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IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS AND BODIES

COURT OF JUSTICE

(2007/C 95/01)

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

OJ C 82, 14.4.2007

Past publications

OJ C 69, 24.3.2007

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

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 March 2007 — British Airways plc v Commission of the European Communities, Virgin Atlantic Airways Ltd

(Case C-95/04 P) [1]

(Appeals — Abuse of dominant position — Airline — Agreements with travel agents — Bonuses linked to growth in sales of that airline's tickets over a given period in comparison with a reference period — Bonuses granted not only for tickets sold once the sales target achieved, but for all tickets sold during the period in question)

(2007/C 95/02)

Language of the case: English

Parties

Appellant: British Airways plc (represented by: R. Subiotto, solicitor, R. O'Donoghue, barrister, W. Wood QC)

Other parties to the proceedings: Commission of the European Communities (represented by: P. Oliver, A. Nijenhuis and M. Wilderspin, Agents), Virgin Atlantic Airways Ltd (represented by: J. Scott, solicitor, C. West, barrister, N. Green QC)

Re:

Appeal against the judgment of the Court of First Instance (First Chamber) of 17 December 2003 in Case T-219/99 *British Airways v Commission* dismissing as unfounded an application for annulment of the decision of the Commission of 14 July 1999 relating to a proceeding under Article 82 [EC] (IV/D-2/34.780 — Virgin/British Airways) concerning agreements concluded between British Airways and travel agencies establishing commission schemes and other benefits linked to the increase in volume of ticket sales of that airline

Operative part of the judgment

1. *The appeal is dismissed.*

2. *British Airways plc is ordered to pay the costs.*

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[1] OJ C 106, 30.4.2004.

Judgment of the Court (Grand Chamber) of 6 March 2007 (Reference for a preliminary ruling from the Finanzgericht Köln — Germany) — Wienand Meilicke, Heidi Christa Weyde, Marina Stöffler v Finanzamt Bonn-Innenstadt

(Case C-292/04) [1]

(Income tax — Tax credit for dividends paid by resident companies — Articles 56 EC and 58 EC — Limitation of the temporal effects of the judgment)

(2007/C 95/03)

Language of the case: German

Referring court

Finanzgericht Köln

Parties to the main proceedings

Applicants: Wienand Meilicke, Heidi Christa Weyde, Marina Stöffler

Defendant: Finanzamt Bonn-Innenstadt

Re:

Reference for a preliminary ruling — Finanzgericht Köln — Interpretation of Articles 56 EC and 58 EC — Income-tax rules providing for a 'tax credit' for dividends distributed by national companies but not for dividends distributed by companies which have their seat in another Member State

Operative part of the judgment

Articles 56 EC and 58 EC are to be interpreted as precluding tax legislation under which, on a distribution of dividends by a capital company, a shareholder who is fully taxable in a Member State is entitled to a tax credit, calculated by reference to the corporation tax rate on the distributed profits, if the dividend-paying company is established in that same Member State but not if it is established in another Member State.

([1]) OJ C 228, 11.9.2004.

Judgment of the Court (Grand Chamber) of 6 March 2007 (references for preliminary ruling from the Tribunale di Larino, Tribunale di Teramo — Italy) — Criminal proceedings against Massimiliano Placanica (Case C-338/04), Christian Palazzese (Case C-359/04), Angelo Sorricchio (Case C-360/04)

(Joined Cases C-338/04, C-359/04 and C-360/04) ([1])

(Freedom of establishment — Freedom to provide services — Interpretation of Articles 43 EC and 49 EC — Games of chance — Collection of bets on sporting events — Licensing requirement — Exclusion of certain operators by reason of their type of corporate form — Requirement of police authorisation — Criminal penalties)

(2007/C 95/04)

Language of the case: Italian

Referring court

Tribunale di Larino, Tribunale di Teramo

Parties in the main proceedings

Massimiliano Placanica (Case C-338/04), Christian Palazzese (Case C-359/04), Angelo Sorricchio (Case C-360/04),

Re:

Preliminary ruling — Tribunale di Larino — Interpretation of Article 43 et seq and Article 49 EC and of the judgment of the Court of Justice in Case C-243/01 *Gambelli and Others* — National law which imposes penalties in relation to the organising of the taking of bets, and the collecting of bets, on various events and, in particular, on sporting events — Collection of bets online by an unlicensed betting operator on behalf of a company operating with a licence in another Member State

Operative part of the judgment

The Court:

1. *National legislation which prohibits the pursuit of the activities of collecting, taking, booking and forwarding offers of bets, in particular bets on sporting events, without a licence or a police authorisation issued by the Member State concerned, constitutes a restriction on the freedom of establishment and the freedom to provide services, provided for in Articles 43 EC and 49 EC respectively.*

2. *It is for the national courts to determine whether, in so far as national legislation limits the number of operators active in the betting and gaming sector, it genuinely contributes to the objective of preventing the exploitation of activities in that sector for criminal or fraudulent purposes.*

3. *Articles 43 EC and 49 EC must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which excludes — and, moreover, continues to exclude — from the betting and gaming sector operators in the form of companies whose shares are quoted on the regulated markets.*

4. *Articles 43 EC and 49 EC must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which imposes a criminal penalty on persons such as the defendants in the main proceedings for pursuing the organised activity of collecting bets without a licence or a police authorisation as required under the national legislation, where those persons were unable to obtain licences or authorisations because that Member State, in breach of Community law, refused to grant licences or authorisations to such persons.*

([1]) OJ C 273, 6.11.2004.
OJ C 262, 23.10.2004.

Judgment of the Court (Grand Chamber) of 27 February 2007 — Gestoras Pro Amnistía, Juan Mari Olano Olano, Julen Zelarain Errasti v Council of the European Union, Kingdom of Spain, United Kingdom of Great Britain and Northern Ireland

(Case C-354/04 P) [1]

(Appeal — European Union — Police and judicial cooperation in criminal matters — Common Positions 2001/931/CFSP, 2002/340/CFSP and 2002/462/CFSP — Measures concerning persons, groups and entities involved in terrorist acts — Action for damages — Jurisdiction of the Court of Justice)

(2007/C 95/05)

Language of the case: French

Parties

Appellants: Gestoras Pro Amnistía, Juan Mari Olano Olano, Julen Zelarain Errasti, (represented by: D. Rouget, avocat)

Other parties to the proceedings: Council of the European Union (represented by: E. Finnegan and M. Bauer, Agents), Kingdom of Spain, United Kingdom of Great Britain and Northern Ireland.

Re:

Appeal brought against the order of the Second Chamber of the Court of First Instance of 7 June 2004 in Case T-332/02 *Gestoras Pro Amnistía and Others* v *Council of the European Union* [2004], not published in the ECR, dismissing the applicants' action seeking damages in respect of the loss allegedly suffered by the applicants as a result of the inclusion of *Gestoras Pro Amnistía* in the list drawn up under the legislation on the fight against terrorism.

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Gestoras Pro-Amnistía, Mr. Olano Olano and Mr. Zelarain Errasti to pay the costs.*

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

[1] OJ C 251, 9.10.2004.

Judgment of the Court (Grand Chamber) of 27 February 2007 — Segi, Araitz Zubimendi Izaga, Aritza Galagara v Council of the European Union, Kingdom of Spain, Kingdom of Great Britain and Northern Ireland

(Case C-355/04 P) [1]

(Appeal — European Union — Police and judicial cooperation in criminal matters — Common Positions 2001/931/CFSP, 2002/340/CFSP and 2002/462/CFSP — Measures concerning persons, groups and entities involved in terrorist acts — Jurisdiction of the Court of Justice)

(2007/C 95/06)

Language of the case: French

Parties

Appellants: Segi, Araitz Zubimendi Izaga, Aritza Galagara (represented by: D. Rouget, avocat)

Other parties to the proceedings: Council of the European Union (represented by: E. Finnegan and M. Bauer, Agents) Kingdom of Spain, United Kingdom of Great Britain and Northern Ireland.

Re:

Appeal brought against the order of the Second Chamber of the Court of First Instance of 7 June 2004, in case T-338/02 *SEGI and Others* v *Council of the European Union* [2004] ECR U-1647, dismissing the applicant's action seeking damages in respect of the loss allegedly suffered by the applicants as a result of the inclusion of SEGI in the list drawn up under the legislation on the fight against terrorism.

Operative part of the judgment

The Court:

1. *Dismisses the appeal.*

2. *Orders Segi, Ms Zubimendi Izaga and Mr Galarraga to pay the costs.*

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

[1] OJ C 251, 9.10.2004.

Judgment of the Court (Grand Chamber) of 13 March 2007 (reference for a preliminary ruling from the High Court of Justice (Chancery Division) (United Kingdom)) — Test Claimants in the Thin Cap Group Litigation v Commissioners of Inland Revenue

(Case C-524/04) ([1])

(Freedom of establishment — Free movement of capital — Corporation tax — Loan interest paid to a related company resident in another Member State or in a non-member country — Interest treated as a distribution — Cohesion of the tax system — Tax avoidance)

(2007/C 95/07)

Language of the case: English

Referring court

High Court of Justice (Chancery Division)

Parties to the main proceedings

Applicant: Test Claimants in the Thin Cap Group Litigation

Defendant: Commissioners of Inland Revenue

Re:

Reference for a preliminary ruling — High Court of Justice (Chancery Division) — Interpretation of Articles 43, 49 and 56 EC — National tax legislation — Ability of a company established on national territory to deduct for tax purposes interest paid on a loan granted by its parent company — Situation differing according to the State where the parent company established

Operative part of the judgment

1. *Article 43 EC precludes legislation of a Member State which restricts the ability of a resident company to deduct, for tax purposes, interest on loan finance granted by a direct or indirect parent company which is resident in another Member State or by a company which is resident in another Member State and is controlled by such a parent company, without imposing that restriction on a resident company which has been granted loan finance by a company which is also resident, unless, first, that legislation provides for a consideration of objective and verifiable elements which make it possible to identify the existence of a purely artificial arrangement, entered into for tax reasons alone, to be established and allows taxpayers to produce, if appropriate and without being subject to undue administrative constraints, evidence as to the commercial justification for the transaction in question and, secondly, where it is established that such an arrangement exists, such legislation treats that interest as a distribution only in so far as it exceeds what would have been agreed upon at arm's length.*

2. *Article 43 EC has no bearing on legislation of a Member State, such as the legislation referred to in Question 1, where that legislation applies to a situation in which a resident company is granted a loan by a company which is resident in another Member State or in a non-member country and which does not itself control the borrowing company and where each of those companies is controlled, directly or indirectly, by a common parent company which is resident in a non-member country.*

3. *In the absence of Community legislation, it is for the domestic legal system of each Member State to designate the courts and tribunals having jurisdiction and to lay down the detailed procedural rules governing actions for safeguarding rights which individuals derive from Community law, including the classification of claims brought by injured parties before national courts and tribunals. Those courts and tribunals are, however, obliged to ensure that individuals have an effective legal remedy enabling them to obtain reimbursement of the tax unlawfully levied on them and the amounts paid to that Member State or withheld by it directly against that tax. As regards other loss or damage which a person may have sustained by reason of a breach of Community law for which a Member State is liable, the latter is under a duty to make reparation for the loss or damage caused to individuals under the conditions set out in paragraph 51 of the judgment in Joined Cases C-46/93 and C-48/93 Brasserie du Pêcheur and Factortame [1996] ECR I-1029, but that does not preclude the State from being liable under less restrictive conditions, where national law so provides.*

Where it is established that the legislation of a Member State constitutes an obstacle to freedom of establishment prohibited by Article 43 EC, the national court may, in order to establish the recoverable losses, determine whether the injured parties have shown reasonable diligence in order to avoid those losses or to limit their extent and whether, in particular, they availed themselves in time of all legal remedies available to them. However, in order to prevent the exercise of the rights which Article 43 EC confers on individuals from being rendered impossible or excessively difficult, the national court may determine whether the application of that legislation, coupled, where appropriate, with the relevant provisions of double taxation conventions, would, in any event, have led to the failure of the claims brought by the claimants in the main proceedings before the tax authorities of the Member State concerned.

([1]) OJ C 57, 5.3.2005.

Judgment of the Court (Grand Chamber) of 13 March 2007 — Office for Harmonisation in the Internal Market (Trade Marks and Designs) v Kaul GmbH, Bayer AG

(Case C-29/05 P) ([1])

(Appeal — Community trade mark — Opposition proceedings — Submission of new facts and evidence in support of an appeal brought before the Board of Appeal of OHIM)

(2007/C 95/08)

Language of the case: German

Parties

Appellant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: A. von Mühlendahl and G. Schneider, Agents)

Other parties to the proceedings: Kaul GmbH (represented by: G. Würtenberger and R. Kunze, Rechtsanwälte), Bayer AG

Re:

Appeal brought against the judgment of the Court of First Instance (Fourth Chamber) of 10 November 2004 in Case T-164/02 *Kaul* v *OHIM and Bayer*, by which the Court of First Instance annulled Decision R 782/2000-3 of the Third Board of Appeal of OHIM of 4 March 2002 relating to opposition proceedings between Kaul GmbH and Bayer AG — Examination of the opposition — Examination of the facts by the Board of Appeal — Scope — Articles 43(2) and 74(2) of Council Regulation No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1)

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the Court of First Instance of the European Communities of 10 November 2004 in Case T-164/02 Kaul v OHIM — Bayer (ARCOL);*

2. *Annuls the decision of the Third Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 4 March 2002 (Case R 782/2000-3);*

3. *Orders OHIM to pay the costs of the proceedings both at first instance and on appeal.*

([1]) OJ C 82, 2.4.2005.

Judgment of the Court (Second Chamber) of 1 March 2007 (reference for a preliminary ruling from the College van Beroep voor het bedrijfsleven (Netherlands)) — Maatschap J. en G.P. en A.C. Schouten v Minister van Landbouw, Natuur en Voedselkwaliteit

(Case C-34/05) ([1])

(Community aid schemes — Regulation (EEC) No 3887/92 — Beef and veal sector — Regulation (EC) No 1254/1999 — Available forage area — Definition — Special premium — Conditions for granting — Parcel of land temporarily under water during the period in question)

(2007/C 95/09)

Language of the case: Dutch

Referring court

College van Beroep voor het bedrijfsleven (Netherlands)

Parties to the main proceedings

Applicant: Maatschap J. en G.P. en A.C. Schouten

Defendant: Minister van Landbouw, Natuur en Voedselkwaliteit,

Re:

Reference for a preliminary ruling — College van Beroep voor het Bedrijfsleven — Interpretation of Article 12(2)(b) of Council Regulation (EC) No 1254/1999 of 17 May 1999 on the common organisation of the market in beef and veal (OJ 1999 L 160, p. 21) and of Article 2(1)(c) of Commission Regulation (EEC) No 3887/92 of 23 December 1992 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes (OJ 1992 L 391, p. 36) — Available forage area — Parcel of land temporarily under water during the period in question

Operative part of the judgment

Article 12(2)(b) of Council Regulation (EC) No 1254/1999 of 17 May 1999 on the common organisation of the market in beef and veal and Article 2(1)(c) of Commission Regulation (EEC) No 3887/92 of 23 December 1992 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes must be interpreted as meaning that a parcel of land declared as a forage area may be regarded as 'available' where, first, it is intended to be used exclusively for the feeding of the animals held on it throughout the calendar year and, secondly, it was in fact possible to use it to feed them for a minimum period of seven months during that year, from the date fixed by the national legislation, which must be between 1 January and 31 March, even though that parcel of land was not occupied continuously by those animals, in particular because it was temporarily under water.

([1]) OJ C 93, 16.4.2005.

Judgment of the Court (Second Chamber) of 15 March 2007 (reference for a preliminary ruling from the Corte suprema di cassazione — Italy) — Reemtsma Cigarettenfabriken GmbH v Ministero delle Finanze

(Case C-35/05) ([1])

(Eighth VAT Directive — Articles 2 and 5 — Taxable persons not established in the territory of the country — Tax paid in error — Arrangements for reimbursement)

(2007/C 95/10)

Language of the case: Italian

Referring court

Corte suprema di cassazione

Parties to the main proceedings

Applicant: Reemtsma Cigarettenfabriken GmbH

Defendant: Ministero delle Finanze

Re:

Reference for a preliminary ruling — Corte suprema di cassazione — Interpretation of Articles 2 and 5 of Eighth Council Directive 79/1072/EEC of 6 December 1979 on the harmonisation of the laws of the Member States relating to turnover taxes — Arrangements for the refund of value added tax to taxable persons not established in the territory of the country (OJ 1979 L 331, p. 11) — Tax paid when not due as a result of an incorrect invoice.

Operative part of the judgment

1) *Articles 2 and 5 of Eighth Council Directive 79/1072/EEC of 6 December 1979 on the harmonisation of the laws of the Member States relating to turnover taxes — Arrangements for the refund of value added tax to taxable persons not established in the territory of the country, must be interpreted as meaning that value added tax that is not due and has been invoiced in error to the beneficiary of the services and paid to the tax authorities of the Member State where those services were supplied, is not refundable under those provisions.*

2) *Except in the cases expressly provided for in Article 21(1) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, as amended by Council Directive 92/111/EEC of 14 December, only the supplier must be considered to be liable for payment of value added tax for the purposes of the tax authorities of the Member State where the services were supplied.*

3) — *The principles of neutrality, effectiveness and non-discrimination do not preclude national legislation, such as that at issue in the main proceedings, according to which only the supplier may seek reimbursement of the sums unduly paid as value added tax to the tax authorities and the recipient of the services may bring a civil law action against that supplier for recovery of the sums paid but not due. However, where reimbursement of the value added tax would become impossible or excessively difficult, the Member States must provide for the instruments necessary to enable that recipient to recover the unduly invoiced tax in order to respect the principle of effectiveness.*

— *This ruling shall not be affected by national legislation on direct taxation.*

([1]) OJ C 93, 16.4.2005.

Judgment of the Court (Second Chamber) of 15 March 2007 — Commission of the European Communities v Republic of Finland

(Case C-54/05) ([1])

(Failure of a Member State to fulfil obligations — Articles 28 EC and 30 EC — Importation of a vehicle registered in another Member State — Obligation to obtain a transfer licence)

(2007/C 95/11)

Language of the case: Finnish

Parties

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

Defendant: Republic of Finland (represented by: T. Pynnä and A. Guimaraes-Purokoski, acting as Agents)

Re:

Failure of a Member State to fulfil its obligations — Infringement of Articles 28 and 30 EC — Import by a person resident in Finland of a vehicle already registered in another Member State — Obligation to obtain, at the frontier point, a transfer licence usually valid for seven days and to take out an insurance policy for the vehicle

Operative part of the judgment

The Court:

1. *Declares that, by requiring a transfer licence for the putting into circulation of vehicles lawfully registered and used in another Member State, as provided for by Decree No 1598/1995 on vehicle registration (asetus ajoneuvojen rekisteröinnistä (1598/1995)) of 18 December 1995, the Republic of Finland has failed to fulfil its obligations under Articles 28 EC and 30 EC;*

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

([1]) OJ C 93, 16.4.2005.

Judgment of the Court (First Chamber) of 1 March 2007 (reference for a preliminary ruling from the Landesgericht für Zivilrechtssachen Wien — Austria) — KVZ retec GmbH v Republik Österreich

(Case C-176/05) ([1])

(Waste — Regulation (EEC) No 259/93 — Supervision and control of shipments of waste — Meat-and-bone meal)

(2007/C 95/12)

Language of the case: German

Referring court

Landesgericht für Zivilrechtssachen Wien

Parties to the main proceedings

Applicant: KVZ retec GmbH

Defendant: Republik Österreich

Re:

Preliminary ruling — Landesgericht für Zivilrechtssachen Wien — Interpretation of Article 1(2)(d) and Article 26(1)(a) and (b) of Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community (OJ 1993 L 30, p. 1) — Meat-and-bone meal shipments — Obligation to notify

Operative part of the judgment

Under Article 1(3)(a) of Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community, as amended by Commission Regulation (EC) No 2557/2001 of 28 December 2001, the shipment of meat-and-bone meal classified as waste on account of a requirement or intention to discard it, which is destined for recovery only and listed in Annex II to that regulation, is excluded from the scope of the provisions of the regulation except as provided for in Article 1(3)(b) to (e), Article 11 and Article 17(1) to (3) thereof. However, it is for the national court to ensure that that shipment takes place in compliance with the requirements arising from the provisions of Regulation (EC) No 1774/2002 of the European Parliament and of the Council of 3 October 2002 laying down health rules concerning animal by-products not intended for human consumption, as amended by Commission Regulation (EC) No 808/2003 of 12 May 2003, amongst which those of Articles 7, 8 and 9 and of Annex II to the regulation may prove to be relevant.

([1]) OJ C 143, 11.6.2005.

