ISSN 1725-2423

Official Journal of the European Union

C 155

Volume 50

English edition

7 July 2007

Information and Notices

Notice No | Contents | Page

EN

(Continued overleaf)

EN

EN

(Continued overleaf)

EN

EN

(Continued overleaf)

EN

(Continued on inside back cover)

EN

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS AND BODIES

COURT OF JUSTICE

(2007/C 155/01)

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

OJ C 140, 23.6.2007

Past publications

OJ C 129, 9.6.2007

OJ C 117, 26.5.2007

OJ C 96, 28.4.2007

OJ C 95, 28.4.2007

OJ C 82, 14.4.2007

OJ C 69, 24.3.2007

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Second Chamber) of 24 May 2007 (reference for a preliminary ruling from the College van Beroep voor het bedrijfsleven (Netherlands)) — Maatschap Schonewille-Prins v Minister van Landbouw, Natuur en Voedselkwaliteit

(Case C-45/05) ([1])

(Agricultural structures — Community aid schemes — Beef and veal sector — Identification and registration of bovine animals — Slaughter premium — Exclusion and reduction)

(2007/C 155/02)

Language of the case: Dutch

Referring court

College van Beroep voor het bedrijfsleven

Parties to the main proceedings

Applicant: Maatschap Schonewille-Prins

Defendant: Minister van Landbouw, Natuur en Voedselkwaliteit

Re:

Reference for a preliminary ruling — College van Beroep voor het bedrijfsleven — Interpretation of Article 21 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 Articles 44, 45 and 47(2) of Commission Regulation (EC) No 2419/2001 of 11 December 2001 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes established by Council Regulation (EEC) No 3508/92 (OJ 2001 L 327, p. 11) — Interpretation of Article 11 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) and of Article 22 of Regulation (EC) No 1760/2000 of the European Parliament and of the Council of 17 July 2000 establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products and repealing Council Regulation (EC) No 820/97 (OJ 2000 L 204, p. 1) — Slaughter premium — Compliance with Regulation No 1760/2000 — Community exclusions and reductions — Application to national exclusions and reductions — Corrections and additions made to the information on the computerised database

Operative part of the judgment

1. *Article 21 of Council Regulation (EC) No 1254/1999 of 17 May 1999 on the common organisation of the market in beef and veal must be interpreted as meaning that the failure to comply with the period for notification to the computerised database of the movement of a bovine animal to or from a holding, laid down in the second indent of Article 7(1) of Regulation (EC) No 1760/2000 of the European Parliament and of the Council of 17 July 2000 establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products and repealing Council Regulation (EC) No 820/97, renders that bovine animal ineligible for a slaughter premium and, consequently, results in the exclusion of that premium for that animal.*

2. *Consideration of the second question referred has revealed nothing capable of casting doubt on the validity of Article 21 of Regulation No 1254/1999 in the light of the principle of proportionality, in so far as that article renders a bovine animal in respect of which there has been a failure to comply with the notification period set out in Article 7(1), second indent, of Regulation No 1760/2000 ineligible for a slaughter premium and consequently results in the exclusion of that premium for that animal.*

3. *Articles 44 and 45 of Commission Regulation (EC) No 2419/2001 of 11 December 2001 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes established by Council Regulation (EEC) No 3508/92 do not apply to the exclusion of a slaughter premium for a bovine animal in respect of which the information regarding its movement to or from a holding was not notified to the computerised database within the period laid down in Article 7(1), second indent, of Regulation No 1760/2000, so as to render that bovine animal eligible for a slaughter premium, even in the case where that information sent to the database in question after the expiry of the prescribed period was correct.*

4. *Article 11 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 and/or Article 22 of Regulation No 1760/2000 must be interpreted as meaning that a Member State cannot lay down national penalties consisting in reductions and exclusions from the total amount of Community aid which can be claimed by a farmer who has applied for a slaughter premium, since penalties of that type are already set out in detail in Regulation No 3887/92.*

(1) OJ C 93, 16.4.2005.

Judgment of the Court (Fourth Chamber) of 24 May 2007 (reference for a preliminary ruling from the Verwaltungsgerichtshof (Austria)) — Winfried L. Holböck v Finanzamt Salzburg-Land

(Case C-157/05) (1)

(Free movement of capital — Freedom of establishment — Income tax — Distribution of dividends — Income from capital originating in a non-member country)

(2007/C 155/03)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Appellant: Winfried L. Holböck

Respondent: Finanzamt Salzburg-Land

Re:

Reference for a preliminary ruling — Verwaltungsgerichtshof — Interpretation of Articles 56 EC and 57 EC — National legislation relating to taxation of dividends issued — Natural person residing in the territory of that State holding two thirds of the shares in a company established in the territory of a non-member country (Switzerland) — Taxation of dividends at the ordinary rate of income tax, in contrast to the reduced rate at which dividends originating inland are taxed

Operative part of the judgment

Article 57(1) EC must be interpreted as meaning that Article 56 EC is without prejudice to the application by a Member State of legislation which existed on 31 December 1993 under which a shareholder in receipt of dividends from a company established in a non-member country, who holds two thirds of the share capital in that company, is taxed at the ordinary rate of income tax, whereas a shareholder in receipt of dividends from a resident company is taxed at a rate of half the average tax rate.

(1) OJ C 143, 11.6.2005.

