetrol v Commission

**(Case T-45/07)**

(2007/C 82/103)

*Language of the case: English*

### Parties

*Applicant:* Unipetrol a.s. (Prague, Czech Republic) (represented by: J. Matějček and I. Janda, lawyers)

*Defendant:* Commission of the European Communities

### Form of order sought

— Annul the contested decision in whole or in part, at least as far as Unipetrol is concerned;

— otherwise exercise the Court's unlimited jurisdiction; and

— order the Commission to bear the costs of these proceedings.

**Pleas in law and main arguments**

The applicant seeks the annulment of Commission Decision C(2006) 5700 final of 29 November 2006 in Case COMP/F/38.638 — Butadiene Rubber and Emulsion Styrene Butadiene Rubber, by which the Commission found that the applicant, together with other undertakings, had infringed Article 81 EC and Article 53 of the Agreement on the European Economic Area by agreeing on price targets for the products, sharing customers by non-aggression agreements and exchanging commercial information relating to prices, competitors and customers.

In support of its application, the applicant submits that the Commission:

— committed an error of appreciation by rejecting the evidence that the applicant's holding of all the shares of the company Kaučuk was of a purely financial nature or, alternatively, committed a manifest error of appreciation by rejecting evidence which demonstrated that Kaučuk acted on the market as an autonomous entity, without any intervention by the applicant in Kaučuk's sales and marketing policy concerning emulsion styrene butadiene rubber; and

— erred in law by imputing the same conduct twice to different entities, i.e. to Kaučuk and to Kaučuk's shareholder, the applicant.

The rest of the pleas in law and main arguments raised by the applicant are identical or similar to those raised in Case T-44/07, *Kaučuk* v *Commission*.

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## Action brought on 21 February 2007 — ratiopharm GmbH v OHIM (BioGeneriX)

**(Case T-47/07)**

(2007/C 82/104)

*Language of the case: German*

**Parties**

*Applicant:* ratiopharm GmbH (Ulm, Germany) (represented by Rechtsanwalt S. Völker)

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

**Form of order sought**

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market of 20 December 2006 in appeal No. R1047/2004-4 concerning Community trade mark application No. 001701762.

— Order the Office for Harmonisation in the Internal Market to pay its own costs.

**Pleas in law and main arguments**

*Community trade mark concerned:* the word mark BioGeneriX for goods and services in the classes 5, 35, 40 and 42 (Application No. 1 701 762).

*Decision of the Examiner:* Refusal to register.

*Decision of the Board of Appeal:* Rejection of the appeal.

*Pleas in law:* Infringement of Article 7(1)(b) and (c) of Regulation (EC) No. 40/94 ([1]), on the basis that the trade mark applied for demonstrates the minimum distinctive character required and that there is no specific need for availability.

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

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## Action brought on 21 February 2007 — ratiopharm v OHIM (BioGeneriX)

**(Case T-48/07)**

(2007/C 82/105)

*Language of the case: German*

**Parties**

*Applicant:* ratiopharm GmbH (Ulm, Germany) (represented by S. Völker, 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 Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 20 December 2006 in Case R 1048/2004-4 concerning the application for Community trade mark No 002603124;

— order the Office for Harmonisation in the Internal Market to pay the costs of the proceedings.

**Pleas in law and main arguments**

*Community trade mark concerned:* Word mark 'BioGeneriX' for goods in Classes 1 and 5 (Application No 2 603 124).

*Decision of the Examiner:* Refusal of part of the application for registration.

*Decision of the Board of Appeal:* Appeal dismissed.

*Pleas in law:* Breach of Article 7(1)(b) and (c) of Regulation (EC) No 40/94 ([1]), as the trade mark applied for has the requisite minimum level of distinctiveness and there is no need to preserve its availability.