Judgment of the Court (First Chamber) of 8 March 2007 (Reference for a preliminary ruling from the Rovaniemen hallinto-oikeus (Finland)) — Länsstyrelson i Norrbottens län v Lapin liitto

(Case C-289/05) ([1])

(Regulation (EC) No 1685/2000 — Annex — Point 1.8 of Rule No 1 — Structural Funds — Eligibility of expenditure — Taking into account of overheads)

(2007/C 95/13)

Language of the case: Finnish

Referring court

Rovaniemen hallinto-oikeus

Parties to the main proceedings

Applicant: Länsstyrelson i Norrbottens län

Defendant: Lapin liitto

Re:

Reference for a preliminary ruling — Rovaniemen hallinto-oikeus — Interpretation of Point 1.7 of Rule No 1 in the Annex to Commission Regulation (EC) No 1685/2000 of 28 July 2000 laying down detailed rules for the implementation of Council Regulation (EC) No 1260/1999 as regards eligibility of expenditure of operations co-financed by the Structural Funds (OJ 2000 L 193, p. 39) — Taking into account of overheads

Operative part of the judgment

Point 1.8 of Rule No 1 in the Annex to Commission Regulation (EC) No 1685/2000 of 28 July 2000 laying down detailed rules for the implementation of Council Regulation (EC) No 1260/1999 as regards eligibility of expenditure of operations co-financed by the Structural Funds, as amended by Commission Regulation (EC) No 448/2004 of 10 March 2004, does not preclude a method of calculating overheads as eligible expenditure for the purposes of a project co-financed by the Structural Funds, on the sole ground that the method is based on a percentage or proportion, in particular, of wage costs or time worked.

(1) OJ C 271, 29.10.2005.

Judgment of the Court (Fourth Chamber) of 1 March 2007 (reference for a preliminary ruling from the Finanzgericht Hamburg (Germany)) — Jan de Nul NV v Hauptzollamt Oldenburg

(Case C-391/05) (1)

(Excise duties — Exemption from excise duty on mineral oils — Directive 92/81/EEC — 'Navigation within Community waters')

(2007/C 95/14)

Language of the case: German

Referring court

Finanzgericht Hamburg

Parties to the main proceedings

Applicant: Jan de Nul NV

Defendant: Hauptzollamt Oldenburg

Re:

Reference for a preliminary ruling — Finanzgericht Hamburg — Interpretation of the first subparagraph of Article 8(1)(c) of Council Directive 92/81/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on mineral oils (OJ 1992 L 316, p. 12) — Definition of 'Community waters' and 'navigation' — Taxation of mineral oils used as fuel for a floating dredger carrying out cleaning work on the Elbe.

Operative part of the judgment

1) *The term 'Community waters' within the meaning of the first subparagraph of Article 8(1)(c) of Council Directive 92/81/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on mineral oils, as amended by Council Directive 94/74/EC of 22 December 1994, relates to all waters which can be used by all sea-going vessels, including those which have the greatest capacity, capable of travelling maritime waterways for commercial purposes.*

2) *Manoeuvres carried out by a hopper dredger during its operations of pumping and discharge of materials, that is to say, journeys inherent in the carrying out of dredging activities, come within the scope of the term 'navigation' as used in the first subparagraph of Article 8(1)(c) of Directive 92/81, as amended by Directive 94/74.*

(1) OJ C 10, 14.1.2006.

Judgment of the Court (Grand Chamber) of 13 March 2007 (reference for a preliminary ruling from the Högsta domstolen — Sweden) — Unibet (London) Ltd, Unibet (International) Ltd v Justitiekanslern

(Case C-432/05) (1)

(Principle of judicial protection — National legislation not providing for a self-standing action to challenge the compatibility of a national provision with Community law — Procedural autonomy — Principles of equivalence and effectiveness — Interim protection)

(2007/C 95/15)

Language of the case: Swedish

Referring court

Högsta domstolen

Parties to the main proceedings

Applicants: Unibet (London) Ltd, Unibet (International) Ltd

Defendant: Justitiekanslern

Re:

Reference for a preliminary ruling — Högsta domstolen — Interpretation of Article 49 EC — National legislation not providing for an action for a declaration that a legislative provision conflicts with higher-ranking legal rules — Right of individuals to effective judicial protection of rights which they derive from the Community legal order

Operative part of the judgment

1. *The principle of effective judicial protection of an individual's rights under Community law must be interpreted as meaning that it does not require the national legal order of a Member State to provide for a free-standing action for an examination of whether national*

provisions are compatible with Article 49 EC, provided that other effective legal remedies, which are no less favourable than those governing similar domestic actions, make it possible for such a question of compatibility to be determined as a preliminary issue, which is a task that falls to the national court.

2. *The principle of effective judicial protection of an individual's rights under Community law must be interpreted as requiring it to be possible in the legal order of a Member State for interim relief to be granted until the competent court has given a ruling on whether national provisions are compatible with Community law, where the grant of such relief is necessary to ensure the full effectiveness of the judgment to be given on the existence of such rights.*

3. *The principle of effective judicial protection of an individual's rights under Community law must be interpreted as meaning that, where the compatibility of national provisions with Community law is being challenged, the grant of any interim relief to suspend the application of such provisions until the competent court has given a ruling on whether those provisions are compatible with Community law is governed by the criteria laid down by the national law applicable before that court, provided that those criteria are no less favourable than those applying to similar domestic actions and do not render practically impossible or excessively difficult the interim judicial protection of those rights.*

([1]) OJ C 36, 11.2.2006.

Judgment of the Court (Second Chamber) of 8 March 2007 (reference for a preliminary ruling from the Cour administrative d'appel de Douai (France)) — Société Roquette Frères v Ministre de l'Agriculture, de l'Alimentation, de la Pêche et de la Ruralité

(Case C-441/05) ([1])

(Common organisation of the markets in the sugar sector — Isoglucose — Determination of the basic quantities used for the allocation of production quotas — Isoglucose produced as an intermediate product — Article 24(2) of Regulation (EEC) No 1785/81 — Article 27(3) of Regulation (EC) No 2038/1999 — Article 1 of Regulation (EC) No 2073/2000 — Article 11(2) of Regulation (EC) No 1260/2001 — Article 1 of Regulation (EC) No 1745/2002 — Article 1 of Regulation (EC) No 1739/2003 — Illegality of a Community measure raised before the national court — Reference for a preliminary ruling on validity — Admissibility — Conditions — Inadmissibility of an action for annulment of the Community measure)

(2007/C 95/16)

Language of the case: French

Referring court

Cour administrative d'appel de Douai

Parties to the main proceedings

Applicant: Société Roquette Frères

Defendant: Ministre de l'Agriculture, de l'Alimentation, de la Pêche et de la Ruralité

Re:

Reference for a preliminary ruling — Cour administrative d'appel de Douai — Validity of Article 24(2) of Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organisation of the markets in the sugar sector (OJ 1981 L 177, p. 4), Article 27(3) of Council Regulation (EC) No 2038/1999 of 13 September 1999 on the common organisation of the markets in the sugar sector (OJ 1999 L 252, p. 1), Article 1 of Commission Regulation (EC) No 2073/2000 of 29 September 2000 reducing, for the 2000/2001 marketing year, the guaranteed quantity under the production quotas scheme for the sugar sector and the presumed maximum supply needs of sugar refineries under the preferential import arrangements (OJ 2000 L 246, p. 38), Article 11(2) of Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector (OJ 2001 L 178, p. 1), Article 1 of Commission Regulation (EC) No 1745/2002 of 30 September 2002 reducing, for the 2002/2003 marketing year, the guaranteed quantity under the production quotas scheme for the sugar sector and the presumed maximum supply needs of sugar refineries under the preferential import arrangements (OJ 2002 L 263, p. 31) and Article 1 of Regulation (EC) No 1739/2003 of 30 September 2003 reducing, for the 2003/2004 marketing year, the guaranteed quantity under the production quotas for the sugar sector and the presumed maximum supply needs of sugar refineries under preferential imports (OJ 2003 L 249, p. 38) — Setting of basic quantities for the allocation of isoglucose production quotas without taking into account the isoglucose produced as an intermediate product

Operative part of the judgment

1. *A natural or legal person such as Roquette Frères, in factual and legal circumstances such as those of the main proceedings, could not undoubtedly have brought an admissible action on the basis of Article 230 EC to annul:*

   — *Article 24(2) of Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organisation of the markets in the sugar sector;*

   — *Article 27(3) of Council Regulation (EC) No 2038/1999 of 13 September 1999 on the common organisation of the markets in the sugar sector;*

   — *Article 1 of Commission Regulation (EC) No 2073/2000 of 29 September 2000 reducing, for the 2000/01 marketing year, the guaranteed quantity under the production quotas*

scheme for the sugar sector and the presumed maximum supply needs of sugar refineries under the preferential import arrangements;

— *Article 11(2) of Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector;*

— *Article 1 of Commission Regulation (EC) No 1745/2002 of 30 September 2002 reducing, for the 2002/03 marketing year, the guaranteed quantity under the production quotas scheme for the sugar sector and the presumed maximum supply needs of sugar refineries under the preferential import arrangements, and*

— *Article 1 of Commission Regulation (EC) No 1739/2003 of 30 September 2003 reducing, for the 2003/04 marketing year, the guaranteed quantity under the production quotas for the sugar sector and the presumed maximum supply needs of sugar refineries under preferential imports.*

Therefore, such a person may, in proceedings brought under national law, plead the illegality of those provisions even though it has not brought an action for annulment of those provisions before the Community Courts within the time-limit laid down in Article 230 EC.

2. *The examination of the second question has not revealed any factor such as to affect the validity of Article 24(2) of Regulation No 1785/81, Article 27(3) of Regulation No 2038/1999, Article 1 of Regulation No 2073/2000, Article 11(2) of Regulation No 1260/2001, Article 1 of Regulation No 1745/2002 or Article 1 of Regulation No 1739/2003.*

([1]) OJ C 36, 11.2.2006.

Judgment of the Court (Fourth Chamber) of 8 March 2007 (reference for a preliminary ruling from the Cour d'appel de Paris — France) — Thomson Multimedia Sales Europe (C-447/05), Vestel France (C-448/05) v Administration des douanes et droits indirects

(Joined Cases C-447/05 and C-448/05) ([1])

(Community Customs Code — Implementing measures — Regulation (EEC) No 2454/93 — Annex 11 — Non-preferential origin of goods — Television receivers — Concept of substantial processing or working — Criterion of added value — Validity)

(2007/C 95/17)

Language of the cases: French

Referring court

Cour d'appel de Paris

Parties to the main proceedings

Applicants: Thomson Multimedia Sales Europe (C-447/05), Vestel France (C-448/05)

Defendant: Administration des douanes et droits indirects

Re:

Preliminary ruling — Cour d'appel de Paris — Validity of Annex 11 to 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 1993 L 253, p. 1) — Criteria for determining the non-preferential origin of goods — Television manufactured in Poland but the cathode ray tube of which, representing 42.43 % of the value of the apparatus, originates in Korea

Operative part of the judgment

Consideration of the questions raised has disclosed nothing capable of affecting the validity of the provisions in column three, under heading 8528 of the Combined Nomenclature, set out in Annex 11 to 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.

([1]) OJ C 48, 25.2.2006.

Judgment of the Court (Fifth Chamber) of 8 March 2007 (reference for a preliminary ruling from the Finanzgericht des Landes Brandenburg — Germany) — Gerlach & Co. mbH v Hauptzollamt Frankfurt (Oder)

(Case C-44/06) ([1])

(Customs union — Community transit — Proof of the regularity of a transit operation or of the place of the offence — Three-month period — Period granted subsequent to the decision to recover the import duties)

(2007/C 95/18)

Language of the case: German

Referring court

Finanzgericht des Landes Brandenburg

Parties to the main proceedings

Applicant: Gerlach & Co. mbH

Defendant: Hauptzollamt Frankfurt (Oder)

Re:

Preliminary ruling –Interpretation of Article 11a(2) of Commission Regulation (EEC) No 1062/87 of 27 March 1987 on provisions for the implementation of the Community transit procedure and for certain simplifications of that procedure (OJ 1987 L 107, p. 1), as amended by Commission Regulation (EEC) No 1429/90 of 29 May 1990 (OJ 1990 L 137, p. 21) — Offence or irregularity committed in the course of an external Community transit operation (T1) — Period for provision of proof as to the place in which the offence or irregularity was committed indicated only after the decision to recover duty had been taken and in the course of complaint proceedings

Operative part of the judgment

Article 11a(2) of Commission Regulation (EEC) No 1062/87 of 27 March 1987 on provisions for the implementation of the Community transit procedure and for certain simplifications of that procedure, as amended by Commission Regulation (EEC) No 1429/90 of 29 May 1990, must be interpreted as meaning that the Member State to which the office of departure belongs cannot grant to the principal the three-month period to enable it to provide proof of the regularity of the transit operation or proof of the place where the offence or irregularity was actually committed after the decision has been taken to proceed to recovery of the import duties, during the proceedings relating to a complaint lodged against that decision.

([1]) OJ C 86, 8.4.2006.

Judgment of the Court (Fifth Chamber) of 8 March 2007 (reference for a preliminary ruling from the Finanzgericht des Landes Brandenburg (Germany)) — Campina GmbH & Co., formerly TUFFI Campina emzett GmbH v Hauptzollamt Frankfurt (Oder)

(Case C-45/06) ([1])

(Milk and milk products — Additional levy — Slight delay in observing the time-limit for communication of the summary of statements — Financial penalty — Regulation (EEC) No 536/93 as amended by Regulation (EC) No 1001/98 — Article 3(2), second subparagraph — Regulation (EC) No 1392/2001 — Article 5(3) — Regulation (EC, Euratom) No 2988/95 — Article 2(2), second sentence — Principle of retroactive application of the less severe penalty)

(2007/C 95/19)

Language of the case: German

Referring court

Finanzgericht des Landes Brandenburg

Parties to the main proceedings

Applicant: Campina GmbH & Co., formerly TUFFI Campina emzett GmbH

Defendant: Hauptzollamt Frankfurt (Oder)

Re:

Reference for a preliminary ruling — Finanzgericht des Landes Brandenburg — Validity of the second subparagraph of Article 3(2) of Commission Regulation (EEC) No 536/93 of 9 March 1993 laying down detailed rules on the application of the additional levy on milk and milk products (OJ 1993 L 57, p. 12), as amended by Regulation 1001/98 (OJ 1998 L 142, p. 22) — Penalty for failure to comply with the time-limit for the annual submission of the statements of the individual producers — Slight delay in observing the time-limit — Principle of proportionality

Operative part of the judgment

The principle of retroactive application of the more lenient penalty must be respected by national courts when they have to penalise practices which do not comply with rules laid down by Community legislation.

In the case of a slight delay in observing the deadline such as that at issue in the main proceedings, the system of financial penalties provided for by Article 5(3) of Commission Regulation (EC) No 1392/2001 of 9 July 2001 laying down detailed rules for applying Council Regulation (EEC) No 3950/92 establishing an additional levy on milk and milk products is less severe than that provided for by the first indent of the second subparagraph of Article 3(2) of Commission Regulation (EEC) No 536/93 of 9 March 1993 laying down detailed rules on the application of the additional levy on milk and milk products, as amended by Commission Regulation (EC) No 1001/98 of 13 May 1998.

([1]) OJ C 154, 1.7.2006.

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

(Case C-139/06) ([1])

(Failure of a Member State to fulfil obligations — Directives 2002/96/EC and 2003/108/EC — Waste — Electrical and electronic equipment)

(2007/C 95/20)

Language of the case: English

Parties

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

Defendant: United Kingdom of Great Britain and Northern Ireland (represented by: V. Jackson, Agent)

Re:

Failure of a Member State to fulfil obligations — Failure to adopt within the prescribed period all measures necessary to comply with Directives 2002/96/EC of the European Parliament and of the Council of 27 January 2003 on waste electrical and electronic equipment (WEEE) (OJ 2003 L 137, p. 24) and 2003/108/EC of the European Parliament and of the Council of 8 December 2003 amending Directive 2002/96/EC (OJ 2003 L 345, p. 106)

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with:*

   — *Directive 2002/96/EC of the European Parliament and of the Council of 27 January 2003 on waste electrical and electronic equipment (WEEE), and*

   — *Directive 2003/108/EC of the European Parliament and of the Council of 8 December 2003 amending Directive 2002/96,*

   the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under those Directives;

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

([1]) OJ C 108 of 6.5.2006.

Judgment of the Court (Seventh Chamber) of 8 March 2007 — Commission of the European Communities v Italian Republic

(Case C-160/06) ([1])

(Failure of a Member State to fulfil its obligations — Directive 2003/51/EC — Company law — Annual accounts of certain types of companies — Failure to transpose within the prescribed period)

(2007/C 95/21)

Language of the case: Italian

Parties

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

Defendant: Italian Republic (represented by: I. Braguglia, Agent, P. Gentili, avvocato)

Re:

Failure of a Member State to fulfil its obligations — Failure to adopt, within the prescribed period, all the provisions necessary to comply with Directive 2003/51/EC of the European Parliament and of the Council of 18 June 2003 amending Directives 78/660/EEC, 83/349/EEC, 86/635/EEC and 91/674/EEC on the annual and consolidated accounts of certain types of companies, banks and other financial institutions and insurance undertakings (OJ 2003 L 178, p. 16)

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2003/51/EC of the European Parliament and of the Council of 18 June 2003 amending Directives 78/660/EEC, 83/349/EEC, 86/635/EEC and 91/674/EEC on the annual and consolidated accounts of certain types of companies, banks and other financial institutions and insurance undertakings, the Italian Republic has failed to fulfil its obligations under that directive;*

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

([1]) OJ C 131, 3.6.2006.

Judgment of the Court (Seventh Chamber) of 15 March 2007 — T.I.M.E. ART Uluslararasi Saat Ticareti ve diş Ticaret AŞ v Office for Harmonisation in the Internal Market (Trade Marks and Designs), Devinlec Développement Innovation Leclerc SA

(Case C-171/06 P) ([1])

(Appeal — Community trade mark — Regulation (EC) No 40/94 — Article 8(1)(b) — Figurative mark — Opposition by the proprietor of an earlier national trade mark — Likelihood of confusion)

(2007/C 95/22)

Language of the case: English

Parties

Appellant: T.I.M.E. ART Uluslararasi Saat Ticareti ve diş Ticaret AŞ (represented by: M. Francetti and F. Jacobacci, avvocati)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: A. Folliard Monguiral and J. Novais Gonçalves, Agents), Devinlec Développement Innovation Leclerc SA (represented by: J.-P. Simon, avocet)

Re:

Appeal against the judgment of the Court of First Instance (Fourth Chamber, Extended Composition) of 12 January 2005 in Case T-147/03 *Devinlec Développement Innovation Leclerc SA* v *Office for Harmonisation in the Internal Market (Trade Marks and Designs)(OHIM)* annulling, upon application by the proprietor of the national figurative mark QUANTIEME for goods in Classes 14 and 18, Decision R 109/2002-3 of the Third Board of Appeal of OHIM of 30 January 2003 which annulled the decision of the Opposition Division refusing registration of the figurative Community trade mark QUANTUM for goods in Class 14

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders T.I.M.E. ART Uluslararasi Saat Ticareti ve diş Ticaret AŞ to pay the costs.*

([1]) OJ C 121, 20.5.2006.

Judgment of the Court (Sixth Chamber) of 18 January 2007 — Commission of the European Communities v Czech Republic

(Case C-203/06) ([1])

(Failure of a Member State to fulfil obligations — Directive 93/16/EEC — Doctors — Mutual recognition of diplomas, certificates and other evidence of formal qualifications — Failure to transpose within the prescribed period)

(2007/C 95/23)

Language of the case: Czech

Parties

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

Defendant: Czech Republic (represented by: T. Boček, Agent)

Re:

Failure of a Member State to fulfil obligations — Failure to have transposed, within the prescribed period, Council Directive 93/16/EEC of 5 April 1993 to facilitate the free movement of doctors and the mutual recognition of their diplomas, certificates and other evidence of formal qualifications (OJ 1993 L 165, p. 1)

Operative part of the judgment

The Court:

1) *Declares that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Council Directive 93/16/EEC of 5 April 1993 to facilitate the free movement of doctors and the mutual recognition of their diplomas, certificates and other evidence of formal qualifications, the Czech Republic has failed to fulfil its obligations under Article 44 of that directive;*

2) *Orders the Czech Republic to pay the costs.*

([1]) OJ C 143, 17.6.2006.

Judgment of the Court (Eighth Chamber) of 1 March 2007 — Commission of the European Communities v Italian Republic

(Case C-327/06) ([1])

(Failure of a Member State to fulfil its obligations — Directive 2002/14/EC — Establishment of a general framework for informing and consulting employees in the European Community — Failure to transpose within the period prescribed)

(2007/C 95/24)

Language of the case: Italian

Parties

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

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

Re:

Failure of a Member State to fulfil its obligations — Failure to take all the measures necessary, within the period prescribed, to comply with Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community — Joint Declaration of the European Parliament and of the Council and the Commission on the representation of workers (OJ 2002 L 80, p. 29).

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community, within the period prescribed, the Italian Republic has failed to fulfil its obligations under that directive.*

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

([1]) OJ C 224 of 16.9.2006.