Judgment of the Court (Seventh Chamber) of 24 May 2007 — Commission of the European Communities v Kingdom of Spain

(Case C-361/05) (1)

(Failure by a Member State to fulfil its obligations — Waste management — Directives 75/442/EEC and 1999/31/EC — Illegal and uncontrolled waste tips — Waste tips at Níjar, Hoyo de Miguel and Cueva del Mojón)

(2007/C 155/04)

Language of the Case: Spanish

Parties

Applicant: Commission of the European Communities (represented by: I. Martínez del Peral and M. Konstantinidis, acting as Agents)

Defendant: Kingdom of Spain (represented by: I. del Cuvillo Contreras and M. Muñoz Pérez, Agents)

Re:

Failure by a Member State to fulfil its obligations — Infringement of Articles 4, 9 and 13 of Council Directive 75/442/EEC, of 15 July 1975, on waste (OJ 1975 L 194, p. 39), as amended by Council Directive 91/156/EEC of 18 March 1991 (OJ 1991 L 78, p. 32) and of Article 14 of Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste (OJ 1999 L 182, p. 1) — Waste tips at Níjar, Hoyo de Miguel and Cueva del Mojón, situated in La Mojonera

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt, within the prescribed period, the necessary provisions to ensure application of Articles 4, 9 and 13 of Council Directive 75/442/EEC of 15 July 1975 on waste — as amended by Council Directive 91/156/EEC of 18 March 1991 — and of Article 14 of Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste, with regard to the waste tips at Níjar, Hoyo de Miguel and Cueva del Mojón (Province of Almería), the Kingdom of Spain has failed to fulfil its obligations under those provisions;*

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

(1) OJ C 296, 26.11.2005.

Judgment of the Court (Fifth Chamber) of 24 May 2007 — Commission of the European Communities v Italian Republic

(Case C-394/05) (1)

(Failure of a Member State to fulfil its obligations — Directive 2000/53/EC — End-of-life vehicles — Articles 3(5), 5(1), 7(2) and 8(3) and (4) — Defective transposition)

(2007/C 155/05)

Language of the case: Italian

Parties

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

Defendant: Italian Republic (represented by: I.M. Braguglia and P. Gentili, Agents)

Re:

Failure of a Member State to fulfil its obligations — Infringement of Articles 2, 3, 4, 5, 6, 7, 8, 10 and 12 of Directive 2000/53/EC of the European Parliament and of the Council of 18 September 2000 on end-of-life vehicles (OJ 2000 L 269, p. 34)

Operative part of the judgment

The Court:

1. *Declares that, by adopting Legislative Decree No 209 of 24 June 2003 transposing into national law the provisions of Directive 2000/53/EC of the European Parliament and of the Council of 18 September 2000 on end-of-life vehicles in a manner contrary to that directive, the Italian Republic has failed to fulfil its obligations under Article 3(5), Article 5(1), the second subparagraph of Article 7(2)(a) and Article 8(3) and (4) of that Directive;*

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

(1) OJ C 22, 28.1.2006.

Judgment of the Court (Sixth Chamber) of 24 May 2007 — Commission of the European Communities v Republic of Portugal

(Case C-43/06) (1)

(Failure by a Member State to fulfil its obligations — Directive 85/384/EEC — Architects — Mutual recognition of diplomas, certificates and other evidence of formal qualifications — Requirement to sit an entrance exam for the institute of architects)

(2007/C 155/06)

Language of the Case: Portuguese

Parties

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

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

Re:

Failure by a Member State to fulfil its obligations — Infringement of Articles 2 and 10 of Council Directive 85/384/EEC of 10 June 1985 on the mutual recognition of diplomas, certificates and other evidence of formal qualifications in architecture, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services (OJ 1985 L 223, p. 15) — Requirement to pass an entrance exam for the institute of architects in the host State, in order to carry on the profession of architect, for architects from other Member States who are not enrolled with their respective national institute of architects.

Operative part of the judgment

The Court:

1. *Declares that, by requiring holders of professional qualifications in architecture conferred by other Member States to sit an entrance exam for the Portuguese Institute of Architects if they were not enrolled in the institute of architects in another Member State, the Republic of Portugal has failed to fulfil its obligations under Articles 2 and 10 of Council Directive 85/384/EEC of 10 June 1985 on the mutual recognition of diplomas, certificates and other evidence of formal qualifications in architecture, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services, as amended by Directive 2001/19/EC of the European Parliament and the Council of 14 May 2001;*

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

(1) OJ C 86, 8.4.2006.

Judgment of the Court (Seventh Chamber) of 24 May 2007 — Commission of the European Communities v Republic of Austria

(Case C-359/06) ([1])

(Failure by a Member State to fulfil its obligations — Directive 2001/45/EC — Social policy — Worker protection — Use of work equipment — Minimum health and safety requirements)

(2007/C 155/07)

Language of the Case: German

Parties

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

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

Re:

Failure by a Member State to fulfil its obligations — Failure to adopt, within the period prescribed, all the necessary provisions to comply with Directive 2001/45/EC of the European Parliament and of the Council of 27 June 2001, amending Council Directive 89/655/EC concerning the minimum safety and health requirements for the use of work equipment by workers at work (second individual Directive within the meaning of Article 16 (89/391/EEC)) (OJ 1989 L 393, p. 46)

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt, within the period prescribed, all the necessary laws, regulations and administrative provisions to comply with Directive 2001/45/EC of the European Parliament and of the Council of 27 June 2001, amending Council Directive 89/655/EEC concerning the minimum safety and health requirements for the use of work equipment by workers at work (second individual Directive within the meaning of Article 16 (89/391/EEC)) regarding Burgenland and the Land of Carinthia, and with regard to the Land of Lower Austria, by not, at the very least, informing the Commission of the European Communities of those provisions within that period, the Republic of Austria has failed to fulfil its obligations under that directive;*

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

([1]) OJ C 249 of 14.10.2006.