([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 14 February 2007 — Movimondo Onlus v Commission

**(Case T-52/07)**

(2007/C 82/106)

*Language of the case: Italian*

**Parties**

*Applicant:* Movimondo Onlus (Rome, Italy) (represented by: P. Vitali, G. Verusio, G.M. Roberti and A. Franchi, lawyers)

*Defendant:* Commission of the European Communities

**Form of order sought**

The applicant claims that the Court should:

— annul the contested Decision;

— in the alternative, declare, pursuant to Article 241 EC, that Articles 133 and 175 of Commission Regulation No 2342/2002 of 23 December 2002 are unlawful and inapplicable;

— order the Commission to pay the costs.

**Pleas in law and main arguments**

1. By the present action, the Associazione Movimondo ONLUS — a non-governmental organisation for international cooperation and solidarity — seeks, in accordance with the fourth paragraph of Article 230 EC, annulment of the Commission's decision of 1 December 2006 (prot. C (2006) 5802 final) imposing an administrative penalty on the non-governmental organisation (NGO) Movimondo for serious breach of professional ethics and non-performance of contractual obligations.

2. In that connection, it should be pointed out that contractual relations with the Commission in the case of humanitarian aid and actions in the field of development cooperation are governed by contracts called *Grant Agreements*, concluded in accordance with *Framework Partnership Agreements* (FPAs) and general contract conditions. In particular, the ECHO FPAs concerned by the events in relation to which the Commission intended to impose the contested penalty are the following:

   — FPA No 3-134, signed on 6 November 2003;

   — FPA No CCP 99/0119 of 26 February 1999.

3. In support of its action for annulment of the decision of 1 December 2006, Movimondo puts forward five pleas in law.

   By the first plea, the applicant alleges infringement of provisions of law in relation to Articles 93, 96 and 114 of Council Regulation No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities, and raises a plea of illegality in respect of Articles 133 and 175 of Commission Regulation 2342/2002 laying down detailed rules for the implementation of Council Regulation No 1605/2002 on the ground that they infringe Article 183 of Council Regulation No 2988/1995 of 18 December 1995.

   By the second plea, the applicant alleges that the Commission made an erroneous and incomplete assessment of the factual basis for the allegations against the applicant, and maintains that there was no conclusive evidence on which to base the decision imposing a penalty.

   By the third plea, the applicant alleges breach of the general principle of *audi alteram partem*.

   By the fourth plea, the applicant alleges an error of assessment of the facts on which the penalty was based and attribution in relation to the applicant of non-existent circumstances. At the same time, it alleges breach of the principle of proportionality and failure properly to state the grounds for its decision as regards the 'effective, proportionate and dissuasive nature' [of the penalty] as required under Article 114 of Regulation No 1605/2002 (the Financial Regulation).

   Lastly, by the fifth plea, the applicant alleges, first, that the projects constituting a *sine qua non* for the contested decision are of wholly indeterminate nature, and that the decision is time-barred. At the same time, it maintains that there is no Community act which provides for such a penalty and alleges infringement of Articles 2(2) and 3(1) of Council Regulation No 2988/95 of 18 December 1995. Secondly, it alleges infringement of Articles 175 and 133 of Commission Regulation No 2342/2002.

## Action brought on 19 February 2007 — Vtesse Networks v Commission

**(Case T-54/07)**

(2007/C 82/107)

*Language of the case: English*

### Parties

*Applicant:* Vtesse Networks Ltd. (St. Albans, United Kingdom) (represented by: H. Mercer, Barrister)

*Defendant:* Commission of the European Communities

### Form of order sought

— Annul Article 1 of the decision insofar as it determined that the application by the United Kingdom of the tax on non-domestic property to BT plc from 1995 to the end of 2005 does not constitute aid within the meaning of Article 87(1) EC;

— order the Commission to pay Vtesse's costs of this action.

### Pleas in law and main arguments

The applicant seeks the annulment of Commission Decision 2006/951/EC [1] of 12 October 2006 finding that the application by the United Kingdom of the tax on non-domestic property to BT plc and Kingston Communications plc from 1995 until the end of 2005 does not constitute aid within the meaning of Article 87(1) EC.

The applicant alleges that the Commission failed to consider and/or to investigate the competitive disadvantage suffered by the applicant vis-à-vis BT plc at the margin when bidding alongside BT plc for contracts with customers for high capacity retail leased lines using optical fibres.