Order of the Court (Sixth Chamber) of 8 February 2007 — Landtag Schleswig-Holstein v Commission of the European Communities

(Case C-406/06) ([1])

(Action of annulment — Court of Justice having no jurisdiction — Referral to Court of First Instance)

(2007/C 95/25)

Language of the case: German

Parties

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

Defendant: Commission of the European Communities

Re:

Annulment of Commission decisions of 10 March 2006 and 23 June 2006 refusing to grant the applicant access to the document SEC(2005) 420, of 22 March 2005, containing a legal analysis relating to a draft framework decision, under discussion in the Council, on the retention of data processed and stored in connection with the provision of publicly available electronic communication services or data transmitted on public communications networks, for the purposes of prevention, investigation, detection and prosecution of crime and criminal offences, including terrorism (Council document 8958/04 CRIMORG 36 TELECOM 82)

Operative part of the order

(1) *Case C-406/06 Landtag Schleswig-Holstein v Commission is referred to the Court of First Instance of the European Communities.*

(2) *The costs are reserved.*

([1]) OJ C 294, 2.12.2006, p. 33.

Appeal brought on 22 January 2007 by Wineke Neirinck against the judgment of the Court of First Instance (Second Chamber) delivered on 14 November 2006 in Case T-494/04 Neirinck v Commission

(Case C-17/07 P)

(2007/C 95/26)

Language of the case: French

Parties

Appellant: Wineke Neirinck (represented by: G. Vandersanden, L. Levi, avocats)

Other party to the proceedings: Commission of the European Communities (represented by: J. Curall, D. Martin, acting as Agents)

Form of order sought

— Set aside the judgment of the Court of First Instance of 14 November 2006 in Case T-494/04;

— accordingly, uphold the applicant's claims at first instance and, thus,

  — annul the decision of which the applicant became aware at the meeting of Unit OIB.1 (Office for Infrastructures and Logistics in Brussels — implementation of building policy) of 4 March 2004 that another candidate had been selected for the post of lawyer in the building policy sector within the OIB to which the applicant had applied (decision to recruit Mr D. S. as an auxiliary member of staff and decision not to appoint the applicant as an auxiliary member of staff);

  — annul the decision of 9 March 2004 informing the applicant that her application had been rejected;

  — annul the subsequent decision of 27 April 2004 informing the applicant that she had not passed the oral test of the recruitment procedure for contractual agents and annul the decision of that date to recruit Mr D. S.;

— in any event, award EUR 30 000 by way of compensation for material and non-material damage and harm suffered by the applicant, that amount being assessed on equitable principles on a provisional basis;

— order the defendant to pay the entire costs incurred at first instance and on appeal.

Pleas in law and main arguments

The applicant raises six pleas in support of her appeal.

By her first plea in law, she submits, first of all, that the Court of First Instance, by declaring the first head of claim for annulment inadmissible, disregarded the conditions of admissibility of an appeal based on Article 236 EC and Articles 90 and 91 of the Staff Regulations and, in particular, the concept of a legal interest in bringing proceedings. The decision to recruit Mr D. S. as an auxiliary member of staff by 1 May 2004 in fact had the effect, first, of increasing the number of candidates for the selection procedure for contractual agents for the position occupied by the applicant, and, secondly, of making it impossible to give the applicant a contract as a temporary member of staff, which clearly highlighted the interest which she had in securing annulment of that decision.

By her second plea, the applicant argues that the Court did not fulfil its general duty to state reasons by considering that the information contained in the decision of 27 April 2004 could be regarded as constituting a statement of reasons of some kind and that the supplementary information provided in the course of the proceedings compensated for the initial inadequacy of the statement of reasons. First, the decision of 27 April 2004 did not contain any reasons as to the particular situation of the applicant and did not set out any specific circumstances or facts known to the applicant such as to enable her to ascertain the scope of the decision. Secondly, such a lack of reasons cannot be covered by explanations provided by the competent authority after the appeal was lodged on pain of infringing the rights of the defence and the principal of equal treatment of the parties before the Community judicature.

By her third plea, the applicant asserts that the Court distorted the evidence by concluding, in paragraph 105 of the judgment under appeal, that the selection procedure was not based on a comparative examination of the candidates' merits. That conclusion is in fact contradicted both by the defendant's written pleadings and by other passages in the judgment under appeal in which the Court itself makes explicit reference to a comparative examination — within that recruitment procedure — of the candidates' merits.

By her fourth plea, the applicant submits that the Court also distorted the evidence and disregarded the concept of abuse of process by holding that the evidence put forward by the applicant did not enable an abuse of process or infringement of the interest of the service to be established. All the factors put forward by the applicant constitute, on the contrary, both consistent and relevant evidence of an abuse of process since, although two distinct sets of proceedings were brought by the defendant, the duties which they sought to appeal were the same, which reflects the desire of the defendant to give advantage to Mr D. S. in taking up the duties of the applicant after 30 April 2004.

By her fifth plea, the applicant argues that the Court disregarded the concepts of the interest of the service and manifest error of assessment by holding that the selection procedure for contractual agents had not been infringed and by refusing, as a result, to review the assessment made by the selection committee of the applicant's oral examination.

By her six plea, the applicant alleges, finally, breach by the Court of the principles of due care and sound administration.

Reference for a preliminary ruling from the Diikitiko Efetio Athinon (Greece) lodged on 5 February 2007 — Motosikletistiki Omospondia Ellados (MOT.O.E) v Elliniko Dimosio

(Case C-49/07)

(2007/C 95/27)

Language of the case: Greek

Referring court

Diikitiko Efetio Athinon

Parties to the main proceedings

Applicant: Motosikletistiki Omospondia Ellados (MOT.O.E)

Respondent: Elliniko Dimosio (Greek State)

Questions referred

1. Can Articles 82 and 86 of the EC Treaty be interpreted so as also to include within their scope the activity of a legal person which has the status of national representative of the Fédération Internationale de Motocyclisme (the International Motorcycling Federation) and engages in economic activity as described above by entering into sponsorship, advertising and insurance contracts, in the context of the organisation of motor sport events by it?

2. Should the answer be in the affirmative, is Article 49 of Law 2696/1999, which, in relation to issue by the competent national public authority (in the present case, the Ministry for Public Order) of permission to organise a motor-vehicle competition, gives the foregoing legal person the power to provide a concurring opinion as to the holding of the competition without that power being made subject to restrictions, obligations and review, compatible with those provisions of the Treaty?

Reference for a preliminary ruling from the Marknadsdomstolen (Sweden) lodged on 6 February 2007 — Kanal 5 Limited and TV 4 Aktiebolag v Föreningen Svenska Tonsättares Internationella Musikbyrå (STIM)

(Case C-52/07)

(2007/C 95/28)

Language of the case: Swedish

Referring court

Marknadsdomstolen

Parties to the main proceedings

Applicants: Kanal 5 Limited and TV 4 Aktiebolag

Defendant: Föreningen Svenska Tonsättares Internationella Musikbyrå (STIM)

Questions referred

A. Is Article 82 EC to be interpreted as meaning that a practice constitutes abuse of a dominant position where a copyright management organisation which has a de facto monopoly position in a Member State applies to or imposes in respect of commercial television channels a remuneration model for the right to make available music in television broadcasts directed at the general public which involves the remuneration being calculated as a proportion of the television channels' revenue from such television broadcasts directed at the general public?

B. Is Article 82 EC to be interpreted as meaning that a practice constitutes abuse of a dominant position where a copyright management organisation which has a de facto monopoly position in a Member State applies to or imposes in respect of commercial television channels a remuneration model for the right to make available music in television broadcasts directed at the general public which involves the remuneration being calculated as a proportion of the television channels' revenue from such television broadcasts directed at the general public, where there is no clear link between the revenue and what the copyright management organisation makes available, that is, authorisation to perform copyright-protected music, as is often the case with, for example, news and sports broadcasts and where revenue increases as a result of development of programme charts, investments in technology and customised solutions?

C. Is the answer to Question A or B affected by the fact that it is possible to identify and quantify both the music performed and viewing?

D. Is the answer to Question A or B affected by the fact that the remuneration model (revenue model) is not applied in a similar manner in respect of a public service company?

Reference for a preliminary ruling from the Landesgericht Bolzano (Italy) lodged on 1 February 2007 — Othmar Michaeler and Subito GmbH v Labour Inspectorate of the Autonomous Province of Bolzano (now the employment protection office) and the Autonomous Province of Bolzano

(Case C-55/07)

(2007/C 95/29)

Language of the case: German

Referring court

Landesgericht Bolzano

Parties to the main proceedings

Applicant: Othmar Michaeler and Subito GmbH

Defendant: Labour Inspectorate of the Autonomous Province of Bolzano (now the employment protection office) and the Autonomous Province of Bolzano

Question referred

Are national provisions (Articles 2 and 8 of Decree-Law No 61/2000) which impose an obligation on employers to send a copy of part-time employment contracts within 30 days of their conclusion to the competent provincial department of the Labour Inspectorate, which imposes a fine of EUR 15 per employee concerned and per day of delay for failure to do so, and which do not set an upper limit for the administrative fine, compatible with Community law provisions and Directive 97/81/EC of 15 December 1997 ([1])?

([1]) OJ 1998 L 14, p. 9.

Reference for a preliminary ruling from the Landesgericht Bozen (Italy) lodged on 1 February 2007 — Ruth Volgger, Othmar Michaeler and Subito GmbH v Labour Inspectorate of the Autonomous Province of Bolzano (now the employment protection office) and Autonomous Province of Bolzano

(Case C-56/07)

(2007/C 95/30)

Language of the case: German

Referring court

Landesgericht Bozen

Parties to the main proceedings

Applicants: Ruth Volgger, Othmar Michaeler and Subito GmbH

Defendants: Labour Inspectorate of the Autonomous Province of Bolzano (now the employment protection office) and Autonomous Province of Bolzano

Question referred

Are national provisions (Articles 2 and 8 of Decree-Law No 61/2000) which impose an obligation on employers to send a copy of part-time employment contracts within 30 days of their conclusion to the competent provincial department of the Labour Inspectorate, which imposes a fine of EUR 15 per employee concerned and per day of delay for failure to do so, and which do not set an upper limit for the administrative fine, compatible with Community law provisions and Directive 97/81/EC of 15 December 1997 ([1])?

([1]) OJ 1998 L 14, p. 9.

Action brought on 7 February 2007 — Commission of the European Communities v Grand-Duchy of Luxembourg

(Case C-57/07)

(2007/C 95/31)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: M. Condou-Durande, Agent)

Defendant: Grand-Duchy of Luxembourg

Form of order sought

— declare that, by failing to adopt the laws, regulations and 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 the Commission of such measures, the Grand-Duchy of Luxembourg has failed to fulfil its obligations under that directive;

— order the Grand-Duchy of Luxembourg to pay the costs.

Pleas in law and main arguments

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

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

Action brought on 8 February 2007 — Commission of the European Communities v Grand-Duchy of Luxembourg

(Case C-61/07)

(2007/C 95/32)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: U. Wölker and J.-B. Laignelot, Agents)

Defendant: Grand-Duchy of Luxembourg

Form of order sought

— declare that, by failing to send the report containing the information required under Article 3(2) of Decision No 280/2004/EC of the European Parliament and of the Council of 11 February 2004 concerning a mechanism for monitoring Community greenhouse gas emissions and for implementing the Kyoto Protocol ([1]), the Grand-Duchy of Luxembourg has failed to fulfil its obligations under that article;

— order the Grand-Duchy of Luxembourg to pay the costs.

Pleas in law and main arguments

The Grand-Duchy of Luxembourg failed to communicate to the Commission by 15 March 2005 the report containing the information required under Article 3(2) of Decision No 280/2004 on, firstly, national policies and measures which limit and/or reduce greenhouse gas emissions by sources or enhance removals by sinks, presented on a sectoral basis for each greenhouse gas and, secondly, national projections of greenhouse gas emissions by sources and their removal by sinks as a minimum for the years 2005, 2010, 2015 and 2020, organised by gas and by sector.

([1]) OJ 2004 L 49, p. 1.

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

(Case C-67/07)

(2007/C 95/33)

Language of the case: French

Parties

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

Defendant: French Republic

Form of order sought

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2004/24/EC of the European Parliament and of the Council of 31 March 2004 amending, as regards traditional herbal medicinal products, Directive 2001/83/EC on the Community code relating to medicinal products for human use ([1]), the French Republic has failed to fulfil its obligations under Article 2 of that directive;

in the alternative:

declare that, by failing to communicate to the Commission the laws, regulations and administrative provisions necessary to comply with Directive 2004/24/EC of the European Parliament and of the Council of 31 March 2004 amending, as regards traditional herbal medicinal products, Directive 2001/83/EC on the Community code relating to medicinal products for human use, the French Republic has failed to fulfil its obligations under Article 2 of that directive;

— order the French Republic to pay the costs.

Pleas in law and main arguments

The period for transposing Directive 2004/24/EC expired on 30 October 2005.

([1]) OJ 2004 L 136, p. 85.

Reference for a preliminary ruling from the Korkein hallinto-oikeus (Finland) lodged on 12 February 2007 — Tietosuojavaltuutettu

(Case C-73/07)

(2007/C 95/34)

Language of the case: Finnish

Referring court

Korkein hallinto-oikeus

Parties to the main proceedings

Appellant: Tietosuojavaltuutettu

Other parties: Satakunnan Markkinapörssi Oy and Satamedia Oy

Questions referred

1. Is an operation in which data on the earned income, income from capital and the wealth of natural persons are

   a) collected from documents in the public domain held by the tax authorities and processed for publication,

   b) published alphabetically in a printed publication by income bracket and municipality in the form of extensive lists,

c) disclosed onward on CD-ROM to be used for commercial purposes, and

d) processed for the purposes of a text messaging service whereby mobile phone users can, by indicating an individual's name and home municipality and texting to a given number, receive in reply data on the earned income, income from capital and wealth of the individual indicated, to be regarded as the processing of personal data within the meaning of Article 3(1) of Directive 95/46/EC ([1])?

2. Is Directive 95/46/EC to be interpreted as meaning that the various operations listed in Question 1(a) to (d) can be regarded as the processing of personal data carried out solely for journalistic purposes within the meaning of Article 9 of the Directive, having regard to the fact that data on over one million taxpayers has been collected from data which are in the public domain under national legislation on the right of public access? Does the fact that publication of those data is the principal aim of the operation have any bearing on the assessment in this case?

3. Is Article 17 of Directive 95/46/EC to be interpreted in conjunction with the principles and purpose of the Directive as precluding the publication of data collected for journalistic purposes and its onward disclosure for commercial purposes?

4. Can Directive 95/46/EC be interpreted as meaning that personal data files containing, solely and in unaltered form, material that has been published in the media fall altogether outside its scope?

([1]) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ 1995 L 281, p. 31.

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

(Case C-75/07)

(2007/C 95/35)

Language of the case: French

Parties

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

Defendant: French Republic

Form of order sought

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2004/28/EC of the European Parliament and of the Council of 31 March 2004 amending Directive 2001/82/EC on the Community code relating to veterinary medicinal products ([1]), the French Republic has failed to fulfil its obligations under Article 3 of that directive;

in the alternative:

declare that, by failing to communicate to the Commission the laws, regulations and administrative provisions necessary to comply with Directive 2004/28/EC of the European Parliament and of the Council of 31 March 2004 amending Directive 2001/82/EC on the Community code relating to veterinary medicinal products, the French Republic has failed to fulfil its obligations under Article 3 of that directive;

— order the French Republic to pay the costs.

Pleas in law and main arguments

The period for transposing Directive 2004/28/EC expired on 30 October 2005.

([1]) OJ 2004 L 136, p. 58.

Action brought on 12 February 2007 — Commission of the European Communities v Grand-Duchy of Luxembourg

(Case C-76/07)

(2007/C 95/36)

Language of the case: French

Parties

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

Defendant: Grand-Duchy of Luxembourg

Form of order sought

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Commission Directive 2005/28/EC of 8 April 2005 laying down principles and detailed guidelines for good clinical practice as regards investigational medicinal products for human use, as well as the requirements for authorisation of the manufacturing or importation of such products ([1]), the Grand-Duchy of Luxembourg has failed to fulfil its obligations under Article 31 of that directive;

in the alternative:

declare that by failing to communicate to the Commission the laws, regulations and administrative provisions necessary to comply with Commission Directive 2005/28/EC of 8 April 2005 laying down principles and detailed guidelines for good clinical practice as regards investigational medicinal products for human use, as well as the requirements for authorisation of the manufacturing or importation of such products, the Grand-Duchy of Luxembourg has failed to fulfil its obligations under Article 31 of that directive;

— order the Grand-Duchy of Luxembourg to pay the costs.

Pleas in law and main arguments

The period for transposing Directive 2005/28/EC expired on 29 January 2006.

([1]) OJ 2005 L 91, p. 13.

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

(Case C-84/07)

(2007/C 95/37)

Language of the case: Greek

Parties

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

Defendant: Hellenic Republic

Form of order sought

The applicant claims that the Court should:

— declare that, by the acts specified hereunder, the Hellenic Republic has failed to fulfil its obligations under Articles 3, 4(1)(b) and 12 of Council Directive 92/51/EEC of 18 June 1992 on a second general system for the recognition of professional education and training to supplement Directive 89/48/EEC ([1]);

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

According to the Commission, the Hellenic Republic refuses to consider and to recognise certain optical diplomas issued by an Italian educational establishment on the basis of a franchise agreement concluded with a Greek educational establishment.

The Commission states that the basic issue that the Greek authorities can determine is whether or not the diploma gives access to the profession concerned and that the question whether or not the diploma in question has been issued on the basis of a franchise agreement is not relevant for the purposes of its recognition by the Greek authorities. Directive 92/51 makes no such distinction. The Commission also states that the present dispute does not concern Articles 149 and 150 EC, or Article 16 of the Greek Constitution, in that the diplomas have been lawfully issued by Italian educational establishments, not by Greek establishments with which the former have concluded franchise agreements for the award of qualifications.

On those grounds, the refusal of the Greek authorities to consider and to recognise those Italian diplomas constitutes an infringement of Articles 3 and 12 of Directive 92/51. Furthermore, in the Commission's submission, and as is clear from substantiated complaints, the Greek authorities required the complainants who applied for recognition of the optical diploma obtained in Italy to undergo a conversion course. The Commission maintains that such a course infringes Article 4(1)(b) of Directive 92/51, pursuant to which the Greek authorities must allow foreign applicants to choose between the conversion course and an aptitude test.

([1]) OJ L 209, 24.7.1992, p. 25.

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

(Case C-85/07)

(2007/C 95/38)

Language of the case: Italian

Parties

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

Defendant: Italian Republic

Forms of order sought

The applicant claims that the Court should:

— declare that, in respect of the pilot river basin district of the River Serchio and the river basin districts of the Eastern Alps and the Northern, Central and Southern Appennines, the Italian Republic has failed to fulfil its obligations under Articles 5(1) and 15(2) of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy ([1]), in so far as it has failed:

  — to submit summary reports of the analyses required under Article 5, as provided for in Article 15(2) of Directive 2000/60/EC, and

  — to undertake the analyses and the review provided for in Article 5(1) of that Directive;

— order the Italian Republic to pay the costs.

Pleas in law and main arguments

Directive 2000/60/EC was received into Italian law by means of Legislative Decree No 152 of 3 April 2006. Article 64 of that Decree identifies eight river basin districts, namely, the river basin district of the Eastern Alps, the river basin district of the Po Valley, the river basin district of the Northern Appennines, the pilot river basin district of the River Serchio, the river basin district of the Central Appennines, the river basin district of the Southern Appennines, the river basin district of Sardinia and the river basin district of Sicily.

The Directive entered into force on 22 December 2000. In consequence, the analyses and the review provided for in Article 5(1) of the Directive should have been completed, in respect of all eight river basin districts, by 22 December 2004.

In addition, the summary report of the analyses required under Article 5 for every river basin district, provided for in Article 15 (2) of the Directive, should have been submitted to the Commission by 22 March 2005.

However, it is clear from an analysis of the communications from the Italian authorities that, in the case of five out of the eight river basin districts, the required information is either incomplete or missing altogether.

The Italian Republic has not submitted a summary report concerning the analyses and the review required under Article 5 for the pilot river basin district of the River Serchio or for the river basin districts of the Eastern Alps, the Northern Appennines, the Central Appennines and the Southern Appennines. Accordingly, the Italian Republic has failed to fulfil its obligations under Article 15(2) of Directive 2000/60/EC.

Lastly, in the absence of evidence to the contrary, the Commission submits that the Italian Republic has also failed to fulfil its obligation to undertake, by the deadline fixed, the analyses and the review required under Article 5(1) of Directive 2000/60/EC, in accordance with the technical specifications set out in Annexes II and III to that Directive, in respect of the river basin districts referred to in the preceding paragraph.

([1]) OJ L 327, 22.12.2000, p. 1.