Judgment of the Court (Sixth Chamber) of 24 May 2007 — Commission of the European Communities v Grand Duchy of Luxembourg

(Case C-364/06) ([1])

(Failure of a Member State to fulfil its obligations — Directive 2002/15/EC — Organisation of the working time of persons performing mobile road transport activities — Failure to transpose within the prescribed period)

(2007/C 155/08)

Language of the case: French

Parties

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

Defendant: Grand Duchy of Luxembourg (represented by: C. Schiltz, Agent)

Re:

Failure of a Member State to fulfil its obligations — Failure to adopt, within the period prescribed, the provisions necessary to comply with Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities (OJ 2002 L 80, p. 35)

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 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities, the Grand Duchy of Luxembourg has failed to fulfil its obligations under that Directive;*

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

([1]) OJ C 249, 14.10.2006.

Judgment of the Court (Sixth Chamber) of 24 May 2007 — Commission of the European Communities v Portuguese Republic

(Case C-375/06) ([1])

(Failure of Member State to fulfil obligations — Directive 2003/105/EC — Protection of workers — Control of major-accident hazards involving dangerous substances — Failure to transpose within the prescribed period)

(2007/C 155/09)

Language of the case: Portuguese

Parties

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

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

Re:

Failure of Member State to fulfil obligations — Failure to take within the prescribed period the measures necessary to comply with Directive 2003/105/EC of the European Parliament and of the Council of 16 December 2003 amending Council Directive 96/82/EC on the control of major-accident hazards involving dangerous substances (OJ 2003 L 345, p. 97)

Operative part of the judgment

The Court:

1. *Declares that, by not adopting, within the prescribed period, the laws regulations and administrative provisions necessary to comply with Article 2 of Directive 2003/105/EC of the European Parliament and of the Council of 16 December 2003 amending Council Directive 96/82/EC on the control of major-accident hazards involving dangerous substances, the Portuguese Republic has failed to fulfil its obligations under that directive.*

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

([1]) OJ C 261, 28.10.2006.

Judgment of the Court (Sixth Chamber) of 24 May 2007 — Commission of the European Communities v Portuguese Republic

(Case C-376/06) ([1])

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

(2007/C 155/10)

Language of the case: Portuguese

Parties

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

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

Re:

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

Operative part of the judgment

The Court:

1. *Declares that, by not adopting, within the prescribed period, the laws regulations and administrative provisions necessary to comply with Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment, the Portuguese Republic has failed to fulfil its obligations under that directive.*

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

([1]) OJ C 261 of 28.10.2006.

Order of the Court (Fourth Chamber) of 10 May 2007 (reference for a preliminary ruling from the Finanzgericht Baden-Württemberg (Germany)) — Lasertec Gesellschaft für Stanzformen mbH v Finanzamt Emmendingen

(Case C-492/04) ([1])

(Article 104(3), first subparagraph, of the Rules of Procedure — Free movement of capital — Freedom of establishment — Taxation — Corporation tax — Loan agreement between companies — Resident borrowing company — Shareholder lending company established in a non-member country — Meaning of 'substantial holding' — Payment of loan interest — Classification — Covert distribution of profits)

(2007/C 155/11)

Language of the case: German

Referring court

Finanzgericht Baden-Württemberg

Parties

Applicant: Lasertec Gesellschaft für Stanzformen mbH

Defendant: Finanzamt Emmendingen

Re:

Reference for a preliminary ruling — Finanzgericht Baden-Württemberg — Interpretation of Articles 56(1) EC, 57(1) EC and 58 EC — National tax legislation — Tax on profits of companies — Taxation as a covert distribution of profits of the interest paid by a national company on loan capital from a shareholder company established in a non-member country

Operative part of the order

A national measure in accordance with which the loan interest paid by a resident capital company to a non-resident shareholder who has a substantial holding in the capital of that company is, under certain conditions, regarded as a covert distribution of profits, taxable in the hands of the resident borrowing company, primarily affects freedom of establishment within the meaning of Article 43 EC et seq. Those provisions cannot be relied on in a situation involving a company in a non-member country.

([1]) OJ C 31, 5.2.2005.

Order of the Court (Sixth Chamber) of 27 March 2007 — TeleTech Holdings, Inc. v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), Teletech International SA

(Case C-312/05 P) ([1])

(Appeal — Community trade mark — Regulation (EC) No 40/94 — Community word mark — Application for declaration of invalidity — Earlier national word mark)

(2007/C 155/12)

Language of the case: Spanish

Parties

Appellant: TeleTech Holdings, Inc. (represented by: E. Armijo Chávarri, abogado)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: J. García Murillo and I. de Medrano Caballero, Agents), Teletech International SA (represented by: J.-F. Adelle and F. Zimeray, avocats)

Re:

Appeal lodged against the judgment of the Court of First Instance (Second Chamber) of 25 May 2005, *TeleTech Holdings* v *OHIM* (intervener: Teletech International SA) (T-288/03), in which the Court of First Instance dismissed the appeal against a decision of the First Board of Appeal of the Office of Harmonisation in the Internal Market (OHIM) which had upheld in part an application for a declaration of invalidity regarding the Community trade mark 'TELETECH GLOBAL VENTURES' brought by Teletech International SA as holder of the national trade mark 'TELETECH INTERNATIONAL'

Operative part of the order

1. *The appeal is dismissed.*

2. *TeleTech Holdings, Inc. is ordered to pay the costs.*

([1]) OJ C 281 of 12.11.2005.

Action brought on 20 March 2007 — European Parliament v Council of the European Union

(Case C-155/07)

(2007/C 155/13)

Language of the case: French

Parties

Applicant: European Parliament (represented by: R. Passos, A. Baas and D. Gauci, Agents)

Defendant: Council of the European Union (represented by: M. Arpio Santacruz, M. Sims and D. Canga Fano, Agents)

Form of order sought

— Annulment, for infringement of the EC Treaty, of Council Decision 2006/1016/EC [1] of 19 December 2006 granting a Community guarantee to the European Investment Bank against losses under loans and loan guarantees for projects outside the Community

— The Council of the European Union to pay the costs.