The applicant submits that the Commission erred in law in the application of Article 87(1) EC in particular by failing to define the relevant market and thereby failing to identify the advantage in fact granted by business rates to BT plc in relation to competition at the margin.

Furthermore, the applicant claims that the Commission committed a manifest error of appraisal of the significance and relevance of the class of contracts where the applicant competed with BT plc and failed to investigate sufficiently the facts of competition at the margin leading to the Commission's reliance on a market share for BT plc of 12 % when the most relevant market share for BT plc was, according to the applicant, 78 %.

Finally, the applicant contends that the Commission did not sufficiently reason the contested decision with regard to the competition actually occurring between the applicant and BT plc.

[1] Commission Decision of 12 October 2006 — the United Kingdom's application of the tax on non-domestic property to telecommunications infrastructure in the United Kingdom (No C 4/2005 (ex NN 57/2004, ex CP 26/2004) — notified under document number C(2006) 4378) (OJ 2006 L 383, p. 70).

## Action brought on 23 February 2007 — Kingdom of the Netherlands v Commission of the European Communities

**(Case T-55/07)**

(2007/C 82/108)

*Language of the case: Dutch*

### Parties

*Applicant:* Kingdom of the Netherlands (represented by: H.G. Sevenster and D.J.M. de Grave, acting as Agents)

*Defendant:* Commission of the European Communities

### Form of order sought

— Annul in part the Commission Decision of 14 December 2006 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) in so far as it relates to the Netherlands and more particularly with regard to the financial correction applied in it regarding payment requested for non-subsidisable expenditure in the framework of the EAGGF, Guarantee Section, for the year 2002 in the amount of EUR 5.67 million;

— order the Commission to pay the costs.

### Pleas in law and main arguments

In support of its application the Netherlands alleges, first, breach of Article 4 of Regulation No 2603/1999 [1], by incorrectly interpreting and applying the concept of 'multiannual expenditure' within the meaning of that article.

Secondly, the applicant complains of breach of Article 44(2) of Regulation 1257/1999 [2], and also the principle of the protection of legitimate expectations through the application of a financial correction of the full amount of the sum concerned, as a consequence of the procedure followed by the Netherlands authorities, when the Commission had previously approved the declaration under the Guarantee section pursuant to the procedure in the framework of the approval of the Netherlands programme document for rural development 2000-2006.

In the alternative, the applicant complains of breach of Article 7(4) of Regulation No 1258/1999 ([3]) and of Article 5(2)(c) of Regulation No 729/90 ([4]), by virtue of the incorrect application of those articles in the contested decision, the Community not having suffered any financial damage as a result of the procedure followed by the Netherlands authorities.

In the further alternative, the applicant alleges breach of the principle of proportionality because a correction was applied in the full amount of the sum concerned, when those EAGGF monies, as is undisputedly the case, were correctly used by the Netherlands authorities in the sense that the Community did not suffer any financial damage as a result of the procedure followed by the Netherlands authorities.

Lastly, the applicant alleges breach of the obligation to state reasons because a correction was applied in the full amount of the sum concerned without any reasons being given and contrary to the findings of the conciliation body, when those EAGGF monies, as is undisputedly the case, were correctly used by the Netherlands authorities in the sense that the Community did not suffer any financial damage as a result of the procedure followed by the Netherlands authorities.

([1]) Commission Regulation (EC) No 2603/1999 of 9 December 1999 laying down rules for the transition to the rural development support provided for by Council Regulation (EC) No 1257/1999 (OJ 1999 L 316, p. 26).
([2]) Council Regulation (EC) No 1257/1999 of 17 May 1999 on the support of rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain regulations (OJ 1999 L 160, p. 80).
([3]) Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy (OJ 1999 L 160, p. 103).
([4]) Council Regulation (EEC) No 729/70 of 21 April 1970 on the financing of the common agricultural policy (OJ 1970 L 94, p. 13).

## Order of the Court of First Instance of 8 February 2007 — Banca Sanpaolo Imi v Commission

**(Case T-37/02)** ([1])

(2007/C 82/109)

*Language of the case: Italian*

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

([1]) OJ C 109, 4.5.2002.