Action brought on 15 February 2007 — Commission of the European Communities v Kingdom of Spain

(Case C-88/07)

(2007/C 95/39)

Language of the case: Spanish

Parties

Applicant: Commission of the European Communities (represented by: S. Pardo Quintillán and A. Alcover San Pedro, Agents)

Defendant: Kingdom of Spain

Form of order sought

— Declare that,

  — by withdrawing from the market a significant number of products based on vegetable matter, lawfully produced and/or marketed in another Member State, under an administrative practice consisting in withdrawing from the market any product containing vegetable matter not included in the annex to the Ministerial Order of 3 October 1873 on the ground that it is regarded as a medicinal product marketed without the requisite authorisation,

  — and also by not having communicated that measure to the Commission,

  the Kingdom of Spain has failed to fulfil its obligations under Articles 28 EC and 30 EC and also Articles 1 and 4 of Decision No 3052/95/EC ([1]);

— order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

The Commission maintains that by withdrawing from the market products manufactured on the basis of bananas, lawfully produced or marketed in other Member States, under an administrative practice which characterises as a medicinal product (and as such subject to the requisite authorisation) any product containing vegetable matter not included in the annex to the Ministerial Order of 3 October 1973, and by not having notified to the Commission the measures taken to withdraw the products concerned from the market within 45 days of the date on which such measures were taken, the Kingdom of Spain has failed to fulfil its obligations under Articles 28 and 30 of the Treaty and Articles 1 and 4 of Decision No 3052/95/EC.

([1]) Decision No 3052/95/EC of the European Parliament and of the Council of 13 December 1995 establishing a procedure for the exchange of information on national measures derogating from the principle of the free movement of goods within the Community (OJ 1995 L 321, p. 1).

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

(Case C-89/07)

(2007/C 95/40)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: G. Rozet, Agent)

Defendant: French Republic

Form of order sought

— Declare that by maintaining in force in its national law a requirement of French nationality for the pursuit of employment as master (captain) or officer (chief mate) on all vessels flying the French flag, the French Republic has failed to fulfil its obligations under Article 39 EC;

— order the French Republic to pay the costs.

Pleas in law and main arguments

In so far as it imposes a requirement of French nationality for the pursuit of employment as master (captain) or officer (chief mate) on all vessels flying the French flag, French legislation conflicts with the provisions of Community law relating to freedom of movement for workers, as interpreted by the Court of Justice in its judgments of 30 September 2003 in Case C-405/01 *Colegio de Oficiales de la Marina Mercante Española* [2003] ECR I-10391 and in Case C-47/02 *Anker and Others* [2003] ECR I-10447. Such a nationality requirement can be imposed only in respect of the posts of master and chief mate actually involving the exercise of rights conferred by public law on a regular basis.

Action brought on 16 February 2007 — Commission of the European Communities v Kingdom of Belgium

(Case C-90/07)

(2007/C 95/41)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: M. Konstantinidis and J.-B. Laignelot, Agents)

Defendant: Kingdom of Belgium

Form of order sought

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2004/12/EC of the European Parliament and of the Council of 11 February 2004 amending Directive 94/62/EC on packaging and packaging waste ([1]), or in any event by failing to communicate them to the Commission, the Kingdom of Belgium has failed to fulfil its obligations under that directive;

— order the Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

The period for the transposition of Directive 2004/12/EC expired on 18 August 2005.

([1]) OJ 2004 L 47, p. 26.

Action brought on 16 February 2007 — Commission of the European Communities v Kingdom of the Netherlands

(Case C-92/07)

(2007/C 95/42)

Language of the case: Dutch

Parties

Applicant: Commission of the European Communities (represented by: P.J. Kuijper and S. Boelaert, Agents)

Defendant: Kingdom of the Netherlands

Form of order sought

— declare that, by introducing and maintaining a system of administrative fees for the issue of residence permits which are higher than those imposed on nationals of Member States and nationals of Norway, Iceland, Liechtenstein and Switzerland for the issue of an equivalent document, and by applying that system to Turkish nationals who have a right of residence in the Netherlands on the basis of the Association Agreement ([1]), the Additional Protocol ([2]) or Decision No 1/80 ([3]), the Kingdom of the Netherlands has failed to fulfil its obligations under the Association Agreement, in particular Article 9, the Additional Protocol, in particular Article 41, and Decision No 1/80, in particular Articles 10 (1) and 13;

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

Pleas in law and main arguments

The Commission finds that the rates of administrative fees for residence permits which the Netherlands have imposed since 1994 on Turkish nationals are at variance with the standstill and non-discrimination provisions of the Association Agreement, the Additional Protocol and Decision No 1/80.

Under the standstill provisions of the Additional Protocol and Decision No 1/80, a Member State is not entitled to introduce any new measure having the purpose or effect of making the rights which Turkish nationals derive from the Association Agreement, the Additional Protocol and Decision No 1/80, and the right of residence closely connected thereto, subject to more stringent conditions. In the Commission's view, the Netherlands administrative fees in question infringe those standstill provisions inasmuch as they were introduced after the standstill provisions had entered into force for the Netherlands and inasmuch as they hinder or make less attractive the exercise of the rights which Turkish nationals derive from the Association Agreement, the Additional Protocol and Decision No 1/80.

The Commission submits further that, in so far as the Netherlands make Turkish nationals subject to the payment of administrative fees for residence permits, such fees may not, pursuant to the provisions on non-discrimination contained in the Association Agreement and Decision No 1/80, be higher than those imposed, in respect of equivalent documents, on EU nationals and nationals of Norway, Iceland, Liechtenstein and Switzerland.

(1) Agreement establishing an Association between the European Economic Community and Turkey, approved and confirmed by Council Decision 64/732/EEC of 23 December 1963 (OJ 1973 C 113).
(2) Additional Protocol, approved by Council Regulation (EEC) No 2760/72 of 19 December 1972 (OJ 1973 C 113).
(3) Decision No 1/80 of 19 September 1980 on the development of the Association.

Action brought on 20 February 2007 — Commission of the European Communities v Kingdom of Belgium

(Case C-93/07)

(2007/C 95/43)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: M. Konstantinidis and J.-B. Laignelot, Agents)

Defendant: Kingdom of Belgium

Form of order sought

— declare that, by failing to adopt 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), or in any event by failing to communicate them to the Commission, the Kingdom of Belgium has failed to fulfil its obligations under that directive;

— order the Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

The period 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 Galicia lodged on 20 February 2007 — Rosa Méndez López v Instituto Nacional de Empleo (INEM); Instituto Nacional de la Seguridad Social (INSS)

(Case C-97/07)

(2007/C 95/44)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de Galicia

Parties to the main proceedings

Applicant: Rosa Méndez López

Defendants: Instituto Nacional de Empleo (INEM); Instituto Nacional de la Seguridad Social (INSS)

Question referred

Should one interpret the expression 'shall receive benefits in accordance with the legislation of that State as if he had last been employed there' contained in Article 71 of Council Regulation (EEC) 1408/71 [1] of 14 June 1971, on the application of social security schemes to employed persons, self employed persons and members of their families moving within the Community, be interpreted as meaning that the requirement set out within Article 215.1 of the Ley General de la Seguridad Social of 'having exhausted entitlement to contributory unemployment benefit' for the purposes of entitlement to Spanish benefits of non-contributory unemployment allowances, is be understood to have been fulfilled if a German contributory unemployment benefit has been exhausted, even if the recipient has never paid contributions in Spain?

[1] OJ 2001 L 149, p 2.

Reference for a preliminary ruling from the Højesteret (Denmark) lodged on 22 February 2007 — Nordania Finans A/S and BG Factoring A/S v Skatteministeriet

(Case C-98/07)

(2007/C 95/45)

Language of the case: Danish

Referring court

Højesteret

Parties to the main proceedings

Applicants: Nordania Finans A/S and BG Factoring A/S

Defendant: Skatteministeriet

Question referred

Is the expression 'capital goods used by the taxable person for the purposes of his business' contained in Article 19(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 [1], to be interpreted as covering goods which a leasing undertaking purchases with a view both to leasing and resale upon termination of the leasing contract?

[1] OJ L 145, p. 1.

Appeal brought on 21 February 2007 by Coop de France Bétail et Viande, formerly the Fédération nationale de la coopération bétail et viande (FNCBV) against the judgment delivered on 13 December 2006 in Joined Cases T-217/03 and T-245/03 Coop de France Bétail et Viande v Commission

(Case C-101/07 P)

(2007/C 95/46)

Language of the case: French

Parties

Appellant: Coop de France Bétail et Viande, formerly Fédération nationale de la coopération bétail et viande (FNCBV) (represented by: M. Ponsard, lawyer)

Other parties to the proceedings: Fédération nationale des syndicats d'exploitants agricoles (FNSEA), Fédération nationale bovine (FNB), Fédération nationale de producteurs de lait (FNPL), Jeunes agriculteurs (JA), Commission of the European Communities, French Republic

Form of order sought

— set aside the judgment of the Court of First Instance of 13 December 2006 in Case T-217/03;

— declare that there is no need to impose a fine on the applicant;

— alternatively reduce the amount of the fine imposed by that judgment;

— order the Commission to pay all the costs related to the interim and the main proceedings before the Court of First Instance and the proceedings before the Court of Justice.

Pleas in law and main arguments

The applicant puts forward six grounds in support of its appeal. By its first five grounds, which seek to have the contested judgment set aside, the applicant alleges, first, that the Court of First Instance erred in failing to recognise the infringement of the rights of defence by the Commission relating to the absence of a reference in the statement of objections to the method used for the calculation of the fines, second, the distortion by the Court of First Instance of the evidence on the secret extension of the agreement of October 2001, third, that the Court of First Instance committed an error of law by presuming that the applicant adhered to the pursuit of the agreement by referring to an overall agreement between slaughterers and breeders, without specifically establishing the appellant's acquiescence to its pursuit, fourth, even assuming that its acquiescence were to

be established, the Court of First Instance erred by classifying the agreement as anti-competitive, without examining the general legal and economic background to it and its possible effects and, fifth, breach of the duty to state reasons and contradiction in the grounds of the contested judgment in that account was taken of the turnover of the appellant's members, and not that of the appellant itself, in order to ascertain whether the ceiling of 10 % of turnover referred to in Article 15(2) of Regulation No 17 had been exceeded.

By its sixth ground of appeal which seeks, in the alternative, to obtain a reduction of the fine imposed on it, the appellant argues that if the Court rejects the preceding grounds of appeal it is appropriate, in any event, to reduce the amount of the fine imposed in so far it corresponds not to 10 % but 20 % of its turnover, which contrary to the wording of Article 15(2) of Regulation No 17.

Reference for a preliminary ruling from the Rechtbank van eerste aanleg te Antwerpen (Belgium) lodged on 22 February 2007 — N.V. Lammers & Van Cleeff v Belgische Staat

(Case C-105/07)

(2007/C 95/47)

Language of the case: Dutch

Referring court

Rechtbank van eerste aanleg te Antwerpen

Parties to the main proceedings

Applicant: N.V. Lammers & Van Cleeff

Defendant: Belgische Staat

Question referred

Do Articles 12, 43, 46, 48, 56 and 58 EC preclude Belgian national statutory rules, as set out in the then applicable Articles 18(1), point 3, and 18(2), point 3, of the WIB92, whereby interest payments were not classified as dividends and were therefore not taxable if those interest payments were made to a director which was a Belgian company, whereas in the same circumstances those interest payments were classified as dividends, and therefore taxable, if they were made to a director which was a foreign company?

Action brought on 22 February 2007 — Commission of the European Communities v French Republic

(Case C-106/07)

(2007/C 95/48)

Language of the case: French

Parties

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

Defendant: French Republic

Form of order sought

— declare that, by still not having drawn up, for many French ports, the waste reception and handling plans provided for in Article 5 of Directive 2000/59/EC ([1]), or in any event by failing to inform the Commission of their existence and their implementation, the French Republic has failed to fulfil its obligations under Articles 5(1) and 16(1) of that directive;

— order the French Republic to pay the costs.

Pleas in law and main arguments

The period for transposition of Directive 2000/59/EC expired on 27 December 2002.

([1]) Directive 2000/59/EC of the European Parliament and of the Council of 27 November 2000 on port reception facilities for ship-generated waste and cargo residues (OJ 2000 L 332, p. 81).

Appeal brought on 13 February 2007 against the judgment of the Court of First Instance (Second Chamber) delivered on 11 December 2006 in Case T-290/05 Friedrich Weber v Commission of the European Communities

(Case C-107/07 P)

(2007/C 95/49)

Language of the case: German

Parties

Appellant: Friedrich Weber (represented by: W. Declair, Rechtsanwalt)

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 11 December 2006 in Case T-290/05 ([1]);

— annul the Commission decision of 27 May 2005.

Pleas in law and main arguments

The appellant justifies his appeal against the above judgment as follows.

The Court of First Instance erred in dismissing the application as inadmissible inasmuch as by that application the respondent should be required by the Court to grant access to certain documents. According to the settled case-law of the Court of Justice, the Court does not have such authority to give instructions. In addition, it was observed in the contested decision that the present appellant's amended application could not be construed as meaning that that application implicitly sought annulment of the present respondent's contested decision. It could not be deduced from this that: the appellant, by his amended application, sought not only implicitly, but also explicitly, annulment of the respondent's contested decision. The appellant's amended application is admissible inasmuch as it seeks annulment of the Commission's decision. The finding that the application was inadmissible in its entirety is thus unlawful.

The Court of First Instance observes in its contested judgment that the application contained 'accusations against German public-law broadcasting bodies and other state bodies.' The description as such in the observations discredits the appellant's statement of facts in an unacceptable way. The derogatory description of the application as 'accusations' shows that the Court failed to examine the extraordinary weight of the allegations and the related infringement of Community law as relevant factors in relation to justifying the application. The Court of First Instance thus disregarded the right to a fair hearing. The way in which the restrained arguments of the appellant were assessed even gives grounds for suspecting bias and for doubts as to a fair hearing.

The impugned judgment contradicts the principles of the Treaty on European Union and the Treaty on establishing the European Community. It disregarded the declared will of the Community, to develop and strengthen democracy and the rule of law as well as human rights and fundamental freedoms. The judgment of the Court fails to recognise the significance of the principle of openness in the framework of the Community's belief in and declared will for democracy. The Court failed to examine the question as to whether the defendant's decision was compatible with the goals of the Community. The impugned judgment thus infringes applicable Community law.

It is not the case that the part of the claim put forward that contained access to the contested Commission document was fully settled. While the defendant confirmed to the Court of First Instance the authenticity of the Commission's letter published in a magazine, the appellant clearly explained, however, that the main issue was not settled by the respondent's confirmation. In support of his application, the appellant argued that the magazine in question is not an organ for the publication of the respondent's public notices.

For all these reasons, the impugned judgment of the Court of First Instance must be set aside.

([1]) OJ 2006 C 331, p. 42.

Reference for a preliminary ruling from the Prud'homie de pêche de Martigues (France) lodged on 20.2.2007 — Jonathan Pilato v Jean-Claude Bourgault

(Case C-109/07)

(2007/C 95/50)

Language of the case: French

Referring court

Prud'homie de pêche de Martigues (France)

Parties to the main proceedings

Applicant: Jonathan Pilato

Defendant: Jean-Claude Bourgault

Questions referred

1. Should Article 11a of Council Regulation (EC) No 894/97 ([1]) of 29 April 1997, as amended by Council Regulation (EC) No 1239/98 ([2]) of 8 June 1998, be interpreted as also prohibiting nets which do not drift or hardly drift by reason of a floating anchor to which they are attached?

2. Is Article 11a(1) and (2) of Council Regulation (EC) No 894/97, as amended by Council Regulation (EC) No 1239/98 of 8 June 1998, valid to the extent to which:

   a) it appears to pursue a strictly environmental objective, although the legal basis on which it is founded is Article 43 of the EC Treaty (now Article 37 EC);

   b) it does not define a drift-net and therefore does not clearly define the scope of that term;

   c) it is not clearly reasoned;

d) it does not take account of available scientific and technical data, of the environmental conditions in the various regions of the Community, or of the benefits or costs which arise from the prohibition which it establishes;

e) it is disproportionate to the objective being pursued;

f) it is discriminatory since it treats very different geographic, economic and social situations in the same fashion;

g) it does not establish any exemption for small-time fishermen who fish with devices such as the '*thonaille*', which, apart from the fact that it is traditional in the Mediterranean, is vital for that part of the population who practise it, and is, moreover, very selective?

([1]) Council Regulation (EC) No 894/97 of 29 April 1997 laying down certain technical measures for conservation of fishery resources (OJ L 1997 132, p. 1).

([2]) Council Regulation (EC) No 1239/98 of 8 June 1998, amending Regulation (EC) No 894/97 laying down certain technical measures for conservation of fishery resources (OJ L 1998 171, p. 1).

Appeal brought on 27 February 2007 by Fédération nationale des syndicats d'exploitants agricoles (FNSEA), Fédération nationale bovine (FNB), Fédération nationale des producteurs de lait (FNPL) and Jeunes agriculteurs (JA) against the judgment delivered by the Court of First Instance (First Chamber) on 13 December 2006 in Joined Cases T-217/03 and T-245/03 FNCBV and Others v Commission

(Case C-110/07 P)

(2007/C 95/51)

Language of the case: French

Parties

Appellants: Fédération nationale des syndicats d'exploitants agricoles (FNSEA), Fédération nationale bovine (FNB), Fédération nationale des producteurs de lait (FNPL), Jeunes agriculteurs (JA) (represented by: V. Ledoux and B. Néouze, avocats)

Other parties to the proceedings: Fédération nationale de la coopération bétail et viande (FNCBV), Commission of the European Communities, French Republic

Forms of Order sought

— set aside the judgment of the Court of First Instance of 13 December 2006;

— state that fines should not be imposed on the appellant federations;

— in the alternative, reduce the amount of those fines;

— order the European Commission to pay the costs relating to the interim proceedings and the main proceedings before the Court of First Instance, as well as the proceedings before the Court of Justice.

Pleas in law and main arguments

The appellants rely on four pleas in law in support of their appeal. Firstly, the appellants assert that the Court of First Instance misconstrued the evidence submitted for its consideration in that it omitted to take into account the two essential pieces of evidence demonstrating that the agreement of 24 October 2001 did not extend beyond 30 November 2001. Secondly, the appellants allege that the Court of First Instance misapplied Community law, as well as the consistent case-law of the Court, in holding that the Commission had not infringed the rights of the defence in failing to point out, in the statement of objections, that it was going to calculate the sum of the fines taking into account the cumulative turnover of the members of the appellant federations. Thirdly, they allege infringement of Article 15(2) of Council Regulation (EEC) No 17/62. In order to conclude that the fines imposed did not exceed the ceiling of 10 % of turnover, laid down in that article, the Court of First Instance took into account the cumulative turnover of the members of those federations, without the precise conditions and objectives laid down in the case-law being fulfilled. Finally, by their fourth plea in law, the appellants allege an infringement of the principle of *non bis in idem*, as well as a breach of the principle of proportionality, in that the Court of First Instance imposed, on each of the federations, a separate fine based on the cumulative turnover of members common to those federations. According to the appellants, in the present case only 1 federation can have a penalty imposed upon it, which takes into account the cumulative financial capacity of the common members of the appellant federations.

Reference for a preliminary ruling from the Tribunal Superior de Justicia de Asturias (Spain) lodged on 28 February 2007 — José Manuel Blanco Pérez, Maria del Pilar Chao Gómez v Principado de Asturias

(Case C-111/07)

(2007/C 95/52)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de Asturias

Parties to the main proceedings

Applicants: José Manuel Blanco Pérez, Maria del Pilar Chao Gómez

Defendant: Principado de Asturias

Question referred

Should Articles 2, 3, 4 and 5 of Decree 72/2001 of 19 July regulating Pharmacies and Pharmaceutical Dispensaries 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]?

Action brought on 27 February 2007 — Commission of the European Communities v Czech Republic

(Case C-114/07)

(2007/C 95/53)

Language of the case: Czech

Parties

Applicant: Commission of the European Communities (represented by B. Stromsky and M. Šimerdová, Agents)

Defendant: Czech Republic

Form of order sought

The Court is asked to:

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2004/24/EC ([1]) of the European Parliament and of the Council of 31 March 2004 amending, as regards traditional herbal medicinal products, Directive 2001/83/EC on the Community code relating to medicinal products for human use, or in any event by not communicating such measures to the Commission, the Czech Republic has failed to fulfil its obligations under Article 2(1) of that directive;

— order the Czech Republic to pay the costs.

Pleas in law and main arguments

The period prescribed for transposing the directive into national law expired on 30 October 2005.

([1]) OJ 2004 L 136, p. 85.

Action brought on 27 February 2007 — Commission of the European Communities v Czech Republic

(Case C-115/07)

(2007/C 95/54)

Language of the case: Czech

Parties

Applicant: Commission of the European Communities (represented by B. Stromsky and M. Šimerdová, Agents)

Defendant: Czech Republic

Form of order sought

The Court is asked to:

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2004/27/EC ([1]) of the European Parliament and of the Council of 31 March 2004 amending Directive 2001/83/EC on the Community code relating to medicinal products for human use, or in any event by not communicating such measures to the Commission, the Czech Republic has failed to fulfil its obligations under Article 3 of that directive;

— order the Czech Republic to pay the costs.

Pleas in law and main arguments

The period prescribed for transposing the directive into national law expired on 30 October 2005.

([1]) OJ 2004 L 136, p. 34.

Action brought on 27 February 2007 — Commission of the European Communities v Czech Republic

(Case C-116/07)

(2007/C 95/55)

Language of the case: Czech

Parties

Applicant: Commission of the European Communities (represented by B. Stromsky and M. Šimerdová, Agents)

Defendant: Czech Republic

Form of order sought

The Court is asked to:

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2004/28/EC [1] of the European Parliament and of the Council of 31 March 2004 amending Directive 2001/82/EC on the Community code relating to veterinary medicinal products, or in any event by not communicating such measures to the Commission, the Czech Republic has failed to fulfil its obligations under Article 3 of that directive;

— order the Czech Republic to pay the costs.