Pleas in law and main arguments

The European Parliament relies on one single plea in law in support of its action, alleging the incorrect choice of legal basis for the contested decision. Since that decision essentially concerns the developing countries among the countries eligible or potentially eligible for European Investment Bank financing under Community guarantee, it should have been adopted on the joint basis of Articles 179 EC and 181a EC, and not solely on the basis of Article 181a EC, which precludes cooperation with developing countries from its scope.

[1] OJ 2006 L 414, p. 95.

Action brought on 26 March 2007 — European Parliament v Council of the European Union

(Case C-166/07)

(2007/C 155/14)

Language of the case: French

Parties

Applicant: European Parliament (represented by: I. Klavina and L. Visaggio, Agents)

Defendant: Council of the European Union (represented by: A. Vitro and M. Moore, Agents)

Form of order sought

— Annulment of Council Regulation (EC) No 1968/2006 [1] of 21 December 2006 concerning Community financial contributions to the International Fund for Ireland (2007 to 2010);

— The Council of the European Union to pay the costs.

Pleas in law and main arguments

The European Parliament relies on one plea in law in support of its action, alleging the incorrect choice of legal basis for the contested Regulation. Since the measures provided for by that regulation concern Community allocations in respect of economic and social cohesion, they should have been adopted on the basis of the third paragraph of Article 159 EC and not on that of Article 308 EC, which can be used only if no other provision of the Treaty confers on the Community institutions the necessary power to adopt the act in question.

[1] OJ 2006 L 409, p. 86 and corrigendum — OJ 2007 L 36, p. 31.

Reference for a preliminary ruling from the Verwaltungsgerichtshof (Austria) lodged on 30 March 2007 — Hartlauer Handelsgesellschaft mbH v Wiener Landesregierung and Oberösterreichische Landesregierung

(Case C-169/07)

(2007/C 155/15)

Language of the case: German

Referring court

Verwaltungsgerichtshof (Administrative Court)

Parties to the main proceedings

Applicant: Hartlauer Handelsgesellschaft mbH

Defendant: Wiener Landesregierung and Oberösterreichische Landesregierung

Questions referred

1. Does Article 43 EC (in conjunction with Article 48 EC) preclude the application of national legislation under which authorisation is required to set up a private hospital in the form of an independent outpatient clinic for dental medicine (dental clinic) and that authorisation is to be refused if, according to the stated purpose of the institution and the range of services envisaged, there is no need for the planned outpatient dental clinic having regard to the existing provision of care by established doctors working on a contractual basis with sickness funds, institutions owned by sickness funds and institutions contracted to sickness funds and by established dentists working on a contractual basis with sickness funds?

2. Is the answer to Question 1 any different if the existing provision of care by outpatient clinics of public, private non-profit making and other hospitals working on a contractual basis with sickness funds is also to be included in the examination as to need?

Reference for a preliminary ruling from the Oberlandesgericht Frankfurt am Main (Germany) lodged on 2 April 2007 — Emirates Airlines Direktion für Deutschland v Diether Schenkel

(Case C-173/07)

(2007/C 155/16)

Language of the case: German

Referring court

Oberlandesgericht Frankfurt am Main

Parties to the main proceedings

Applicant: Emirates Airlines Direktion für Deutschland

Defendant: Diether Schenkel

Question referred

Is Article 3(1)(a) of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 ([1]), to be interpreted as meaning that 'a flight' includes in any event the flight from the point of departure to the destination and back in the case where the outward and return flights are booked at the same time?

([1]) OJ 2004 L 46, p. 1.

Reference for a preliminary ruling from House of Lords (United Kingdom) made on 2 April 2007 — Riunione Adriatica Di Sicurta SpA (RAS) v West Tankers Inc.

(Case C-185/07)

(2007/C 155/17)

Language of the case: English

Referring court

House of Lords

Parties to the main proceedings

Applicant: Riunione Adriatica Di Sicurta SpA (RAS)

Defendant: West Tankers Inc.

Question referred

Is it consistent with EC Regulation 44/2001 ([1]) for a court of a Member State to make an order to restrain a person from commencing or continuing proceedings in another Member State on the ground that such proceedings are in breach of an arbitration agreement?

([1]) Council Regulation (EC) of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 12, p. 1).

Action brought on 11 April 2007 — Commission of the European Communities v Kingdom of Spain

(Case C-196/07)

(2007/C 155/18)

Language of the case: Spanish

Parties

Applicant: Commission of the European Communities (represented by: V. Di Bucci and E. Gippini Fournier, Agents)

Defendant: Kingdom of Spain

Form of order sought

— declare that by not withdrawing without delay a number of conditions imposed by the decision of the National Energy Committee (CNE) (conditions 1 to 6, 8 and 17) which were declared incompatible with Community law by Article 1 of the Commission Decision of 26 September 2006 (Case No COMP/M.4197 — E.ON/Endesa — C(2006)4279 final) and by not withdrawing by 19 January 2007 a number of conditions imposed by decision of the Ministry (amended conditions 1, 10, 11 and 15) which declared incompatible with Community law by Article 1 of the Commission Decision of 20 December 2006 (Case No COMP/M.4197 — E.ON/Endesa — C(2006)7039 final), the Kingdom of Spain has failed to fulfil its obligations under Article 2 of both decisions;

— order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

The Spanish authorities have not withdrawn a number of conditions imposed by the decision of the CNE (conditions 1 to 6, 8 and 17) which were declared incompatible with Community law by Article 1 of the Commission Decision of 26 September 2006 and have not withdrawn the amended conditions imposed by decision of the Ministry (amended conditions 1, 10, 11 and 15) which were declared incompatible with Community law by Article 1 of the second Commission Decision of 20 December 2006.