## Order of the Court of First Instance of 8 February 2007 — Banca Intesa Banca Commerciale italiana v Commission

**(Case T-39/02)** ([1])

(2007/C 82/110)

*Language of the case: Italian*

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

([1]) OJ C 109, 4.5.2002.

## Order of the Court of First Instance of 8 February 2007 — Capitalia, formerly Banca di Roma v Commission

**(Case T-40/02)** ([1])

(2007/C 82/111)

*Language of the case: Italian*

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

([1]) OJ C 109, 4.5.2002.

## Order of the Court of First Instance of 8 February 2007 — MCC v Commission

**(Case T-41/02)** ([1])

(2007/C 82/112)

*Language of the case: Italian*

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

([1]) OJ C 109, 4.5.2002.

# EUROPEAN UNION CIVIL SERVICE TRIBUNAL

## Judgment of the Civil Service Tribunal of 1 March 2007 — Sundholm v Commission

**(Case F-30/05)** ([1])

***(Officials — Evaluation — Career development report — 2003 assessment procedure — Obligation to state the reasons on which the report is based — Rights of the defence)***

(2007/C 82/113)

*Language of the case: French*

### Parties

*Applicant:* Asa Sundholm (Brussels, Belgium) (represented by: initially S. Orlandi, X. Martin, A. Coolen and E. Marchal, then S. Orlandi, J.-N. Louis, A. Coolen and E. Marchal, lawyers)

*Defendant:* Commission of the European Communities (represented by: C. Barardis-Kayser and M. Velardo, Agents, assisted by F. Herbert and L. Eskenazi, lawyers)

### Re:

Annulment of the applicant's staff development report for the 2003 assessment procedure

### Operative part of the judgment

*The Tribunal:*

1. *Dismisses the application;*

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

([1]) OJ C 193 of 6.8.2005, p. 31 (case initially registered before the Court of First Instance of the European Communities as Case T-197/05 and transferred to the Civil Service Tribunal of the European Union by order of 15.12.2005).

## Judgment of the Civil Service Tribunal of 1 March 2007 — Fardoom and Ashbrook v Commission

**(Case F-72/05)** ([1])

***(Officials — Reimbursement of expenses — Mission expenses — Refusal to sign the travel orders requested in the context of union activities — Interest in bringing an action — Inadmissibility)***

(2007/C 82/114)

*Language of the case: French*

### Parties

*Applicants:* Mohammad Reza Fardoom (Roodt-sur-Syre, Luxembourg) and Michael Ashbrook (Strassen, Luxembourg) (represented by: initially G. Bounéou and F. Frabetti, then F. Frabetti, lawyers)

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

### Re:

Annulment of the Commission's decision not to sign the travel orders requested by the applicants in the context of their union activities

### Operative part of the judgment

*The Tribunal:*

1. *Dismisses the application;*

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

([1]) OJ C 229 of 17.9.2005 (case initially registered before the Court of First Instance of the European Communities as Case T-291/05 and transferred to the Civil Service Tribunal of the European Union by order of 15.12.2005).

## Judgment of the Civil Service Tribunal (Second Chamber) of 1 March 2007 — Neirinck v Commission

**(Case F-84/05)** ([1])

***(Officials — Temporary staff — Admissibility — Request within the meaning of Article 90(1) of the Staff Regulations — Principle of the protection of legitimate expectations — Alleged promise to recruit)***

(2007/C 82/115)

*Language of the case: French*

### Parties

*Applicant:* Wineke Neirinck (Brussels, Belgium) (represented by: G. Vandersanden, L. Levi and C. Ronzi, lawyers)

*Defendant:* Commission of the European Communities (represented by: D. Martin and L. Lozano Palacios, agents)

### Re:

An application for damages seeking compensation for the loss suffered by the applicant as a result of not having been employed as a member of the temporary staff following an alleged error on the part of the defendant's administration.