Pleas in law and main arguments

The period prescribed for transposing the directive into national law expired on 30 October 2005.

[1] OJ 2004 L 136, p. 58.

Action brought on 27 February 2007 — Commission of the European Communities v Czech Republic

(Case C-117/07)

(2007/C 95/56)

Language of the case: Czech

Parties

Applicant: Commission of the European Communities (represented by B. Stromsky and M. Šimerdová, Agents)

Defendant: Czech Republic

Form of order sought

The Court is asked to:

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Commission Directive 2005/28/EC [1] of 8 April laying down principles and detailed guidelines for good clinical practice as regards investigational medicinal products for human use, as well as the requirements for authorisation of the manufacturing or importation of such products, or in any event by not communicating such measures to the Commission, the Czech Republic has failed to fulfil its obligations under Article 31(1) of that directive;

— order the Czech Republic to pay the costs.

Pleas in law and main arguments

The period prescribed for transposing the directive into national law expired on 29 October 2006.

[1] OJ 2005 L 91, p. 13.

Action brought on 27 February 2007 — Commission of the European Communities v Republic of Finland

(Case C-118/07)

(2007/C 95/57)

Language of the case: Finnish

Parties

Applicant: Commission of the European Communities (represented by M. Huttunen, H. Støvlbæk and B. Martenczuk, acting as Agents)

Defendant: Republic of Finland

Form of order sought

— declare that, by failing to take the appropriate steps in accordance with the second paragraph of Article 307 EC to eliminate the incompatibilities relating to provisions on transfers in the international investment agreements concluded between it and the Russian Federation (the former Soviet Union), Belarus, China, Malaysia, Sri Lanka and Uzbekistan, the Republic of Finland has failed to fulfil its obligations under Article 307 EC;

— order the Republic of Finland to pay the costs.

Pleas in law and main arguments

The present case concerns international investment agreements made by the Republic of Finland with the Russian Federation, Belarus, China, Malaysia, Sri Lanka and Uzbekistan before it acceded to the European Union. Provisions contained in those agreements concern the transfer of capital and payments in connection with investments. The Commission submits that those provisions in the agreements are incompatible with Community law, since as a result of those provisions Finland is unable to comply with measures taken by the EC institutions under Articles 57(2) EC, 59 EC and 60(1) EC. Since the agreements in question were made before Finland's accession to the EU, Finland is obliged to take all appropriate steps to eliminate the incompatibilities in the agreements in accordance with the second paragraph of Article 307 EC.

Action brought on 27 February 2007 — Commission of the European Communities v Kingdom of the Netherlands

(Case C-120/07)

(2007/C 95/58)

Language of the case: Dutch

Parties

Applicant: Commission of the European Communities (represented by: B. Stromsky and H. van Vliet, Agents)

Defendant: Kingdom of the Netherlands

Form of order sought

— Declare that, by not adopting the laws, regulations and administrative provisions necessary to comply with Directive 2004/24/EC ([1]) of the European Parliament and of the Council of 31 March 2004 amending, as regards traditional herbal medicinal products, Directive 2001/83/EC on the Community code relating to medicinal products for human use, or in any event by not informing the Commission of those provisions, the Kingdom of the Netherlands has failed to fulfil its obligations under that directive;

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

Pleas in law and main arguments

The period within which the directive had to be transposed into national law expired on 30 October 2005.

([1]) OJ L 136, p. 85.

Action brought on 28 February 2007 — Commission of the European Communities v French Republic

(Case C-121/07)

(2007/C 95/59)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: B. Stromsky and C. Zadra, acting as Agents)

Defendant: French Republic

Form of order sought

— declare that, by failing to take all the measures necessary to comply with the judgment of the Court of Justice of the European Communities of 15 July 2004 in Case C-419/03 ([1]) concerning the failure to transpose into national law the provisions of Directive 2001/18/EC Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC ([2]) which diverge from or exceed the provisions of Council Directive 90/220/EEC of 23 April 1990 on the deliberate release into the environment of genetically modified organisms ([3]), the French Republic has failed to fulfil its obligations under Article 228 (1) of the Treaty Establishing the European Community;

— order the French Republic to pay to pay into the Commission's 'European Community own resources' account a periodic penalty payment of EUR 366 744 for each day of delay in complying with judgment in Case C-419/03 from the date of judgment herein until the judgment in Case C-419/03 has been complied with in full;

— order the French Republic to pay to pay into the Commission's 'European Community own resources' account a lump sum of EUR 46 660 for day of delay in complying with the judgment in Case C-419/03 from the date of the judgment in Case C-419/03 until either:

  — the judgment in Case C-419/03 has been fully complied with (if that is the case before the judgment is delivered in this case), or

  — the judgment has been delivered in this case (if the judgment delivered in Case C-419/03 has not been fully complied with at that time);

— order French Republic to pay the costs.

Pleas in law and main arguments

More than four years after the expiry of the period prescribed for the transposition of Directive 2001/18 and more than 28 months after the judgment of the Court of 15 July 2004 in Case C-419/03 declaring that the French Republic had failed to fulfil its obligation to transpose that directive, the French Republic has still failed to take the measures necessary to comply with that judgment. Therefore, the Commission proposes that the French Republic should be ordered to pay a fine and a periodic penalty payment to reflect the seriousness of that infringement and its impact on the pursuit of the objectives pursued by the Community legislature.

([1]) Judgment not published in the ECR.
([2]) OJ 1990 L 106, p. 1.
([3]) OJ 1990 L 117, p. 15.

Appeal brought on 28 February 2007 by Eurostrategies SPRL against the order of the Court of First Instance (Fourth Chamber) delivered on 1 December 2006 in Case T-203/06: Eurostrategies sprl v Commission of the European Communities

(Case C-122/07 P)

(2007/C 95/60)

Language of the case: English

Parties

Appellant: Eurostrategies SPRL (represented by: R.A. Lang and S. Crosby, Solicitors)

Other party to the proceedings: Commission of the European Communities

Form of order sought

The appellant claims that the Court should:

— annul the Order of the Court of First Instance of 1 December 2006 in Case T-203/06 quo ad its reasoning only.

— make a ruling that the costs of the appeal be awarded in the appellant's favour.

Pleas in law and main arguments

The appellant maintains that:

1. The Court of First Instance (CFI) infringed the principle of equality of arms, as enshrined in Article 6(1) of the European Convention on Human Rights and the EU Treaty by refusing to hear the Appellant's side of the story in respect of whether or not the appellant had received a supposed 'holding reply', which would, had it been received, have extended the Commission's deadline by fifteen days, thus obviating the need for a Court action.

   Further the CFI failed to hear the appellant's side of the story in respect of a second letter which the Commission contended was sent by email but which was in fact sent by fax.

2. The CFI infringed Regulation (EC) No 1049/2001 ([1]) of the European Parliament and the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents by finding that the Commission was entitled to the benefit of a 15-day extension of time pursuant to Article 8(2) of the Regulation, in the absence of evidence of the fulfilment of the requisite conditions for such an extension. One of the requisite conditions is that the 'applicant is notified'. However, the only evidence produced by the Commission was the effect that an email was sent, not that it was received. The appellant contends that an email does not take legal effect until it is seen by the recipient. Thus, notification did not take place and so the stipulations of Article 8 (2) of Regulation 1049/2001 were not fulfilled.

3. The CFI infringed a mandatory rule of procedure by not carrying out a balancing exercise in reaching its judgment. The appellant cites Articles 47(1) and 67(3) of the Rules of Procedure of the Court of First Instance of the European Communities of 2 May 1991 as examples of the need to carry out a balancing exercise.

4. The CFI made a manifest error of assessment by distorting the clear sense of the evidence before it; the evidence in no way demonstrates notification, by the Commission, to the appellant, of its request for a 15-day extension.

5. In the alternative to plea 4, the CFI infringed Community law in holding that an email takes legal effect on sending, not on receipt.

([1]) OJ L 145, p. 43.

Action brought on 28 February 2007 — Commission of the European Communities v Kingdom of the Netherlands

(Case C-123/07)

(2007/C 95/61)

Language of the case: Dutch

Parties

Applicant: Commission of the European Communities (represented by: B. Stromsky and H. van Vliet, Agents)

Defendant: Kingdom of the Netherlands

Form of order sought

— declare that, by failing to bring into force all of the laws, regulations and administrative provisions necessary to comply with Directive 2004/27/EC ([1]) of the European Parliament and of the Council of 31 March 2004 amending Directive 2001/83/EC on the Community code relating to medicinal products for human use, or in any event by not informing the Commission of those provisions, the Kingdom of the Netherlands has failed to fulfil its obligations under that directive;

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

Pleas in law and main arguments

The period within which the directive had to be transposed in national law expired on 30 October 2005.

([1]) OJ 2004 L 136, p. 34.

Reference for a preliminary ruling from the Hoge Raad der Nederlanden lodged on 2 March 2007 — J.C.M. Beheer B.V. v Staatssecretaris van Financiën

(Case C-124/07)

(2007/C 95/62)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: J.C.M. Beheer B.V.

Defendant: Staatssecretaris van Financiën

Question referred

Do the provisions of Article 13 B(a) of the Sixth Directive ([1]) extend to activities of a (legal) person which performs characteristic and essential activities of an insurance broker and insurance agent, whereby negotiations are carried out in the name of another insurance broker or insurance agent in connection with the bringing about of insurance transactions?

([1]) Sixth Council Directive 77/388/EEG 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.

Reference for a preliminary ruling from the Sąd Rejonowy w Jaworznie (Republic of Poland) lodged on 7 March 2007 — Piotr Kawala v Gmina Miasta Jaworzna

(Case C-134/07)

(2007/C 95/63)

Language of the case: Polish

Referring court

Sąd Rejonowy w Jaworznie

Parties to the main proceedings

Applicant: Piotr Kawala

Defendant: Gmina Miasta Jaworzna

Question referred

The following question is referred to the Court of Justice of the European Communities in Luxembourg pursuant to Article 234 EC: Does Article 90 EC prevent the application of Paragraph 1 of the Regulation of the Minister for Infrastructure of 28 July 2003 on the amount of the charges for a vehicle registration card to the extent that it makes registration of a vehicle brought in from outside the Republic of Poland, from another Member State, dependent upon payment of a charge for issue of a vehicle registration card amounting to PLN 500?

Action brought on 13 March 2007 — Commission of the European Communities v Kingdom of Sweden

(Case C-145/07)

(2007/C 95/64)

Language of the case: Swedish

Parties

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

Defendant: Kingdom of Sweden

Form of order sought

— declare that, by failing to adopt the laws, regulation and administrative provisions necessary to comply with Directive 2003/42/EC of the European Parliament and of the Council of 13 June 2003 ([1]) on occurrence reporting in civil aviation or, in any event, by failing to notify the Commission thereof, the Kingdom of Sweden has failed to fulfil its obligations under the Directive, and

— order the Kingdom of Sweden to pay the costs.

Pleas in law and main arguments

The time-limit for implementing the Directive expired on 4 July 2005.

([1]) OJ 2003 L 167, p. 23.

Action brought on 13 March 2007 — Commission of the European Communities v Kingdom of Sweden

(Case C-146/07)

(2007/C 95/65)

Language of the case: Swedish

Parties

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

Defendant: Kingdom of Sweden

Form of order sought

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2001/84/EC of the European Parliament and of the Council of 27 September 2001 ([1]) on the resale right for the benefit of the author of an original work of art or, in any event, by failing to notify the Commission thereof, the Kingdom of Sweden has failed to fulfil its obligations under the Directive, and

— order Kingdom of Sweden to pay the costs.

Pleas in law and main arguments

The time-limit prescribed for implementing the Directive expired on 31 December 2005.

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

Action brought on 13 March 2007 — Commission of the European Communities v French Republic

(Case C-147/07)

(2007/C 95/66)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: S. Pardo Quintillán, J. Hottiaux, J.-B. Laignelot, Agents)

Defendant: French Republic

Form of order sought

— declare that, by failing to take all the measures necessary to comply with Article 4 of Council Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption ([1]), the French Republic has failed to fulfil its obligations under that directive;

— order the French Republic to pay the costs.

Pleas in law and main arguments

The quality of water intended for human consumption in France does not comply with the provisions of Directive 98/83 in so far as the thresholds laid down in that directive are regularly exceeded, as regards nitrates and pesticides, in the Deux-Sèvres, Charente-Maritime and Vendée Departments.

([1]) OJ 1998 L 330, p. 32.

Action brought on 14 March 2007 — Commission of the European Communities v Republic of Hungary

(Case C-148/07)

(2007/C 95/67)

Language of the case: Hungarian

Parties

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

Defendant: Republic of Hungary

Form of order sought

— declare that, by failing to eliminate the restrictions to the provision of cable television services imposed by Article 115 (4) of Law I of 1996 on Radio and Television, the Republic of Hungary has failed to fulfil its obligations under Commission Directive 2002/77/EC of 16 September 2002 on competition in the markets for electronic communications networks and services ([1]);

— order Republic of Hungary to pay the costs.

Pleas in law and main arguments

The period prescribed for transposing the directive into national law expired on 30 April 2004.

According to the Commission, the Republic of Hungary has failed to fulfil its obligations under Article 2(3) of Directive 2002/77/EC by restricting the right of cable television service providers to broadcast programmes so that in territorial coverage is no more than one third of the population.

([1]) OJ 2002 L 249, p. 21.

Order of the President of the Court of 1 February 2007 — Commission of the European Communities v Italian Republic

(Case C-71/06) ([1])

(2007/C 95/68)

Language of the case: Italian

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 15 February 2007 — Commission of the European Communities v Hellenic Republic

(Case C-124/06) ([1])

(2007/C 95/69)

Language of the case: Greek

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

([1]) OJ C 96, 22.4.2006.

Order of the President of the Court of 26 February 2007 (reference for a preliminary ruling from the Krajský Soud v Praze — Czech Republic) — Ochranný svaz autorský pro práva k dílům hudebním (OSA) v Miloslav Lev

(Case C-282/06) ([1])

(2007/C 95/70)

Language of the case: Czech

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

([1]) OJ C 212, 2.9.2006.

COURT OF FIRST INSTANCE

Judgment of the Court of First Instance of 22 March 2007 — SIGLA v OHIM — Elleni Holding (VIPS)

(Case T-215/03) ([1])

(Community trade mark — Opposition proceedings — Application for the Community word mark VIPS — Earlier national word mark VIPS — Article 8(5) of Regulation (EC) No 40/94 — Article 74 of Regulation (EC) No 40/94 — Principle that the parties delimit the subject matter of the proceedings — Rights of the defence)

(2007/C 95/71)

Language of the case: Spanish

Parties

Applicant: SIGLA SA (Madrid, Spain) (represented by: E. Armijo Chávarri, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Elleni Holding BV (Alphen aan de Rijn, Netherlands)

Re:

Action brought against the decision of the Third Board of Appeal of OHIM of 1 April 2003 (Case R 1127/2000-3) relating to opposition proceedings between SIGLA SA and Elleni Holding BV

Operative part of the judgment

The Court:

1. *Annuls the decision of the Third Board of Appeal of the Office for Harmonisation in the Internal market (Trade Marks and Designs) of 1 April 2003 (Case R 1127/2000-3);*

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

([1]) OJ C 200, 23.8.2003.

Judgment of the Court of First Instance of 15 March 2007 — Katalagarianakis v Commission

(Case T-402/03) ([1])

(Officials — Appointment — Review of classification in grade and step — Application of the Court's case-law — Articles 5 and 31(2), the second paragraph of Article 32 and Articles 45 and 62 of the Staff Regulations)

(2007/C 95/72)

Language of the case: French

Parties

Applicant: Georgios Katalagarianakis (Overijse, Belgium) (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:

Application for annulment of the Commission's decision reviewing and fixing the applicant's classification at recruitment at Grade A6, first step, reviewing and fixing his subsequent classification at Grade A5, third step, on 1 April 2000 and fixing the starting point of its pecuniary effects at 5 October 1995.

Operative part of the judgment

The Court:

1. *Annuls the Commission's decision of 14 April 2003 in so far as it fixes the starting point of its pecuniary effects at 5 October 1995.*

2. *Rules that the Commission is to undertake a comparative examination of the applicant's merits and those of the officials promoted to Grade A5 in each promotion year since 1 May 1993.*

3. *Following that examination and if the Commission should be unable to award the applicant such promotion in grade as may appear justified, invites the parties to seek agreement as to appropriate compensation.*

4. *Rules that the parties are to inform the Court within three months of the delivery of this judgment of the content of any agreement they may have reached, failing which, of their conclusions, with figures, as to the assessment of the loss sustained.*

5. *Dismisses the remainder of the action.*

6. *Reserves the costs.*

([1]) OJ C 35 of 7.2.2004.

Judgment of the Court of First Instance of 15 March 2007 — Dascalu v Commission

(Case T-430/03) ([1])

(Officials — Appointment — Review of classification in grade and step — Application of the Court of Justice's case-law — Articles 5 and 31(2), the second paragraph of Article 32 and Articles 45 and 62 of the Staff Regulations)

(2007/C 95/73)

Language of the case: French

Parties

Applicant: Iosif Dascalu (Kraainem, Belgium) (represented by: N. Lhoest, lawyer)

Defendant: Commission of the European Communities (represented by: C. Berardis-Kayser, L. Lozano Palacios and H. Krämer, originally, and then by C. Berardis-Kayser and H. Krämer, Agents)

Re:

First, application for annulment of the Commission's decisions of 23 December 2002 and 14 April 2003 altering the applicant's classification in grade, in so far as they fix his classification in step on recruitment in Grade A6, first step, fix 5 October 1995 as the date on which they were to take pecuniary effect and do not re-establish the applicant's career in grade and, so far as may be necessary, an application for annulment of the decisions rejecting the applicant's complaints and, second, an application seeking compensation for the damage allegedly caused by those decisions.

Operative part of the judgment

The Court:

1. *Annuls the Commission's decision of 14 April 2003 in so far as it fixes 5 October 1995 as the starting point of its pecuniary effects.*

2. *Rules that the Commission is to undertake a comparative examination of the applicant's merits and those of the officials promoted to Grade A5 since 16 April 1993, and then to Grade A4 since 16 January 1998.*

3. *Following that examination and if the Commission should be unable to award the applicant such promotion in grade as may appear justified, invites the parties to seek agreement as to appropriate compensation, taking into account, if appropriate, the application for damages by way of compensation made by the applicant.*

4. *Rules that the parties are to inform the Court within three months of the delivery of this judgment of the content of any agreement they may have reached, failing which, of their conclusions, with figures, as to the assessment of the loss sustained.*

5. *Dismisses the remainder of the action.*

6. *Reserves the costs.*

([1]) OJ C 47 of 21.2.2004.

Judgment of the Court of First Instance (Third Chamber) of 14 March 2007 — Aluminium Silicon Mill Products GmbH v Council of the European Union

(Case T-107/04) ([1])

(Action for annulment — Dumping — Imports of silicon originating in Russia — Injury — Causal link)

(2007/C 95/74)

Language of the case: English

Parties

Applicant: Aluminium Silicon Mill Products GmbH (Zug, Switzerland) (represented by: A. Willems and L. Ruessmann, lawyers)

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

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

Re:

Annulment of Council Regulation (EC) No 2229/2003 of 22 December 2003 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of silicon originating [in] Russia (OJ 2003 L 339, p. 3).

Operative part of the judgment

The Court:

1. *Annuls Article 1 of Council Regulation (EC) No 2229/2003 of 22 December 2003 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of silicon originating [in] Russia in so far as it imposes an anti-dumping duty on the applicant;*

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

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

([1]) OJ C 106, 30.4.2004.

Judgment of the Court of First Instance of 7 March 2007 — Sequeira Wandschneider v Commission

(Case T-110/04) ([1])

(Officials — Career development report — Assessment period 2001/2002 — Action for annulment — Statement of reasons — Evaluation of merits — Evidence — Action for damages)

(2007/C 95/75)

Language of the case: French

Parties

Applicant: Paulo Sequeira Wandschneider (Brussels, Belgium) (originally represented by G. Vandersanden and A. Finchelstein, and then by G. Vandersanden and C. Ronzi, lawyers)

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

Re:

First, an application for annulment of the decision of 23 April 2003 containing the applicant's career development report for the period 1 July 2001 to 31 December 2002 and, second, an application for damages

Operative part of the judgment

The Court:

1. *Annuls the decision of 23 April 2003 containing the applicant's career development report for the period 1 July 2001 to 31 December 2002;*

2. *Rejects the action for damages;*

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

([1]) OJ C 106 of 30.4.2004.