The first decision required that the Kingdom of Spain withdraw the conditions in question 'without delay'. Upon expiry of the period prescribed by the Commission for compliance with the reasoned opinion, almost six months had elapsed since the notification of the first decision, so that it is clear that the Kingdom of Spain had not complied 'without delay' with the obligation imposed by Article 2.

The deadline of 19 January 2007 for compliance with the Commission's second decision expired without the Kingdom of Spain having withdrawn the conditions declared by that decision to be incompatible with Community law.

It follows that the Kingdom of Spain has failed to comply with Article 2 of the Commission's first decision and with Article 2 of its second decision.

Appeal brought on 16 April 2007 by the Hellenic Republic against the judgment delivered by the Court of First Instance (First Chamber) on 17 January 2007 in Case T-231/04 Hellenic Republic v Commission of the European Communities

(Case C-203/07 P)

(2007/C 155/19)

Language of the case: Greek

Parties

Appellant: Hellenic Republic (represented by: P. Milonopoulos and S. Trekli)

Other party to the proceedings: Commission of the European Communities

Form of order sought

— allow the present appeal;

— set aside the judgment of the Court of First Instance in so far as it is contested;

— grant the application in accordance with the form of order sought;

— order the Commission to pay the costs.

Pleas in law and main arguments

The Hellenic Republic submits that the Court of First Instance of the European Communities misinterpreted Articles 12, 13 and 15 of the initial memorandum of understanding, Article 14 of the additional memorandum and the principles of good faith and of the protection of legitimate expectations, since it held that the obligations of the Member States in connection with the Abuja I and II projects were determined by the conduct of each Member State and not that they were of a purely contractual nature and determined by the provisions of the two abovementioned memoranda; on a proper interpretation of the foregoing provisions of those contractual documents, however, it had to be accepted that financial obligations had not arisen for the Hellenic Republic since it had only signed and had not ratified the additional memorandum, it had therefore not approved that memorandum, and all the special conditions laid down for the arising of financial obligations had not been met in the case of the Hellenic Republic.

The Hellenic Republic submits that the Court of First Instance of the European Communities misinterpreted Article 15 of the initial memorandum of understanding in holding that, prior to signature of the additional memorandum, an agreement was implicitly concluded by the partners on 24 February 1997 to implement the project and in this way Article 15(1) essentially was set aside or was amended.

Reference for a preliminary ruling from the Bayerisches Landessozialgericht (Germany) lodged on 20 April 2007 — Petra von Chamier-Glisczinki v Deutsche Angestellten-Krankenkasse

(Case C-208/07)

(2007/C 155/20)

Language of the case: German

Referring court

Bayerisches Landessozialgericht

Parties to the main proceedings

Appellant: Petra von Chamier-Glisczinki

Respondent: Deutsche Angestellten-Krankenkasse

Questions referred

1. Should Article 19(1)(a) — in conjunction, as the case may be, with Article 19(2) — of Regulation (EEC) No 1408/71 ([1]) be interpreted in the light of Article 18 EC and Articles 39 EC and 49 EC, in conjunction with Article 10 of Regulation (EEC) No 1612/68 ([2]), as meaning that an employed or self-employed person, or a member of that person's family, may not receive any cash benefits or reimbursement provided on behalf of the competent institution by the institution of the place of residence, if there is provision under the law applicable to the institution of the place of residence for persons insured by that institution to receive only cash benefits, and not benefits in kind?

2. If there is no such entitlement to benefits in kind, is there, in the light of Article 18 EC, or Articles 39 EC and 49 EC, any entitlement to payment — subject to prior approval — by the competent institution of the costs of in-patient care in a care home situated in another Member State, in the amount of the benefits payable in the competent Member State?

([1]) OJ, English Special Edition 1971(II), p. 416.
([2]) OJ, English Special Edition 1968(II), p. 475.

Action brought on 20 April 2007 — Commission of the European Communities v Ireland

(Case C-211/07)

(2007/C 155/21)

Language of the case: English

Parties

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

Defendant: Ireland

The applicant claims that the Court should:

— declare that in maintaining in force Sections 5.2 and 5.3 of the Motor Insurance Agreement of 31st May 2004 and in particular by i) excluding compensation to users of vehicles if all vehicles involved are uninsured, and ii) limiting the right to compensation in respect of persons in an uninsured vehicle which did not cause the damage or injury, the Republic of Ireland has failed to fulfil its obligations under Council Directive 84/5/EEC of 30th December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles, and in particular Article 1(4), third subparagraph thereof, and

— order Ireland to pay the costs.

Pleas in law and main arguments

Section 5.3 of the Agreement between the Minister of Transport and the Motor Insurers' Bureau of Ireland of 31st May 2004 ('the Agreement') provides for the exclusion of compensation for **all** drivers of uninsured vehicles, whether causing the accident or not), and thus goes beyond the permitted scope of the exclusion laid down in the third subparagraph of Article 1(4) of the directive.

As regards the situation of passengers travelling in uninsured vehicles, section 5.2 of the Agreement provides for a general exclusion from compensation in all cases where the injured person '*knew or ought reasonably to have known that there was not in force an approved policy of insurance*'. **All** passengers in uninsured vehicles are accordingly treated identically, regardless of whether they were travelling in the vehicle causing the damage or injury or not. This is in clear contradiction with the wording of the third subparagraph of Article 1(4) of the directive, which

expressly distinguishes between these two situations and limits the exclusion of compensation in relation to those persons (including the driver) in the vehicle that **caused the damage or injury**.