### Operative part of the judgment

*The Tribunal:*

1. *dismisses the action;*

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

([1]) OJ C 281, 12.11.2005, p. 29 (case initially registered before the Court of First Instance of the European Communities under number T-334/05 and transferred to the Civil Service Tribunal of the European Union by order of 15.12.2005).

## Judgment of the Civil Service Tribunal of 14 February 2007 — Fernández Ortiz v Commission

**(Case F-1/06)** ([1])

***(Officials — Recruitment — Probationary period — Dismissal after the end of the probationary period)***

(2007/C 82/116)

*Language of the case: Spanish*

### Parties

*Applicant:* Fernández Ortiz (Madrid, Spain) (represented by: J. Iturriagagoitia Bassas, lawyer)

*Defendant:* Commission of the European Communities (represented by: F. Clotuche-Duvieusart, L Lozano Palacios and L. Escobar Guerrero, Agents)

### Re:

Annulment of the decision whereby the Commission of the European Communities dismissed the applicant after the end of his probationary period.

### Operative part of the judgment

*The Tribunal:*

1. *Dismisses the application;*

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

([1]) OJ C 74 of 25.3.2006.

## Action brought on 18 December 2006 — Meister v OHIM

**(Case F-138/06)**

(2007/C 82/117)

*Language of the case: German*

### Parties

*Applicant:* Herbert Meister (Alicante, Spain) (represented by: Hans-Joachim Zimmermann)

*Defendant:* Office for Harmonisation in the Internal Market

### Form of order sought

— annul the implied decision of rejection by the President of the Office for Harmonisation in the Internal Market (OHIM) of 18 September 2006 taken under Article 90(2) of the Staff Regulations;

— in the alternative, annul the implied decision of rejection by the President of OHIM of 18 September 2006 taken under Article 90(2) of the Staff Regulations and the written decision of rejection by the President of OHIM of 20 September 2006 (dated 18 September 2006);

— in the further alternative, annul the written decision of the President of OHIM of 20 September 2006 which was based on Article 90(2) of the Staff Regulations;

— in the alternative, annul the communication of OHIM of 9 June 2006 entitled 'definitive Promotion Points 2006';

— in the alternative, annul the implied decision of rejection by the President of OHIM of 27 November 2006;

— order OHIM to pay the applicant an appropriate amount of up to one year's salary, but not less than EUR 45 000;

— order OHIM to pay the costs of the proceedings.

**Pleas in law and main arguments**

The applicant is an official of OHIM in Alicante, Spain, and complains about the reports which the defendant has to submit about him every two years, which, he claims, are substantively incorrect and are flawed and have not been produced on numerous occasions. Accordingly, the applicant seeks annulment of all the defendant's implied decisions taken on the basis of Article 90(2) of the Staff Regulations and the amendment of the promotion points granted erroneously by the defendant to him in 2006.

The applicant also claims that, by unlawfully infringing Article 90(2) of the Staff Regulations in his regard for years, the defendant has intentionally and immorally disregarded his rights as an employee. He thus seeks damage for non-material harm from the defendant on the grounds of physical harassment and continuous infringement of his personal rights.

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## Action brought on 26 January 2007 — Chassagne v Commission

**(Case F-8/07)**

(2007/C 82/118)

*Language of the case: French*

**Parties**

*Applicant:* Olivier Chassagne (Brussels, Belgium) (represented by: Y. Minatchy, lawyer)

*Defendant:* Commission of the European Communities

**Form of order sought**

The applicant claims that the Tribunal should:

— Annul the Commission's decisions dated 23 June 2006 and 27 October 2006 and adopt the measures arising from such annulment for the applicant;

— Order every measure necessary to safeguard the applicant's rights and interests;

— Order the defendant to pay damages of EUR 1;

— Order the defendant to pay the costs.

**Pleas in law and main arguments**

By the contested decisions, the Commission transferred the applicant, an official in DG TREN with the status, at that time, of half-time secondment for trade union activities, from that DG's list to the 'A*10 list in Annex IV' under the 2006 promotion procedure.