Judgment of the Court of First Instance of 8 March 2007 — France Télécom v Commission

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

(Competition — Decision ordering an inspection — Loyal cooperation with the national courts — Loyal cooperation with the national competition authorities — Article 20(4) of Regulation (EC) No 1/2003 — Commission Notice on Cooperation within the Network of Competition Authorities — Statement of reasons — Proportionality)

(2007/C 95/76)

Language of the case: French

Parties

Applicant: France Télécom SA, formerly Wanadoo SA (Paris, France) (represented by: H. Calvet and M.-C. Rameau, lawyers)

Defendant: Commission of the European Communities (represented by: É. Gippini Fournier and O. Beynet, Agents)

Re:

Annulment of Commission Decision C (2004) 1929 of 18 May 2004 in Case COMP/C-1.38.916 ordering French Eélécom SA and all undertakings which it controls directly or indirectly, including Wanadoo SA and all undertakings controlled directly or indirectly by Wanadoo SA, to submit to an inspection pursuant to Article 20(4) of Council Regulation (EC) No 1/2003 of 16 December 2003 on the implementation of the rules on competition laid down in Articles 81 [EC] and 82 [EC] (OJ 2003 L 1, p. 1).

Operative part of the judgment

The Court:

1. *Dismisses the application;*

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

([1]) OJ C 262, 23.10.2004.

Judgment of the Court of First Instance of 8 March 2007 — France Télécom v Commission

(Case T-340/04) ([1])

(Competition — Decision ordering an inspection — Loyal cooperation with the national courts — Loyal cooperation with the national competition authorities — Article 20(4) of Regulation (EC) No 1/2003 — Statement of reasons — Proportionality — Fresh plea in law — Inadmissible)

(2007/C 95/77)

Language of the case: French

Parties

Applicant: France Télécom SA, formerly Wanadoo SA (Paris, France) (represented by: C. Clarenc and J. Ruiz Calzado, lawyers)

Defendant: Commission of the European Communities (represented by: É. Gippini Fournier and O. Beynet, Agents)

Re:

Annulment of Commission Decision C (2004) 1929 of 18 May 2004 in Case COMP/C-1.38.916 ordering French Télécom SA and all undertakings which it controls directly or indirectly, including Wanadoo SA and all undertakings controlled directly or indirectly by Wanadoo SA, to submit to an inspection pursuant to Article 20(4) of Council Regulation (EC) No 1/2003 of 16 December 2003 on the implementation of the rules on competition laid down in Articles 81 [EC] and 82 [EC] (OJ 2003 L 1, p. 1).

Operative part of the judgment

The Court:

1. *Dismisses the application;*

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

([1]) OJ C 262, 23.10.2004.

Judgment of the Court of First Instance of 6 March 2007 — Golf USA v OHIM (GOLF USA)

(Case T-230/05) ([1])

(Community trade mark — Application for the Community word mark GOLF USA — Absolute grounds for refusal — Descriptive character — Lack of distinctive character)

(2007/C 95/78)

Language of the case: English

Parties

Applicant: Golf USA Inc., established in Oklahoma City, Oklahoma (United States)) (represented by: A. de Bosch Kemper-de Hilster, lawyer)

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

Re:

Action against the decision of the Second Board of Appeal of (OHIM) of 25 April 2005 (R 823/2004-2) refusing the application to register the word mark GOLF USA

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

([1]) OJ C 205, 20.8.2005.

Judgment of the Court of First Instance of 22 March 2007 — Carsten Brinkmann v OHIM — Terra Networks (Terranus)

(Case T-322/05) ([1])

(Community trade mark — Opposition procedure — Application for Community work mark Terranus — Earlier Community and national figurative mark terra — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation No 40/94)

(2007/C 95/79)

Language of the case: German

Parties

Applicant: Carsten Brinkmann (Cologne, Germany) (represented by K. van Bebber, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented initially by T. Eichenberg and subsequently by G. Scheider, Agents)

Other party to the proceedings before the Board of Appeal of OHIM: Terra Networks, SA (Pozuelo de Alarcón, Spain)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 10 June 2005 (Case R 1145/2004-1) relating to opposition proceedings between Terra Network, SA and Carsten Brinkmann.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

([1]) OJ C 281, 12.11.2005.

Judgment of the Court of First Instance of 22 March 2007 — Saint-Gobain Pam v OHIM — Propamsa (PAM PLUVIAL)

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

(Community trade mark — Opposition proceedings — Application for the Community word mark PAM PLUVIAL — Earlier national figurative marks PAM — Relative ground for refusal — Likelihood of confusion — Proof of use — Article 8(1)(b) and Article 43 of Regulation (EC) No 40/94)

(2007/C 95/80)

Language of the case: French

Parties

Applicant: Saint-Gobain Pam SA (Nancy, France) (represented by: J. Blanchard and G. Marchais, lawyers)

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

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

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 15 April 2005 (Case R 414/2004-4) concerning registration of the word mark PAM PLUVIAL and relating to opposition proceedings between Propamsa, SA and Saint-Gobain Pam SA.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the applicant, Saint-Gobain Pam SA, to pay the costs.*

([1]) OJ C 315, 10.12.2005.

Order of the Court of First Instance of 5 March 2007 — Beyatli and Candan v Commission

(Case T-455/04) ([1])

(Officials — Open competition — Notice of competition — Time-limits — Compalint — Inadmissibility)

(2007/C 95/81)

Language of the case: English

Parties

Applicants: Derya Beyatli (Nicosia, Cyprus) and Armagan Candan (Istanbul, Turkey) (represented by: A. Demetriades, lawyer)

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

Re:

Application for annulment of the decision of 5 May 2004 of the president of the selection board of open competition EPSO/A/1/03 notifying the applicants of their failure in the written tests

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *Each of the parties is to bear its own costs.*

([1]) OJ C 57 of 5.1.2005.

Order of the Court of First Instance of 27 February 2007 — SP Entertainment Development v Commission

(Case T-44/05) ([1])

(State aid — Actionable measure — Inadmissibility)

(2007/C 95/82)

Language of the case: German

Parties

Applicant: SP Entertainment Development GmbH (Norderfriedrichskoog, Germany) (represented by: C. Demleitner, lawyer)

Defendant: Commission of the European Communities (represented by: V. Kreuschitz, Agent)

Re:

Application for annulment of the decision contained in a letter from the Commission of 20 October 2004 concerning the recovery of State aid granted by the German authorities to Space Park Development GmbH & Co. KG.

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *The applicant, SP Entertainment Development GmbH, shall pay all the costs.*

([1]) OJ C 115 of 14.5.2005.

Order of the Court of First Instance of 5 February 2007 — Sinara Handel v Council and Commission

(Case T-91/05) ([1])

(Preliminary issues — Plea of inadmissibility — Action for damages — Loss of profit — Application for repayment of anti-dumping duties — No jurisdiction)

(2007/C 95/83)

Language of the case: English

Parties

Applicant: Sinara Handel GmbH (Cologne, Germany) (represented by: K. Adamantopoulos and E. Petritsi, lawyers)

Defendants: Council of the European Union (represented by: J.-P. Hix, Agent, assisted by G. Berrisch, lawyer); and Commission of the European Communities (represented by: N. Khan and T. Scharf, Agents)

Re:

Action for compensation under Article 288 EC for the damage allegedly suffered because of the adoption of Council Regulation (EC) No 2320/97 of 17 November 1997 imposing definitive anti-dumping duties on imports of certain seamless pipes and tubes of iron or non-alloy steel originating in Hungary, Poland, Russia, the Czech Republic, Romania and the Slovak Republic, repealing Regulation (EEC) No 1189/93 and terminating the proceeding in respect of such imports originating in the Republic of Croatia (OJ 1997 L 322, p. 1)

Operative part of the order

The Court:

1. *Dismisses the application as inadmissible;*

2. *Orders the applicant, Sinara Handel GmbH, to bear the costs.*

([1]) OJ C 115, 14.5.2005.

Order of the Court of First Instance of 26 February 2007 — Evropaïki Dynamiki v Commission

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

(Actions for annulment — Arbitration clause — e-Content Programme — Termination of contract — Repayment — Inadmissibility)

(2007/C 95/84)

Language of the case: English

Parties

Applicant: Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE (Athens, Greece)

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

Re:

Action for annulment, first, of the Commission's decision of 16 May 2003 to terminate contract EDC-53007 EEBO/27873; secondly, of the Commission's decision of 12 November 2004 to reimburse to the applicant an amount for the costs of labour not exceeding EUR 85 971; and thirdly, the Commission's decision of 7 March 2005 to issue a debit note in the amount of EUR 59 485 in respect of the applicant.

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *The applicant is ordered to bear its own costs and to pay those of the Commission.*

([1]) OJ C 193, 6.8.2005.

Order of the President of the Court of First Instance of 16 February 2007 — Republic of Hungary v Commission

(Case T-310/06 R)

(Application for Interim measures — Application for suspension of operation — Agriculture — Common organisation of the market in cereals — Taking-over of maize by intervention agencies — Regulation (EC) No 1572/2006 — Lack of urgency)

(2007/C 95/85)

Language of the case: Hungarian

Parties

Applicant: Republic of Hungary (represented by: J. Fazekas, Agent)

Defendant: Commission of the European Communities (represented by: F. Clotuche-Duvieusart and Z. B. Pataki, Agents)

Re:

Application for suspension of operation of certain provisions of Commission Regulation (EC) No 1572/2006 of 18 October 2006 amending Regulation (EC) No 824/2000 establishing procedures for the taking-over of cereals by intervention agencies and laying down methods of analysis for determining the quality of cereals (OJ 2006 L 290, p. 29)

Operative part of the order

1. *The application for interim measures is rejected*

2. *The costs are reserved.*

Order of the President of the Court of First Instance of 1 March 2007 — FMC Chemical and Others v EFSA

(Cases T-311/06 RI, T-311/06 RII, T-312/06 R and T-313/06 R)

(Application for interim measures — Application for suspension of operation — Directive 91/414/EEC — European Food Safety Authority — Inadmissibility)

(2007/C 95/86)

Language of the case: English

Parties

Applicants: FMC Chemical SPRL (Brussels, Belgium), Arysta Lifesciences SAS (Noguères, France) and Otsuka Chemical Co. Ltd (Osaka, Japan) (represented by: C. Mereu and K. Van Maldegem, lawyers)

Defendant: European Food Safety Authority (EFSA) (represented by: A. Cuvillier and D. Detken, Agents)

Intervener in support of the Defendant: Commission of the European Communities (represented by: B. Doherty, Agent)

Re:

Applications for suspension of operation of the measures of the EFSA of 28 July and 28 August 2006 regarding the evaluation of the active substances carbofuran, carbosulfan and benfuracarb in accordance with Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market (OJ 1991 L 230, p. 1), and for other interim measures.

Operative part of the order

1. *Cases T-311/06 RI, T-311/06 RII, T-312/06 R and T-313/06 R are joined for the purpose of this order.*

2. *The applications for interim relief are dismissed.*

3. *Costs are reserved.*

Order of the President of the Court of First Instance of 26 February 2007 — Icuna.Com v Parliament

(Case T-383/06 R)

(Interim measures — Application for suspension of operation of a decision — No need to adjudicate)

(2007/C 95/87)

Language of the case: French

Parties

Applicant: Icuna.Com SCRL (Braîne-le-Château, Belgium) (represented by: J. Windey and P. Bandt, lawyers)

Defendant: European Parliament (represented by: O. Caisou-Rousseau and M. Ecker, Agents)

Re:

Application for interim measures seeking, in substance, suspension of operation of the decision of the European Parliament dated 1 December 2006 accepting the tender submitted by Mostra and rejecting the applicant's tender in the context of call for tenders EP/DGINFO/WEBTV/2006/2003 and also of the implementation of any contract entered into with Mostra, pending the decision of the Court in the main action.

Operative part of the order

1. *There is no longer any need to adjudicate on the application for interim measures.*

2. *Costs are reserved.*

Order of the President of the Court of First Instance of 1 March 2007 — Dow AgroSciences v EFSA

(Case T-397/06 R)

(Applications for interim measures — Application for suspension of operation of a measure — Directive 91/414/CEE — European Food Safety Authority — Inadmissibility)

(2007/C 95/88)

Language of the case: English

Parties

Applicant: Dow AgroSciences Ltd (Hitchin, United Kingdom) (represented by: K. Van Maldegem and C. Mereu, lawyers)

Defendant: European Food Safety Authority (EFSA) (represented by: A. Cuvillier and D. Detken, Agents,)

Re:

Application for suspension of operation of the decision of the European Food Safety Authority (EFSA) of 28 July 2006, updated on 6 October 2006, concerning the evaluation of the active substance haloxyfop-R for the purposes of Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant-protection products on the market (OJ 1991 L 230, p. 1), and for the grant of other interim measures

Operative part of the order

1. *Rejects the application for interim measures;*

2. *Reserves the costs.*

Order of the President of the Court of First Instance of 26 February 2007 — Sumitomo Chemical Agro Europe v Commission

(Case T-416/06 R)

(Application for interim measures — Application for suspension of operation — Directive 91/414/EEC — No urgency)

(2007/C 95/89)

Language of the case: English

Parties

Applicant: Sumitomo Chemical Agro Europe SAS (Saint-Didier-au-Mont-d'Or, France) (represented by: K. Van Maldegem and C. Mereu, lawyers)

Defendant: Commission of the European Communities (represented by: L. Parpala and B. Doherty, Agents)

Re:

Application for suspension of certain provisions of Commission Directive 2006/132/EC of 11 December 2006 amending Council Directive 91/414/EEC to include procymidone as an active substance (OJ 2006 L 349, p. 22), and for certain other interim measures.

Operative part of the order

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

(2) *The costs are reserved.*

Action brought on 20 February 2007 — Fahas v Council

(Case T-49/07)

(2007/C 95/90)

Language of the case: German

Parties

Applicant: Sofiane Fahas (Milkendorf, Germany) (represented by: F. Zillmer, lawyer)

Defendant: Council of the European Union

Form of order sought

— Annul Decision 2002/848/EC of 28 October 2002 implementing Article 2(3) of Regulation (EC) No 2580/2001 and repealing Decision 2002/460/EC, by which the Council drew up an updated list of persons, groups and entities to which that regulation applies, and all decisions adopted in the meantime by the Council of the European Union in the meantime including Decision 2006/1008/EC of 21 December 2006, which is currently in force, in so far as they concern the applicant;

— declare all aforementioned decisions up to and including Decision 2006/1008/EC of 21 December 2006 inapplicable to the applicant;

— order the Council of the European Union to pay the applicant damages for the harm suffered, the amount to be determined at the Court's discretion, but at least EUR 2 000;

— order the defendant to pay the costs.

Pleas in law and main arguments

By its application, the applicant challenge Decision 2006/1008/EC [1] and all previous decisions since Decision 2002/848/EC [2], in so far as he is expressly listed in the contested legislation.

In support of his claim, the applicant alleges infringement of his right to a fair hearing and his right to effective legal protection. In addition, Decision 2006/1008/EC is unfounded and thus is in breach of Article 253 EC.

[1] Council Decision 2006/1008/EC of 21 December 2006 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 (OJ 2006 L 379, p. 123).

[2] Council Decision 2002/848/EC of 28 October 2002 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).

Action brought on 23 February 2007 — Portuguese Republic v Commission

(Case T-50/07)

(2007/C 95/91)

Language of the case: Portuguese

Parties

Applicant: Portuguese Republic (Lisbon, Portugal) (represented by: Inez Fernandes and P. Barros da Costa, acting as Agents, and M. Figueiredo, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— Annulment of 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) [1], in so far as it applies to Portugal a financial correction of 5 % in aid for arable crops, in respect of the additional payment for durum wheat, in the sum of EUR 3 945 827,00, under the system created by Council Regulation (EC) No 1251/1999 of 17 May 1999 establishing a support system for producers of certain arable crops [2];

— as an ancillary matter, annulment of the decision in so far as it excludes from Community financing expenditure incurred by the Portuguese Republic before 16 December 2003, in the sum of EUR 3 231 650,20;

— an order that the Commission of the European Communities should pay the costs.

Pleas in law and main arguments

The applicant relies on the following grounds:

— Infringement of the fourth subparagraph of Article 7(4)(a) of Regulation No 1258/99 [3]: in this connection the applicant alleges breach of the duty to state reasons and disregard of essential procedural requirements;

— with regard to the late performance of inspections on the spot in the marketing years 2002 and 2003 laid to its charge by the contested decision, the applicant alleges breach of the principle of subsidiarity, breach of the principle of equality of Member States, breach of the principle of proportionality and error as to the factual grounds;

— the applicant also argues that the EAGGF has sustained no financial loss;

— furthermore, the applicant challenges the Commission's finding as to the allegedly insufficient number of site visits regarding durum wheat in 2002.

[1] OJ 2006 L 355, p. 96.

[2] OJ 1999 L 160, p. 1.

[3] Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy (OJ 1999 L 160, p. 103).

Action brought on 22 February 2007 — Agrar-Invest-Tatschl v Commission

(Case T-51/07)

(2007/C 95/92)

Language of the case: German

Parties

Applicant: Agrar-Invest-Tatschl GmbH (St. Andrä im Lavanttal, Ausria) (represented by O. Wenzlaff, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— annul Article 1(2) and Article 1(3) of Commission Decision C(2006) 5789 final (REC 05/05) of 4 December 2006;

— order the defendant to find that the subsequent entry into the accounts of import duties amounting to EUR 110 937,60 in respect of the import of sugar originating in Croatia by the applicant from 26 June 2002, which is the subject-matter of the request made by the Republic of Austria of 10 June 2005, should be discounted;

— in the alternative to the second form of order sought, order the defendant to find that the import duties amounting to EUR 110 937,60 in respect of the import of sugar originating from Croatia by the applicant from 26 June 2002, which is the subject-matter of the request made by the Republic of Austria of 10 June 2005, should be remitted.

Pleas in law and main arguments

The applicant challenges Commission Decision C(2006) 5789 final of 4 December 2006 finding, first, that, as regards a specified amount, the subsequent entry into the accounts of import duties was not justified and, secondly, that, as regards a further amount, the subsequent entry into the accounts of import duties was justified and that the remission of those duties in a particular case was not justified (request of the Republic of Austria).

In this decision directed at the Republic of Austria, the Commission came to the conclusion, applying Regulation (EEC) No 2913/92 ([1]) ('the Customs Code of the Communities') and Regulation (EEC) No 2454/93 ([2]), that the subsequent entry into the accounts of import duties amounting to EUR 110 937,60 should not be discounted and that the remission of those import duties was not justified.

In support of its claim, the applicant argues that the contested decision is unlawful, because the conditions for the discounting of the subsequent entry of the import duties in the accounts under Article 220(2)(b) of the Customs Code of the Communities or for the remission of the subsequently entered import duties under Article 239 of the Customs Code of the Communities are satisfied.

([1]) Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 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 1993 L 253, p. 1).

Action brought on 19 February 2007 — Trade-Stomil v Commission

(Case T-53/07)

(2007/C 95/93)

Language of the case: English

Parties

Applicant: Trade-Stomil Sp z o. o. (Łódź, Poland) (represented by: F. Carlin, barrister, E. W. Batchelor, solicitor)

Defendant: Commission of the European Communities

Form of order sought

— Annulment of the decision, in particular Articles 1 to 4 thereof, to the extent that it applies to Trade-Stomil; or

— annulment of Article 2 of the decision insofar as it pertains to Trade-Stomil; or

— modification of Article 2 of the decision as it pertains to Trade-Stomil, so as to annul or substantially reduce the fine imposed on Trade-Stomil therein; and, in any event,

— order that the Commission pay its own costs and Trade-Stomil's costs in connection with 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.

The applicant relies upon fourteen grounds in support of its claims. According to the applicant:

i) the Commission infringed Article 81 EC, as it allegedly failed to prove to the requisite standard that Trade-Stomil participated in the cartel;

ii) the Commission infringed the duty to state reasons in finding that the duration of Trade-Stomil's participation in the cartel amounted to three months;

iii) the Commission is said to lack the jurisdiction which is necessary to address a decision to Trade-Stomil under Article 81(1) EC and Article 53 EEA agreement;

iv) the Commission further infringed Article 81 EC finding that Trade-Stomil was acting as a non-genuine agent of Dwory;

v) the Commission infringed the duty to state reasons in finding that Trade-Stomil was acting as a non-genuine agent of Dwory;

vi) the Commission breached the principle of equal treatment in setting the starting point of the fine based on Dwory and Trade-Stomil's combined turnover;

vii) the Commission infringed the duty to state reasons by fining Trade-Stomil on the basis of Trade-Stomil and Dwory's sales turnover, rather than Trade-Stomil's turnover alone;

viii) the Commission allegedly infringed the principle of equality in calculating the starting point on Trade-Stomil, as a mere agent with no control over prices or quantities, in the same way as a supplier/producer;

ix) the Commission infringed the duty to follow self-imposed rules by not taking into account Trade-Stomil's passive or follow-my-leader participation in the cartel;

x) the Commission infringed the duty to follow self-imposed rules by failing to reduce the fine for non-implementation;

xi) the Commission decision breached the principle of proportionality in setting the fine;

xii) the Commission infringed the rights of defence by failing to hear Trade-Stomil as to the basis on which it proposed to assume jurisdiction extra-territorially;

xiii) the Commission failed to establish or hear Trade-Stomil as to the intentional or negligent nature of the infringement;

xiv) the Commission allegedly erred in calculating the fine.