Appeal brought on 23 April 2007 by Indorata-Serviços e Gestão, Ld[a] against the judgment delivered on 15 February 2007 in Case T-204/04 Indorata-Serviços e Gestão, Ld[a] v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-212/07 P)

(2007/C 155/22)

Language of the case: German

Parties

Appellant: Indorata-Serviços e Gestão, Ld[a] (represented by: T. Wallentin, Rechtsanwalt)

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

Form of order sought

— set aside the judgment of the Court of First Instance of 15 February 2007 in Case T-204/04 ([1]);

— order the respondent to pay the costs.

Pleas in law and main arguments

The appellant argues four grounds in support of its appeal against the above judgment of the Court of First Instance.

By its first ground of appeal, the appellant relies on infringement of Article 7(1)(b) of Regulation No 40/94. Contrary to the observations of the Court, the term HAIRTRANSFER is capable of registration since its fanciful nature gives it distinctive character and is therefore capable of distinguishing the goods and services of the appellant from those of other undertakings.

By its second ground of appeal, the appellant relies on infringement of Article 7(1)(c) of Regulation No 40/94. By its finding that the sign HAIRTRANSFER in respect of the goods applied for in Class 8 has a sufficiently direct and genuine link to the goods concerned and that the sign HAIRTRANSFER indicates the intended purpose of the goods in Class 22 to the relevant public, and therefore in its entirety also shows a sufficiently direct and genuine link to the goods concerned in Class 22, the Court of First Instance misinterpreted and misapplied the provision at issue. In addition, HAIRTRANSFER cannot be descriptive in respect of the rejected goods per se, since an 'exclusively descriptive' function of goods is not appropriate for services (!)

By its third ground of appeal, the appellant relies on breach of the principle of equal treatment. Signs which are definitely similar to the set of words at issue have been the subject of decisions of OHIM on the registration of Community trade marks. The appellant stated in the proceedings before the Court of First Instance that the sign in the present case has distinctive character also on account of the settled practice of OHIM, the Austrian Patent Office and the Patent Offices of numerous Member States.

Finally, by its fourth ground of appeal, the appellant relies on breach of general principles of EC law. The judgement of the Court of First Instance under appeal infringes the requirement of objectivity and the principle of coherence in decision-making, inasmuch as within one and the same application for a Community trade mark registration a distinction is made which cannot be objectively applied. It is quite evident that 'hair thickening' in Class 44 and rejected by the Office is included in hair lengthening. Registration of the sign HAIRTRANSFER in respect of 'hair lengthening' and rejection in respect of 'hair thickening' is therefore objectively unjustified.

([1]) OJ C 82 of 14.4.2007, p. 32.

Reference for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 24 April 2007 — Verlag Schawe GmbH v Sächsisches Druck- und Verlagshaus AG

(Case C-215/07)

(2007/C 155/23)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Verlag Schawe GmbH

Defendant: Sächsisches Druck- und Verlagshaus AG

Questions referred

1. Do Article 7(1) and (5) and Article 9 of Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases ([1]) prohibit a legal provision of a Member State, according to which an official database which is published as a matter of general information for official purposes (in this instance: a systematic and complete collection of all calls for tender documents emanating from a German *Land*) does not benefit from *sui generis* protection under the directive?

2. If the answer to Question 1 is in the negative: is this also the case where the database is constructed not by a public body but by a private undertaking on its behalf, to which all bodies of this *Land* issuing calls for tender must directly submit their calls for tender documents for publication?

([1]) OJ 1996 L 77, p. 20.

Action brought on 25 April 2007 — Commission of the European Communities v Kingdom of the Netherlands

(Case C-217/07)

(2007/C 155/24)

Language of the case: Dutch

Parties

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

Defendant: Kingdom of the Netherlands

Form of order sought

— declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways and amending Council Directive 95/18/EC on the licensing of railway undertakings and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification ([1]),

and with

Directive 2004/50/EC of the European Parliament and of the Council of 29 April 2004 amending Council Directive 96/48/EC on the interoperability of the trans-European high-speed rail system and Directive 2001/16/EC of the European Parliament and of the Council on the interoperability of the trans-European conventional rail system ([2]),

or in any event by not communicating such measures to the Commission, the Netherlands has failed to fulfil its obligations under those directives;

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

Pleas in law and main arguments

The period prescribed for transposing those directives into national law expired on 30 April 2006.

([1]) OJ L 164, 30.4.2004, p. 44.
([2]) OJ L 164, 30.4.2004, p. 114.

Reference for a preliminary ruling from the Raad van State (Belgium) lodged on 27 April 2007 — VZW de Nationale Raad van Dierenkwekers en Liefhebbers and VZW Andibel v Belgische Staat

(Case C-219/07)

(2007/C 155/25)

Language of the case: Dutch

Referring court

Raad van State (Belgium)

Parties to the main proceedings

Applicants: VZW de Nationale Raad van Dierenkwekers en Liefhebbers and VZW Andibel

Defendant: Belgische Staat

Questions referred

1. Must Article 30 of the Treaty of 25 March 1957 establishing the European Community, in itself or in conjunction with Council Regulation (EC) No 338/97 ([1]) of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein, be interpreted as meaning that a prohibition on the import of or trade in fauna, imposed in implementation of Article 3bis(1) of the Law of 4 August 1986 on the protection and welfare of animals (Wet betreffende de bescherming en het welzijn der dieren), is not justified in

respect of mammals which are imported from another EU Member State and which come under category B, C or D in the Regulation or are not referred to in the Regulation, where those mammals are held in that Member State in accordance with the legislation of that State and that legislation complies with the provisions of the Regulation?