In support of his action, the applicant claims, in particular, that the decisions: (i) infringe the principle of the obligation to state reasons; (ii) are devoid of legal basis, and (iii) misapply Article 6 (3)(b) of the General provisions for implementing Article 43 of the Staff Regulations.

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## Action brought on 7 February 2007 — Scozzaro v EMEA

**(Case F-13/07)**

(2007/C 82/119)

*Language of the case: French*

**Parties**

*Applicant:* Salvatore Scozzaro (Broxbourne, United Kingdom) (represented by: S. Orlandi, A. Coolen, J.-N. Louis and E. Marchal, lawyers)

*Defendant:* European Medicines Agency (EMEA)

**Form of order sought**

The applicant claims that the Tribunal should:

— annul the decision of 31 March 2006 by which the Executive Director of the EMEA refused the applicant's request for the establishment of an Invalidity Committee and the confirmatory decision of the following 25 October;

— order the defendant to pay the costs.

**Pleas in law and main arguments**

On 17 March 2005, the applicant, a member of the EMEA's temporary staff, fell victim to an accident at work, as a result of which he became incapable of carrying out his work. On 14 February 2006, he was informed that his contract would not be renewed beyond 15 October 2006. His request for the establishment of an Invalidity Committee was refused.

In support of his action, the applicant pleads, in particular, breach of the first paragraph of Article 31 and of Article 33(1) of the Conditions of employment of other servants of the European Communities (RAA), as interpreted by the Civil Service Tribunal in its judgment of 16 January 2007 in Case F-119/05 *Gesner* v *OHIM* (not yet reported in the ECR).

## Action brought on 27 February 2007 — Caló v Commission

**(Case F-14/07)**

(2007/C 82/120)

*Language of the case: French*

### Parties

*Applicant:* Giuseppe Caló (Luxembourg, Luxembourg) (represented by: S. Orlandi, A. Coolen, J.-N. Louis and E. Marchal, lawyers)

*Defendant:* Commission of the European Communities

### Form of order sought

The applicant claims that the Tribunal should:

— annul the decision to dismiss the applicant's candidature for the post of Director of the 'Business Statistics' Directorate of the Statistics Office of the European Communities;

— annul the decision to appoint Mr. X to that post;

— order the defendant to pay the applicant the token sum of EUR 1 by way of damages for a breach of administration;

— order the defendant to pay the costs.

### Pleas in law and main arguments

The applicant, an official of the defendant, challenged before the Court of First Instance of the European Communities the decision to re-assign him to the duties of Principal Adviser to the DG to which he was assigned ([1]) and the decision to reject his candidature for the post of Director in the same DG ([2]), and before the Civil Service Tribunal of the European Union ([3]), the decisions, taken in connection with the reorganisation of the DG Eurostat, to reject his candidature for a Director's post. Now he is contesting the decision to reject his candidature for another post as a Director in the same DG and to appoint another candidate to that post.

In support of his action, the applicant relies on, inter alia, the existence of a manifest error of assessment and the infringement of: (i) Articles 7, 29 and 45 of the Staff Regulations; (ii) the Commission rules on the appraisal, selection and appointment of officials in higher-management posts as defined in a Communication of 22 December 2000; (iii) the rules on the appraisal of higher-management staff of Grades A1 and A2, as defined in a Communication of 10 March 2004; (iv) the vacancy notice COM/2006/164.

([1]) Case T-118/04 (OJ C 118 of 30.4.2004, p. 47).
([2]) Case T-134/04 (OJ C 146 of 29.5.2004, p. 6).
([3]) Case F-79/06 (OJ C 237 of 30.9.2006, p. 17).

## Order of the Civil Service Tribunal of 27 February 2007 — Rounis v Commission

**(Case F-78/05)** ([1])

(2007/C 82/121)

*Language of the case: French*

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

([1]) OJ C 271, 29.10.2005, p. 22.

## Order of the Civil Service Tribunal of 14 February 2007 — Geert Haelterman and Others v Commission

**(Case F-102/06)** ([1])

(2007/C 82/122)

*Language of the case: French*

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

([1]) OJ C 26, 28.9.2006, p. 35.