Appeal brought on 23 February 2007 by the Commission of the European Communities against the judgment of the Civil Service Tribunal delivered on 14 December 2006 in Case F-122/05 Economidis v Commission

(Case T-56/07 P)

(2007/C 95/94)

Language of the case: French

Parties

Appellant: Commission of the European Communities (represented by: J. Currall and G. Berscheid, Agents)

Other party to the proceedings: Ioannis Economidis (Woluwé-St-Etienne, Belgium)

Form of order sought by the appellant

— Set aside the judgment under appeal in so far as it upholds the first two pleas in law alleging illegality of the appointment procedure and breach of Article 29(1) and Article 31 of the Staff Regulations and annuls the appointment of another person to the post of Head of Unit 'Biotechnology and applied genomics' and, consequently, the rejection of the applicant's candidature for that post;

— itself give judgment in the dispute, uphold the pleas submitted by the defendant at first instance and, accordingly, dismiss the application in Case F-122/05;

— in the alternative, refer the case beck to the Civil Service Tribunal for a decision on the remaining pleas;

— order the applicant at first instance to pay the costs of the proceedings and also to bear his own costs before the Civil Service Tribunal.

Pleas in law and main arguments

By the judgment of 14 December 2006 which the appellant now seeks to have set aside, the Civil Service Tribunal (CST) annulled the Commission's decision of 23 December 2004 appointing another candidate to a post as Head of Unit and, consequently, rejecting the applicant's candidature.

In support of its application to have that judgment set aside, the Commission raises three pleas in law, the first of which alleges incorrect application of the *Kratz* ([1]) decision in the present case in so far as the new rules applicable, including the relevant provisions of the Staff Regulations and the Commission's 'Middle Management' decision ([2]), are different from those which were applicable in *Kratz*, a consideration which the Tribunal failed to take into account.

The second plea put forward by the Commission alleges a contradiction in the grounds of the judgment under appeal, in that the Tribunal found, first of all, that the principle of separation of functions and grade was relevant, that the post could be filled solely by transfer, the grade being automatically that of the candidate chosen on the date of appointment, whereas it then concluded that posts must be published by pairs of two grades.

Third, the Commission contends that if the obligation to publish posts as Head of Unit according to specific pairs of grades, as imposed on the institutions by the judgment under appeal, were to be upheld, the applicant at first instance would not have an interest in bringing proceedings and his action ought therefore to be dismissed as inadmissible. In the Commission's submission, the judgment under appeal thus exceeds the subject-matter of the application at first instance.

([1]) Case T-10/94 *Kratz* v *Commission* [1995] ECR II-1455.
([2]) Commission Decision C (2004) 1597 of 28 April 2004 relating to the middle management, published in *Administrative Notices* No 73/2004 of 23 June 2004.

Action brought on 26 February 2007 — E.ON Ruhrgas and E.ON Földgáz Trade v Commission

(Case T-57/07)

(2007/C 95/95)

Language of the case: English

Parties

Applicants: E.ON Ruhrgas International AG (Essen, Germany) and E.ON Földgáz Trade Zrt. (Budapest, Hungary) (represented by: G. Wiedemann and T. Lübbig, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Annul the 4 paragraph at the bottom of page 1 of the decision by the European Commission (document No *30783) dated 19 December 2006 and directed to E.ON Ruhrgas International AG in Case M.3696 — E.ON/MOL; and annul the decision by the European Commission (document No *924) dated 16 January 2007 and also directed to E.ON Ruhrgas International AG in Case M.3696 — E.ON/MOL;

— order the Commission to pay the costs incurred by the applicants in the present proceedings.

Pleas in law and main arguments

By decision of 21 December 2005 the Commission declared, subject to the applicant's compliance with certain conditions and obligations, the acquisition of two Hungarian gas companies by the applicant E.ON Ruhrgas International AG compatible with the common market and the functioning of the Agreement on the European Economic Area.

As one of the obligations, the applicant E.ON Ruhrgas International AG undertook to organise and implement a gas release programme on the Hungarian market. The initial auction price was to be set at 95 % of the weighted average cost of gas provided that the aggregate loss the applicants may incur as a result of the final auction price being set below the weighted average cost of gas does not exceed EUR 26 million.

In the contested letters the Commission indicated that the losses made by the applicants in a given auction should be offset by any profits made by the applicants in other auctions. The applicants contest this and are of the opinion that losses which results from the gas release auctions do not need to be offset by potential profits that may derive from future auctions.

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

Firstly, the applicants submit that the Commission has no legal basis for increasing the financial burdens and thereby subsequently change the legal obligations resulting from the Commission's decision of 21 December 2005.

Secondly, the applicants contend that the Rules of procedure of the Commission ([1]) have been infringed in that neither have all the members of the Commission deliberated on the content of the two contested letters, nor has there been a proper delegation of powers to the Directorate General of the Commission by virtue of Article 14 of the said rules.

([1]) OJ 2000 L 308, p. 26, as amended.

Action brought on 23 February 2007 — BYK-Chemie v OHIM — (Substance for Success)

(Case T-58/07)

(2007/C 95/96)

Language of the case: German

Parties

Applicant: BYK-Chemie (Wesel, Germany) (represented by: J. Kroher and A. Hettenkofer, lawyers)

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 defendant of 9 January 2007 in Case R0816/2006-04;

— order the defendant to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: The word mark 'Substance for success' for goods and services in Classes 1, 40-42 (Application No 3 660 552).

Decision of the Examiner: Rejection of the application.

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

Pleas in law: Breach of Article 7(1)(b) and (c) of Council Regulation No 40/94 [1] as the registered trade mark is neither devoid of the necessary distinctive character nor is to be reserved for use in trade.

[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 20 February 2007 — Polimeri Europa v Commission

(Case T-59/07)

(2007/C 95/97)

Language of the case: Italian

Parties

Applicant: Polimeri Europa SpA (Brindisi, Italy) (represented by: M. Siragusa and F.M. Moretti, avvocati)

Defendant: Commission of the European Communities

Form of order sought

The applicant claims that the Court should

— annul the decision, in whole or in part, with all the consequences entailed for the amount of the penalty;

— in the alternative, annul or reduce the penalty;

— in any case, order the Commission to pay the costs, fees and expenses.

Pleas in law and main arguments

By decision of 29 November 2006 (C(2006) final in Case COMP/F/38.638 — Butadiene Rubber (BR) and Emulsion Styrene Butadiene Rubber (ESBR); 'the Decision'), the Commission declared that Polimeri Europa, together with other undertakings, has infringed Article 81 EC and Article 53 of the Agreement on the European Economic Area by agreeing price targets for BR/ESBR products, sharing customers through non-aggression pacts and exchanging sensitive commercial information.

In support of its action challenging that measure, Polimeri Europa alleges serious breaches of procedure and infringement of its rights of defence. In particular, the applicant notes the following conduct on the part of the Commission: (i) its use of incorrect rules in applying the Leniency Notice; (ii) its unjustified and inexplicable adoption of a second statement of objections, thereby distorting the role of such a statement; (iii) its attribution to Polimeri Europa — first stated in the Decision — of sole liability for facts relating to a period during which Syndial SpA, not Polimeri Europa, had been managing the business; (iv) its introduction in the Decision of an assessment of the market that was new and different as compared with the assessment previously used.

The applicant also alleges that the Decision is flawed by the following substantive defects: (i) lack of a proper preliminary investigation, coupled with an insufficient and contradictory statement of reasons, as regards the definition of the relevant market, in that the Commission carried out a joint evaluation of the BR/ESBR sectors — without, however, taking natural rubber into account — and assessed the market unfairly; (ii) erroneous attribution to Polimeri Europa of liability for facts relating to a period during which another company (not Polimeri Europa) was managing the products in question; (iii) lack of a proper preliminary investigation, coupled with an insufficient and contradictory statement of reasons, as regards the assessment of the facts; (iv) lack of a proper preliminary investigation, coupled with an insufficient and contradictory statement of reasons, as regards the evidence for a hypothetical unlawful act on the BR market.

Lastly, the applicant alleges that the penalty imposed on it is unlawful for the following reasons: (i) breach of the obligation to evaluate the true impact of the infringement; (ii) failure properly to state reasons and breach of the principles of equal treatment and proportionality as regards the application of the multiplier for the purposes of deterrence; (iii) erroneous calculation of the duration of the infringement in the light of the evidence available; (iv) faulty reasoning and breach of the principles of legal certainty and proportionality as regards application of the repeat offender mechanism; (v) failure to apply the mitigating factor consisting in non-implementation of the alleged agreements and concerted practices.

Action brought on 23 February 2007 — Spain v Commission

(Case T-60/07)

(2007/C 95/98)

Language of the case: Spanish

Parties

Applicant: Kingdom of Spain (represented by: M. Muñoz Pérez)

Defendant: Commission of the European Communities

Form of order sought

— Annul Commission Decision 2006/932/EC of 14 December 2006 excluding from Community financing certain expenditures 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 subject-matter of this action;

— Order the Commission to pay the costs

Pleas in law and main arguments

The Kingdom of Spain challenges the contested Decision, in so far as it provides for a financial correction in respect of the failure to meet environmental conditions in the withdrawals of fruit and vegetables for animal feed in the Valencian Community during the financial years 2001, 2002 and 2003, in the amounts of EUR 2 858 447,88, EUR 4 357 238,89 and EUR 3 679 878,76 respectively.

In support of its claim, the applicant alleges:

— Non-existence of the irregularities complained of by the Commission, since the relevant rules of the Valencian Community did not give rise to a parallel system of biodegradation.

— Breach of the principle of proportionality by the financial correction made, in so far as, the Commission did not establish the real amount of the financial risk that the supposed irregularities found entailed for the EAGGF; and secondly, the controls carried out by the Spanish authorities with regard to the withdrawal of products for animal feed were far superior to those required by the Community rules.

— In the alternative, partial lack of basis for the financial correction applied.

Action brought on 26 February 2007 — Italian Republic v Commission

(Case T-61/07)

(2007/C 95/99)

Language of the case: Italian

Parties

Applicant: Italian Republic (represented by: P. Gentili, Avvocato dello Stato)

Defendant: Commission of the European Communities

Form of order sought

The applicant claims that the Court should:

— annul memorandum No 12244 of 14.12.2006 of the European Commission, Directorate General for Regional Policy — Programmes and projects in Cyprus, Greece, Hungary, Italy, Malta and the Netherlands — concerning payments by the Commission which differ from the amount requested. Ref. Programma DOCUP Lazio (No CCI 2000 IT 162 DO 009);

— annul memorandum No 12528 of 19.12.2006 of the European Commission, Directorate General for Regional Policy — Programmes and projects in Cyprus, Greece, Hungary, Italy, Malta and the Netherlands — concerning payments by the Commission which differ from the amount requested. Ref. Programma DOCUP Piemonte (No CCI 2000 IT 162 DO 007);

— annul memorandum No 12558 of 20.12.2006 of the European Commission, Directorate General for Regional Policy — Programmes and projects in Cyprus, Greece, Hungary, Italy, Malta and the Netherlands — concerning payments by the Commission which differ from the amount requested. Ref. Programma POR Puglia (No CCI 1999 IT 161 PO 009);

— annul memorandum No 00321 of 16.1.2007 of the European Commission, Directorate General for Regional Policy — Programmes and projects in Cyprus, Greece, Hungary, Italy, Malta and the Netherlands — concerning payments by the Commission which differ from the amount requested. Ref. Programma DOCUP Lazio (No CCI 2000 IT 162 DO 009);

— annul memorandum No 00322 of 16.1.2007 of the European Commission, Directorate General for Regional Policy — Programmes and projects in Cyprus, Greece, Hungary, Italy, Malta and the Netherlands — concerning certification of the intermediate statement of expenses and claim for payment. Ref. DOCUP Veneto Ob. 2 2000-2006 (No CCI 2000 IT 162 DO 005);

— annul memorandum No 00324 of 16.1.2007 of the European Commission, Directorate General for Regional Policy — Programmes and projects in Cyprus, Greece, Hungary, Italy, Malta and the Netherlands — concerning payments by the Commission which differ from the amount requested. Ref. Programma POR Sardegna 2000-2006 (No CCI 1999 IT 161 PO 010);

— annul memorandum No 00325 of 16.1.2007 of the European Commission, Directorate General for Regional Policy — Programmes and projects in Cyprus, Greece, Hungary, Italy, Malta and the Netherlands — concerning payments by the Commission which differ from the amount requested. Ref. Programma POR Campania 2000-2006 (No CCI 1999 IT 161 PO 007);

— annul memorandum No 00425 of 18.1.2007 of the European Commission, Directorate General for Regional Policy — Programmes and projects in Cyprus, Greece, Hungary, Italy, Malta and the Netherlands — concerning payments by the Commission which differ from the amount requested. Ref. Programma DOCUP Toscana Ob. 2 (No CCI 1999 IT 162 DO 001);

— annul memorandum No 00427 of 18.1.2007 of the European Commission, Directorate General for Regional Policy — Programmes and projects in Cyprus, Greece, Hungary, Italy, Malta and the Netherlands — concerning payments by the Commission which differ from the amount requested. Ref. Programma POR Puglia (No CCI 1999 IT 161 PO 009);

— annul all related and prior acts and, consequently, order the Commission of the European Communities to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those relied on in Case T-345/04 *Italy* v *Commission* ([1]).

([1]) OJ C 262, 23.10.04, p. 55.

Appeal brought on 28 February 2007 by the Commission of the European Communities against the judgment of the Civil Service Tribunal delivered on 13 December 2006 in Case F-17/05 de Brito Sequeira Carbalho v Commission

(Case T-62/07 P)

(2007/C 95/100)

Language of the case: French

Parties

Appellant: Commission of the European Communities (represented by: D. Martin, Agent, and C. Falmagne, lawyer)

Other party to the proceedings: José Antonio de Brito Sequeira Carvalho

Form of order sought by the appellant

— Set aside the judgment of the Civil Service Tribunal of 13 December 2006 in Case F-17/05;

— dismiss the action brought by Mr Sequeira;

— order each of the parties to bear its own costs relating to these proceedings and the proceedings before the Civil Service Tribunal.

Pleas in law and main arguments

By its judgment of 13 December 2006 in Case F-17/05 *de Brito Sequeira Carvalho* v *Commission*, the Civil Service Tribunal (CST) upheld in part the action brought by the applicant at first instance and annulled the Commission decision of 13 July 2004 prohibiting the applicant's access to its buildings and the decisions automatically extending his sick leave.

The Commission bases the appeal, first, on the fact that the Tribunal adjudicated *ultra petita* by annulling the Commission decision of 13 July 2004 prohibiting the applicant's access to its buildings and, second, on the fact that the judgment under appeal infringed Community law. The Commission claims that the Tribunal distorted the facts of the case, that it erred in law in interpreting the obligation to state the reasons on which a decision is based and that it infringed the fifth subparagraph of Article 59(1) of the Staff Regulations. The Commission further maintains that by the interpretation in the judgment of Article 59(5) of the Staff Regulations, the Tribunal distorted the arbitration procedure provided for in that provision.

Action brought on 1 march 2007 — Mülhens v OHIM — Exportaciones Aceiteras Fedeoliva (tosca de FEDEOLIVA)

(Case T-63/07)

(2007/C 95/101)

Language in which the application was lodged: English

Parties

Applicant: Mülhens GmbH & Co. KG (Köln, Germany) (represented by: D. Eickemeier, lawyer)

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

Other party to the proceedings before the Board of Appeal: Exportaciones Aceiteras Fedeoliva, A. I. E. (Jaen, Spain)

Form of order sought

— Annul the decision of the Second Board of Appeal of the defendant dated 18 December 2006 in Case R 761/2006-2;

— reject the application of the Community trade mark No 3 467 651.

Pleas in law and main arguments

Applicant for the Community trade mark: Exportaciones Aceiteras Fedeoliva, A. I. E.

Community trade mark concerned: The figurative Community trademark 'tosca de FEDEOLIVA' for goods and services in classes 16, 29, 35 and 39 Application No 3 467 651

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

Mark or sign cited: The community and national word marks 'TOSCA' for goods and services in class 3 (perfumeries, essential oils, non-medicated toilet preparations and cosmetics, preparations for hair, toothpastes, toilet soaps)

Decision of the Opposition Division: Rejected the opposition

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8(1)(b), 8(2)(c) and 8(5) of Council Regulation (EC) No 40/94 ('CTMR') and of the essential procedural requirements enshrined in Articles 43(1), 73 and 74 (1)(2) of the CTMR.

Action brought on 2 March 2007 — Agencja Wydawnicza Technopol v OHIM — ('350')

(Case T-64/07)

(2007/C 95/102)

Language of the case: Polish

Parties

Applicant: Agencja Wydawnicza Technopol, Sp. z o. o. (Częstochowa, Republic of Poland) (represented by: D. Rzążewska, lawyer)

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

Form of order sought

— set aside in its entirety the decision delivered on 21 December 2006 by the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) in Case No R 1033/2006-4;

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

Pleas in law and main arguments

Community trade mark concerned: word mark '350' for goods in Class 16

Decision of the Examiner: registration refused

Decision of the Board of Appeal: appeal dismissed

Pleas in law: incorrect application of the provisions of Article 7 (1)(b) and (c) of Regulation No 40/94 on the Community trade mark ([1]), inasmuch as, according to the applicant, the designation '350', in relation to the goods indicated, is neither descriptive nor devoid of distinctive character.

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

Action brought on 2 March 2007 — Agencja Wydawnicza Technopol v OHIM — ('250')

(Case T-65/07)

(2007/C 95/103)

Language of the case: Polish

Parties

Applicant: Agencja Wydawnicza Technopol, Sp. z o. o. (Częstochowa, Republic of Poland) (represented by: D. Rzążewska, lawyer)

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

Form of order sought

— set aside in its entirety the decision delivered on 21 December 2006 by the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) in Case No R 1034/2006-4;

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

Pleas in law and main arguments

Community trade mark concerned: word mark '250' for goods in Class 16

Decision of the Examiner: registration refused

Decision of the Board of Appeal: appeal dismissed

Pleas in law: incorrect application of the provisions of Article 7 (1)(b) and (c) of Regulation No 40/94 on the Community trade mark ([1]), inasmuch as, according to the applicant, the designation '250', in relation to the goods indicated, is neither descriptive nor devoid of distinctive character.

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

Action brought on 2 March 2007 — Agencja Wydawnicza Technopol v OHIM — ('150')

(Case T-66/07)

(2007/C 95/104)

Language of the case: Polish

Parties

Applicant: Agencja Wydawnicza Technopol, Sp. z o. o. (Częstochowa, Republic of Poland) (represented by: D. Rzążewska, lawyer)

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

Form of order sought

— set aside in its entirety the decision delivered on 21 December 2006 by the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) in Case No R 1035/2006-4;

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

Pleas in law and main arguments

Community trade mark concerned: word mark '150' for goods in Class 16

Decision of the Examiner: registration refused

Decision of the Board of Appeal: appeal dismissed

Pleas in law: incorrect application of the provisions of Article 7 (1)(b) and (c) of Regulation No 40/94 on the Community trade mark ([1]), inasmuch as, according to the applicant, the designation '150', in relation to the goods indicated, is neither descriptive nor devoid of distinctive character.

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

Action brought on 2 March 2007 — Ford Motor v OHIM (FUN)

(Case T-67/07)

(2007/C 95/105)

Language of the case: German

Parties

Applicant(s): Ford Motor Company (Dearborn, Michigan, USA) (represented by R. Ingerl, lawyer)

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

Form of order sought

— set aside the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 20 December 2006 (Case R 1135/2006-2)

— order the defendant to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: Word mark 'FUN' for goods and services in Class 12 (Application No 4 509 808).

Decision of the Examiner: Refusal of the application.

Decision of the Board of Appeal: Dismissal of the appeal and refusal of the application.

Pleas in law:

— infringement of Article 7(1)(c) of Regulation (EC) No 40/94 ([1]) by reason of the incorrect application of the absolute ground for refusal regarding the indication of the characteristics of the goods to words forming part of the general vocabulary which are not directly descriptive,

— infringement of Article 7(1)(b) of Regulation No 40/94 by accepting that the mark was devoid of any descriptive character by reason only of the improper application of Article 7(1)(c) of Regulation No 40/94, and

— infringement of Article 7(1)(b) of Regulation No 40/94 on the ground that the mark applied for was sufficiently distinctive.

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

Action brought on 26 February 2007 — Cantieri Navali Termoli v Commission

(Case T-70/07)

(2007/C 95/106)

Language of the case: Italian

Parties

Applicant: Cantieri Navali Termoli SpA (Termoli, Italy) (represented by: B. Daniela Mammarella, lawyer)

Defendant: Commission of the European Communities

Form of order sought

The applicant claims that the Court should:

— annul the decision;

— order the defendant to pay all costs and fees incurred in the proceedings.

Pleas in law and main arguments

The present application is directed against the Commission's decision of 4 July 2006 on State aid which Italy is planning to implement for Cantieri Navali Termoli S.p.A (No C 48/2004 (ex No 595/2003)) [1], by which it classed as State aid not compatible with the common market the operating aid, provided for in Article 3 of the Shipbuilding Regulation [2], that Italy planned to give the applicant in respect of Ship C.180 (ex C.173), and forbade the 10-month extension of the ship's delivery limit, on the ground that the causes of the delays invoked by the applicant (the impact of the events of 11 September 2001 in New York, the need for technical modifications, the occurrence of natural disasters) failed to satisfy the second subparagraph of Article 3(2) of the Shipbuilding Regulation.