2. Does Article 30 EC of the EC Treaty or Regulation No 338/97 preclude the adoption by a Member State of rules which, under existing legislation on animal welfare, prohibit any commercial use of specimens, save where those specimens are explicitly referred to in those national rules, where the objective of the protection of those species, as referred to in Article 30 EC, can be achieved just as effectively by measures which obstruct intra-Community trade less?

(1) OJ 1997 L 61, p. 1.

Reference for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 3 May 2007 — UTECA (Unión de Televisiones Comerciales Asociadas) v Federación de Asociaciones de Productores Audiovisuales, Ente Público RTVE y Administración del Estado

(Case C-222/07)

(2007/C 155/26)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Applicant: UTECA (Unión de Televisiones Comerciales Asociadas)

Defendants: Federación de Asociaciones de Productores Audiovisuales, Ente Público RTVE y Administración del Estado

Questions referred

1. Does Article 3 of Council Directive 89/552/EEC (1) of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, as amended by Directive 97/36/EC (2) of the European Parliament and of the Council of 30 June 1997, permit Member States to impose on television operators the obligation to earmark a percentage of their operating revenue for the pre-funding of European cinematographic films and films made for television?

2. If the reply to the previous question is affirmative, is a national measure which, in addition to laying down the pre-funding obligation referred to above, reserves 60 % of that compulsory funding for original Spanish-language works compatible with that directive and with Article 12 EC, taken in conjunction with the other special provisions to which that article refers?

3. Does an obligation imposed by a national measure on television operators to the effect that the latter must earmark a percentage of their operating revenue for the pre-funding of cinematographic films, where 60 % of that amount must be earmarked specifically for original Spanish-language films the majority of which are produced by the Spanish film industry, amount to State aid in favour of that industry within the meaning of Article 87 EC?

(1) OJ L 298, p. 23.
(2) OJ L 202, p. 60.

Action brought on 4 May 2007 — Commission of the European Communities v Grand Duchy of Luxembourg

(Case C-224/07)

(2007/C 155/27)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: N. Yerrel and P. Dejmek, Agents)

Defendant: Grand Duchy of Luxembourg

Form of order sought

— declare that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways and amending Council Directive 95/18/EC on the licensing of railway undertakings and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (Railway Safety Directive) (1), the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 33 of that directive;

or in the alternative:

declare that, by failing to communicate to the Commission the laws, regulations and administrative provisions necessary to comply with Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways and amending Council Directive 95/18/EC on the licensing of railway undertakings and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (Railway Safety Directive), the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 33 of that directive;

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

Pleas in law and main arguments

The period for transposition of Directive 2004/49/EC expired on 30 April 2006.

([1]) OJ 2004 L 164, p. 44, and corrigendum OJ 2004 L 220, p. 16.

Reference for a preliminary ruling from the Finanzgericht Düsseldorf (Germany) lodged on 7 May 2007 — Flughafen Köln/Bonn GmbH v Hauptzollamt Köln

(Case C-226/07)

(2007/C 155/28)

Language of the case: German

Referring court

Finanzgericht Düsseldorf

Parties to the main proceedings

Applicant: Flughafen Köln/Bonn GmbH

Defendant: Hauptzollamt Köln

Question referred

Is Article 14(1)(a) of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity ([1]) to be interpreted as meaning that an undertaking which used gas oil on which tax was paid coming within heading 2710 of the Combined Nomenclature in order to produce electricity, and which has claimed a refund of that tax, can rely directly on this provision?

([1]) OJ 2003 L 283, p. 51.

Reference for a preliminary ruling from the Tribunal administratif de Paris (France) lodged on 9 May 2007 — Diana Mayeur v Ministre de la santé et des solidarités

(Case C-229/07)

(2007/C 155/29)

Language of the case: French

Referring court

Tribunal administratif de Paris

Parties to the main proceedings

Applicant: Diana Mayeur

Defendant: Ministre de la santé et des solidarités

Question referred

Do the provisions of Article 23 of Directive 2004/38/EC of 29 April 2004 ([1]) entitle a national of a non-Member State, who is married to a Community national, to rely on the Community rules relating to the mutual recognition of diplomas and to the freedom of establishment, and do they require the competent authorities of the Member State, from which authorisation to practise a regulated profession is sought, to take into consideration all the diplomas, certificates and other evidence of formal qualifications, even if they were obtained outside the European Union but if, at least, they have been recognised in another Member State, and the relevant experience of the person concerned, by comparing the specialised knowledge and abilities certified by those diplomas and that experience with the knowledge and qualifications required by the national rules?

([1]) Directive 2004/38/EC of the Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77, and corrigenda — OJ 2004 L 229, p. 35 and OJ 2005 L 197, p. 34).

Action brought on 8 May 2007 — Commission of the European Communities v Kingdom of the Netherlands

(Case C-230/07)

(2007/C 155/30)

Language of the case: Dutch

Parties

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

Defendant: Kingdom of the Netherlands

Form of order sought

— declaration that the Kingdom of the Netherlands has failed to fulfil its obligations under Article 26(3) of Directive 2002/22/EC ([1]) by failing to ensure that, to the extent technically feasible, caller location information is made available for calls to the European emergency call number '112';

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

Pleas in law and main arguments

The period prescribed for transposing Directive 2002/22/EC into national law expired on 24 July 2003.

([1]) Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) (OJ L 108, 24.4.2002, p. 51).