In support of its claims, the applicant alleges:

(a) Procedural defect, in the form of an insufficient statement of reasons in respect of the following findings:

— that the events of 11 September had no causal link with the present case: by contrast with the cruise ship shipbuilding sector, the shipbuilding sector in which the applicant is active — that is to say, the petro-chemical tanker shipbuilding sector — was found to have suffered no disruption on account of those events;

— that it has not been shown that the natural disasters which struck the territory in which the applicant is active played a causal role;

— the findings concerning the need to introduce technical modifications to the construction.

(b) Manifest error in the assessment of the facts adduced by way of evidence, confirmed by the Italian State, of the disruption of the programme of works, including the unwarranted distinction drawn between chemical markets and other shipping sectors for the purposes of applying the Community legislation in question, as well as the biased interpretation of the November 2003 report from the Clarkson Research Institute — moreover, an interpretation in the abstract and out of context — to which decisive importance was attributed, without practical checks being carried out and substantiated by documentary evidence.

(c) Misuse of powers, given the failure to determine, on the basis of facts and by reference to the characteristics and circumstances of the individual case, whether the requested extension of only 10 months was likely to affect trade between Member States, and thus to assess the compatibility of the operating aid with the competition rules of the Community.

[1] OJ L 283, 28.12.2006, p. 53.
[2] Council Regulation (EC) No 1540/98 establishing new rules on aid to shipbuilding (OJ L 202, 18.7.1998, p. 1).

Action brought on 9 March 2007 — Icuna.Com v Parliament

(Case T-71/07)

(2007/C 95/107)

Language of the case: French

Parties

Applicant: Icuna.Com SCRL (Braine-le-Château, Belgium) (represented by J. Windey and P. de Bandt, lawyers)

Defendant: European Parliament

Form of order sought

— annul the decision of the European Parliament of 31 January 2007, annulling the tender procedure EP/DGINFO/WEBTV/2006/0003, in so far as concerns lot 2;

— declare that the Community is non-contractually liable and order the European Parliament to pay compensation to the applicant for all the damage suffered as a result of the contested decision and to appoint an expert to assess that damage;

— in any event, order the European Parliament to pay the costs of the present proceedings.

Pleas in law and main arguments

By decision of 1 December 2006, the European Parliament rejected the applicant's tender submitted in the context of the tender procedure EP/DGINFO/WEBTV/2006/0003, lot 2: programme contents, with a view to the creation of a European Parliament web television channel [1] and entered into a contract with another tenderer. That decision was the subject of an action for annulment brought by the applicant in the Court of First Instance on 19 December 2006 [2]. In the context of interlocutory proceedings, the President of the Court of First Instance ordered, with interim effect, and in so far as the Parliament had already concluded the contract in accordance with the decision of 1 December 2006, the suspension of the operation of the contract. Following the hearing held in the interlocutory proceedings, the Parliament adopted the contested decision on 31 January 2007, by which it annulled the tender procedure at issue in so far as that procedure concerns lot 2.

In support of its action, the applicant relies on two pleas in law. By the first plea it is alleged that the contested decision was unlawful, owing to the lack of competence of the author of the act and the infringement of Article 101 of the Financial Regulation [3]. The applicant claims that no provision of Community law authorises the contracting authority to annul the award of a procurement contract after the signature of the contract with the successful tenderer. Moreover, it asserts that even if the defendant were competent to adopt the contested decision on the basis of Article 101 of the Financial Regulation, that provision does not authorise it to proceed to the partial annulment of the tender procedure.

By the second plea, the applicant asserts that the contested decision is vitiated by a failure to state reasons, in so far as it does not make it possible to understand the reasons which led the defendant to adopt such a measure, or the legal basis on which it is founded or the reason for which the tender procedure was partially annulled (that is, in respect of lot 2 only).

In addition to the annulment of the decision of 31 January 2007, the applicant claims compensation for all the damage it has suffered as a result of that decision.

(1) Contract notice: 'European Parliament web television channel' (OJ 2006 S 87-091412).
(2) Case T-383/06 *Icuna.Com* v *Parliament*, OJ 2007 C 20, p. 31.
(3) Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 248, p. 1).

Action brought on 12 March 2007 — Federal Republic of Germany v Commission

(Case T-74/07)

(2007/C 95/108)

Language of the case: German

Parties

Applicant): Federal Republic of Germany (represented by: M. Lumme and C. Blaschke, assisted by C. von Donat, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— annulment of Commission Decision C(2006) 7271 final of 27 December 2006 on the reduction of the period of the financial contribution of the European Regional Development Fund granted by Commission Decision C(95) 2271 to the Operational Programme under the Community initiative INTERREG II in the Saarland, Lorraine and Western Palatinate regions in Germany,

— order the Commission to pay the costs.

Pleas in law and main arguments

By the contested decision, the Commission reduced the period of the contribution of the European Regional Development Fund to the Operational Programme for North-Rhine Westphalia under the Community initiative INTERREG II in the Saarland, Lorraine and Western Palatinate regions.

In support of its application, the applicant alleges infringement of Article 24(2) of Regulation No 4253/88 (1), on the ground that it contains no provisions allowing for a reduction of that kind. It argues in particular that the deviations from the indicative financing plan do not represent a significant alteration of the plan. The applicant claims that, even if the plan were to have been significantly altered, the Commission should agree to that alteration.

In addition, the applicant maintains that insufficient reasons were given for the reduction. In particular, it claims that there is no justification for the failure to apply the rule of flexibility in the 'Guidelines on the financial closure of operational measures (1994 — 1999) of the structural funds' (SEC(1999) 1316).

If it were to be accepted that provisions allowing a reduction exist, the applicant argues that defendant failed to exercise the discretion afforded to it in relation to the specific programme. According to the applicant, the Commission should have considered whether a reduction in the European Regional Development Fund contribution appeared reasonable.

Lastly, the applicant claims that there was an infringement of the principle of partnership.

(1) Council Regulation (EC) No 4253/88 of 19 December 1988 laying down provisions for implementing Regulation (EEC) No 2052/88 as regards coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments (OJ 1988 L 374, p. 1).

Action brought on 8 March 2007 — IXI Mobile v OHIM — Klein (IXI)

(Case T-78/07)

(2007/C 95/109)

Language in which the application was lodged: English

Parties

Applicant: IXI Mobile, Inc (Redwood City, United States) (represented by: S. Malynicz, Barrister)

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

Other party to the proceedings before the Board of Appeal: Jochen und Eckhard Klein GbR (Olching, Germany)

Form of order sought

— The decision of the Second Board of Appeal dated 11 January 2007 in Case R 796/2006-2 dismissing the appeal shall be annulled;

— the Office and the other party shall bear their own costs and pay those of the applicant.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The word mark 'IXI' for goods in class 9 — application No 723 140

Proprietor of the mark or sign cited in the opposition proceedings: Jochen und Eckhard Klein GbR

Mark or sign cited: The Community word mark 'ixi' for goods in class 9

Decision of the Opposition Division: Opposition upheld for all the contested goods

Decision of the Board of Appeal: Appeal dismissed

Pleas in law: The opponent did not adduce evidence of similarity between the respective goods; the Board of Appeal took an unduly broad view of the scope of protection of the earlier mark and failed to properly analyse the relevant factors governing the assessment of similarity of the respective goods. Furthermore, the Board of Appeal took the reasons for the applicant to select its mark into consideration, which the applicant submits is an irrelevant consideration.

Action brought on 9 March 2007 — SHS Polar Sistemas Informáticos v OHIM — Polaris Software Lab (POLARIS)

(Case T-79/07)

(2007/C 95/110)

Language in which the application was lodged: English

Parties

Applicant: SHS Polar Sistemas Informáticos, SL (Madrid, Spain) (represented by: C. Hernández Hernández, lawyer)

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

Other party to the proceedings before the Board of Appeal: Polaris Software Lab Ltd (Chennai, India)

Form of order sought

— That the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market dated 8 January 2007 in Case R 658/2006-2 be annulled;

— that OHIM bears its own cost and pays those incurred by the applicant.

Pleas in law and main arguments

Applicant for the Community trade mark: Polaris Software Lab Ltd

Community trade mark concerned: The figurative mark 'POLARIS' for goods and services in classes 9 and 42 — application No 3 267 713

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

Mark or sign cited: The Community word mark 'POLAR' for goods and services in classes 9, 38 and 42

Decision of the Opposition Division: Opposition upheld for all the contested goods in class 9

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

Pleas in law: Violation of Article 8(1)(b) of Council Regulation No 40/94 as i) the earlier trade mark can be applied to software destined to a non-specialist consumer, which could give rise to a confusion, ii) the small visual and phonetic differences between the two conflicting trade marks do not suffice to avoid a likelihood of confusion and iii) both marks are connected to the same meaning.

Action brought on 15 March 2007 — JanSport Apparel v OHIM (BUILT TO RESIST)

(Case T-80/07)

(2007/C 95/111)

Language of the case: English

Parties

Applicant: JanSport Apparel Corp. (Wilmington, USA) (represented by: C. Bercial Arias, C. Casalonga, K. Dimidjian-Lecompte, lawyers)

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

Form of order sought

— Annul the contested decision R 1090/2006-2 of the Second Board of Appeal, dated 12 January 2007, partially refusing the registration of CTM Application No 2937522 BUILT TO RESIST for the following goods:

paper, cardboard and goods made from these materials, not included in other classes; printed matter; bookbinding material; advertisement boards of paper or cardboard, albums, announcement cards, bags of paper or plastic, for packaging, bags of conical paper, bibs of paper, books, calendars, cardboard labels, catalogues, charts, embroidery designs (patterns), engravings, envelopes, folders, forms, greeting cards, books, magazines, newspapers, pamphlets, newsletters and other printed publications, photographs, pictures, portraits, postcards, stationery, address plates, address stamps, adhesive tapes for stationery or household purposes, announcement cards book markers, writing pads, plastic film for wrapping, paper, cardboard and goods made from these materials; adhesives for stationery or household purposes; artists' materials; paint brushes; typewriters and office requisites (except furniture); instructional and teaching material (except apparatus); plastic materials for packaging (not included in other classes); printers' type; printing blocks pencil cases, pens, writing paper, envelopes, posters, paper banners, personal organizers, notebooks and paper binders; mouse pads in class 16;

leather and imitations of leather, and goods made of these materials and not included in other classes; animal skins, hides; trunks and travelling bags; all purpose bags and sporting bags, softluggage, luggage cases, backpacks, day packs, fanny packs, frame packs, knapsacks, ski packs, book bags, tote bags, duffle bags, bicycle bags, handbags, garment bags, clothing bags, suitcases, pullman cases, briefcases, wallets, umbrellas and parasols, business card cases and holders, billfolds and money clips, straps, pads and belts and all related goods to the before mentioned as far as included in class 18; and

clothing, headgear and footwear in class 25; and

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

Pleas in law and main arguments

Community trade mark concerned: The national word mark 'BUILT TO RESIST' for goods and services in classes 16, 18 and 25 — application No 293 7522

Decision of the examiner: Refusal of the application

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 7(1)(b) and 7(1)(c) of Council Regulation 40/94.

First, with regards to the descriptiveness of the word mark claimed, the applicant submits that the latter enables the relevant public to discern immediately and without further reflection any of the characteristics of the goods offered. The simple fact that the word mark at stake is evocative of the goods claimed is not sufficient, according to the applicant, to be refused registration and thus, the afforded protection on the basis of Article 7(1)(c). Moreover, the applicant contends that pursuant to established case-law, even if a slogan may also serve marketing or advertising purposes, in addition to its principal function as a trade mark, it should not be refused registration. Furthermore, the applicant submits that the fact that the word mark was registered at a national level, in the United States, for the same products, proves that it is capable of being perceived by the public and in fact for English speaking consumers, as an indication of commercial origin.

Second, with regards to its inherent distinctiveness, the applicant claims that the word mark provides at least a minimum degree of distinctiveness which should allow the registration to proceed.

Order of the Court of First Instance (Fifth Chamber) of 26 February 2007 — Rathscheck Schiefer und Dach-Systeme and Others v Commission

(Case T-198/06) ([1])

(2007/C 95/112)

Language of the case: German

The President of the Court of First Instance (Fifth Chamber) has ordered that the case be removed from the register.

([1]) OJ C 237, 30.9.2006.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Judgment of the Civil Service Tribunal (Second Chamber) of 15 March 2007 — Sanchez Ferriz v Commission

(Case F-111/05) ([1])

(Officials — Appraisal — Career development report — 2001-2002 appraisal procedure)

(2007/C 95/113)

Language of the case: French

Parties

Applicant: Carlos Sanchez Ferriz (Brussels, Belgium) (represented by: F. Frabetti, lawyer)

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

Re:

Application for annulment of the applicant's career development report for the period 2001-2002

Operative part of the judgment

The Tribunal:

1. *dismisses the application;*

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

([1]) OJ C 48, 25.2.2006, p. 36 (case initially registered before the Court of First Instance of the European Communities under number T-413/05 and transferred to the Civil Service Tribunal of the European Union by order of 15.12.2005).

Order of the President of the Civil Service Tribunal of 13 March 2007 — Chassagne v Commission

(Case F-1/07 R)

(Application for interim measures — Application for suspension of operation — Urgency — None)

(2007/C 95/114)

Language of the case: French

Parties

Applicant: Olivier Chassagne (Brussels, Belgium) (represented by: Y. Minatchy, lawyer)

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

Re:

First, application for annulment of the list of Commission temporary staff promoted during the 2006 procedure in so far as it does not include the applicant and, secondly, an application for damages

Operative part of the order

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

2. *Costs are reserved.*

Action brought on 26 February 2007 — O'Connor v Commission

(Case F-12/07)

(2007/C 95/115)

Language of the case: French

Parties

Applicant: Elizabeth O'Connor (Brussels, Belgium) (represented by: S. Orlandi, A. Coolen, J.-N. Louis and E. Marchal, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— annul the Commission's decision to set at 11 months and 25 days the maximum period for the award of an unemployment allowance to the applicant;

— order the defendant to pay the costs.

Pleas in law and main arguments

The applicant, a former member of the Commission's temporary staff, worked for the latter continuously from 16 January 2001 to 31 December 2005 under six different fixed-term contracts concluded in the following order: a first contract as a member of the temporary staff, a first contract as a member of the auxiliary staff, a second contract as a member of the temporary staff, a second contract as a member of the auxiliary staff, a third contract as a member of the temporary staff and, finally, a contract as a member of the contract staff.

The administration granted her entitlement to the unemployment allowance for a maximum period of 11 months and 25 days, in so far as it held that the periods covered by the auxiliary staff contracts should be treated as periods spent in the service of an employer other than the Community institutions.

In support of her action, the applicant submits, first, that the Commission committed an abuse of rights by retaining her in its service more than five years under a variety of fixed-term contracts and under different sets of staff regulations. Secondly, she submits that the Commission misapplied Article 28a(4) and Article 96(4) of the Conditions of Employment of Other Servants, in so far as the period during which the applicant worked as a member of the auxiliary staff was not taken into account for the purposes of their provisions.

Action brought on 27 February 2007 — K v European Parliament

(Case F-15/07)

(2007/C 95/116)

Language of the case: German

Parties

Applicant: K (represented by Dieter Struck)

Defendant: European Parliament

Form of order sought

— annul the decision of the European Parliament of 29 November 2006 rejecting the applicant's application;

— order the defendant to pay damages for pain and suffering and compensation;

— declare the principle of equal treatment to have been infringed and deliberate and intentional harm to the applicant's general rights as an individual to have taken place;

— declare the defendant to have infringed the principle of legitimate expectations and the obligation to give reasons for administrative acts, as also the principle of non-discrimination;

— order the defendant to bear all the costs incurred in connection with the bringing of the action and the costs of the action itself.

Pleas in law and main arguments

The applicant, who was an official at the European Parliament from 1 January 1978, seeks damages for pain and suffering and compensation from the defendant by reason of conduct leading to the infringement of the applicant's general rights as an individual and the unusual circumstances which led to the applicant's retirement on the ground of ill health.

Action brought on 5 March 2007 — Kerelov v Commission

(Case F-19/07)

(2007/C 95/117)

Language of the case: French

Parties

Applicant: Georgi Kerelov (Pazardzhik, Bulgaria) (represented by: Angel Kerelov, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— annul the decision of 6 December 2006 of the selection board for competition EPSO/AD/43/06-CJ not to include the applicant on the reserve list for that competition;

— declare null and void, and if necessary annul as unlawful, the decision of 2 February 2007 of the selection board for competition EPSO/AD/43/06-CJ to exclude the applicant from that competition;

— order the defendant to pay the applicant fixed damages assessed on equitable principles at EUR 120 491,28 (two years' salary) with statutory interest from the date on which the application in respect of the material and non-material damage suffered by the applicant as a result of those illegal decisions by the competition selection board was lodged;

— order the defendant to pay the costs.

Pleas in law and main arguments

Concerning the first decision under appeal, the applicant puts forward 10 pleas:

(1) the ordinary members of the selection board were not able to make a free assessment of the candidates in so far as the chairman and the alternate chairman were their hierarchical superiors;

(2) the members of the selection board were not familiar with the main language of the competition (Bulgarian), contrary to the requirements resulting from well-established case-law;

(3) the length and difficulty of the texts which the candidates had to translate were not comparable as between the source languages chosen;

(4) the marking of the written tests was arbitrary, since the selection board did not know Bulgarian;

(5) the duration of the oral test varied greatly depending on the candidate;

(6), (7) and (8) first, the criteria applied by the selection board to assess the oral tests did not correspond to the purpose of those tests and, secondly, several candidates were awarded marks which were arbitrary;

(9) candidates were denied their right to have their submissions re-marked, in so far as the reserve list had been definitively drawn up and put into circulation before the expiry of the 20-day period laid down in the competition notice for the purpose of the exercise of that right;

(10) the selection board assessed the applicant's tests, in particular his oral test, improperly, justifying the marks by incoherent, inconsistent and irrelevant reasons.

Concerning the second decision under appeal, the applicant raises 3 pleas:

(1) he disputes the relevance of the facts on which the selection board based its decision, namely the fact that he tried to contact members of the selection board;

(2) he disputes that the selection board has the power to exclude a candidate from a competition for such reasons, since, he submits, EPSO alone has that power;

(3) he maintains that, even if the selection board does have such a power, it cannot exercise it after the reserve list has been drawn up.

Action brought on 16 March 2007 — Lafili v Commission

(Case F-22/07)

(2007/C 95/118)

Language of the case: French

Parties

Applicant: Paul Lafili (Genk, Belgium) (represented by: G. Vandersanden and L. Levi, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— annulment of the decision to classify the applicant in Grade AD 13, step 5, contained in a memorandum from DG ADMIN of 11 May 2006 and in the pay slip of June 2006 and in subsequent pay slips;

— restoration of the applicant to Grade AD 13, step 2 with effect from 1 May 2006, retaining a multiplication factor of 1.1172071;

— complete reinstatement of the applicant's career with retrospective effect from 1 May 2006 to the date of his classification in the grade and step thus corrected (including the evaluation of his experience in the classification thus corrected, his entitlement to promotion and his pension rights), including interest for late payment based on the rate set by the European Central Bank for main refinancing operations during the period in question, plus two percentage points, on the whole of the amount corresponding to the difference between the salary for the classification in the classification decision and the classification to which he should have been entitled until the date of the decision as to his proper classification;

— an order that the defendant should pay the costs.

Pleas in law and main arguments

The applicant, a Commission official, was classified in Grade A4, step 7, until the day before the entry into force of the new Staff Regulations. On 1 May 2004, that classification was converted to Grade A*12, step 7, with a multiplication factor of 0.9442490 (in accordance with Article 2(2) of Annex XIII to the Staff Regulations). On 1 July 2004, the applicant moved to Grade A*12, step 8, with the same multiplication factor. On 22 July 2005, the applicant was promoted, with retrospective effect from 1 May 2004, to Grade A*13, step 1, with a multiplication factor of 1.1172071 (in accordance with Article 7(6) of Annex XIII to the Staff Regulations). With effect from 1 May 2006, he was classified in Grade AD 13, step 5, with a multiplication factor of 1, pursuant to a decision of DG ADMIN of 11 May 2006.

In his action, the applicant claims that such a classification (i) breaches, inter alia, Articles 44 and 46 of the Staff Regulations and Article 7 of Annex XIII to the Staff Regulations; (ii) is vitiated by a lack of competence; (iii) breaches the principle of protection of legitimate expectations. In particular, according to the applicant, the Commission's interpretation of Article 7(7) of Annex XIII to the Staff Regulations is incorrect in that it takes the view that, where a multiplication factor is higher than 1, the excess should be converted to seniority in step.

Order of the Civil Service Tribunal of 15 March 2007 — Simon v Court of Justice and Commission

(Case F-58/06) ([1])

(2007/C 95/119)

Language of the case: Hungarian

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

([1]) OJ C 190, 12.8.2006, p. 35.

Order of the Civil Service Tribunal of 15 March 2007 — Simon v Court of Justice and Commission

(Case F-100/06) ([1])

(2007/C 95/120)

Language of the case: Hungarian

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

([1]) OJ C 294, 2.12.2006, p. 65.