Action brought on 10 May 2007 — Commission of the European Communities v Portuguese Republic

(Case C-234/07)

(2007/C 155/31)

Language of the case: Portuguese

Parties

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

Defendant: Portuguese Republic

Form of order sought

— a declaration that, by failing to ensure in practice, to the extent technically feasible, that information on the location of callers, for all calls made to the European emergency number 112, is made available to the authorities responsible for handling emergencies, the Portuguese Republic has failed to fulfil its obligations under Article 26 (3) of Directive 2002/22/EC ([1]) of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive);

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

Pleas in law and main arguments

The period prescribed for transposition of the directive into domestic law expired on 24 July 2004.

([1]) OJ 2002 L 108, p. 51.

Action brought on 22 May 2007 — Commission of the European Communities v Grand Duchy of Luxembourg

(Case C-244/07)

(2007/C 155/32)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: P. Dejmek and N. Yerrell, Agents)

Defendant: Grand Duchy of Luxembourg

Form of order sought

— declare that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Directive 2004/50/EC of the European Parliament and of the Council of 29 April 2004 amending Council Directive 96/48/EC on the interoperability of the trans-European high-speed rail system and Directive 2001/16/EC of the European Parliament and of the Council on the interoperability of the trans-European conventional rail system ([1]), the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 4 of that directive;

or in the alternative:

declare that, by failing to communicate to the Commission the laws, regulations and administrative provisions necessary to comply with Directive 2004/50/EC of the European Parliament and of the Council of 29 April 2004 amending Council Directive 96/48/EC on the interoperability of the trans-European high-speed rail system and Directive 2001/16/EC of the European Parliament and of the Council on the interoperability of the trans-European conventional rail system, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 4 of that directive;

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

Pleas in law and main arguments

The period for transposition of Directive 2004/50/EC expired on 29 April 2006.

([1]) OJ 2004 L 164, p. 114, and corrigendum OJ 2004 L 220, p. 40.

Action brought on 22 May 2007 — Commission of the European Communities v Germany

(Case C-245/07)

(2007/C 155/33)

Language of the case: German

Parties

Applicant: Commission of the European Communities (represented by: G. Braun and P. Dejmek, acting as Agents)

Defendant: Federal Republic of Germany

Form of order sought

— Declaration that, by failing to adopt within the prescribed period or by not informing the Commission of the adoption of all laws, regulations and administrative provisions necessary in order to transpose Directive 2004/50/EC ([1]) of the European Parliament and of the Council of 29 April 2004 amending Council Directive 96/48/EC ([2]) on the interoperability of the trans-European high-speed rail system and Directive 2001/16/EC ([3]) of the European Parliament and of the Council on the interoperability of the trans-European conventional rail system in national law, the Federal Republic of Germany has failed to fulfil its obligations under that directive;

— The Federal Republic of Germany to pay the costs.

Pleas in law and main arguments

The period prescribed for transposition of Directive 2004/50/EC expired on 30 April 2006.

([1]) OJ 2004, L 116, p. 114.
([2]) OJ 1996, L 235, p. 6.
([3]) OJ 2001, L 110, p. 1.

Action brought on 24 May 2007 — Commission of the European Communities v Hellenic Republic

(Case C-250/07)

(2007/C 155/34)

Language of the case: Greek

Parties

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

Defendant: Hellenic Republic

Form of order sought

— declare that, by not first publishing a call for competition and by being unjustifiably tardy in replying to the complainant's request that the reasons for the rejection of its tender be explained, the Hellenic Republic has failed to fulfil its obligation, regarding a call for competition before a procedure for the submission of tenders is embarked upon, under Article 20(2) of Directive 93/38/EEC ([1]) of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors and its obligation under Article 41(4) of Directive 93/38/EEC, as both interpreted by the case-law of the Court of Justice of the European Communities;

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

The Commission received a complaint relating to irregularities in the carrying out of a tender procedure announced by the Dimosia Epikhirisi Ilektrismou (Public Power Corporation; 'the DEI') for the study, supply, transport, installation and bringing into operation of two steam-electric units for the steam electric station at Atherinolakkos, Crete.

The Commission submits that the DEI failed to publish a call for competition, in breach of Article 20(2)(a) of Directive 93/38/EEC, which provides for exceptions provided that conditions that must be interpreted restrictively are met. Specifically, the Commission considers that the DEI interpreted improperly the term 'suitable tenders' and 'substantial change in the conditions of the original contract' in order to justify application of the exception under the foregoing provision.

The Commission also considers that in the case in point it is not possible to rely on reasons of overriding and extreme urgency, or unforeseeable events, within the meaning of Article 20(2)(d), since they are not substantiated by the DEI.

Finally, in the light of the Court's case-law, the Commission considers that there was significant delay regarding a statement of the reasons for rejecting the complainant's tender, in breach of Article 41(4) of Directive 93/38/EEC.

Consequently, the Commission submits that the Hellenic Republic has failed to fulfil its obligations under Articles 20(2) and 41(4) of Directive 93/38/EEC.

([1]) OJ L 199, 9.8.1993, p. 84.

COURT OF FIRST INSTANCE

Conduct of the activities of the Court of First Instance between 1 and 17 September 2007

(2007/C 155/35)

At its Plenary Meeting of 6 June 2007, the Court of First Instance took note of the fact that, by reason of the Court vacation, the taking of the oath before the Court of Justice by four new Members of the Court of First Instance will take place only after the end of that vacation. Consequently, in accordance with the third paragraph of Article 5 of the Statute of the Court of Justice, until the new Members of the Court of First Instance take up their duties:

— the President of the Court of First Instance will be Mr Vesterdorf;

— the Presidents of the Chambers of five Judges will be Mr Jaeger, Mr Pirrung, Mr Vilaras and Mr Legal, Presidents of Chambers;

— the President of the First Chamber will be Mr Cooke, President of Chamber;

— the decision of 14 January 2006 (OJ 2006 C 10, p. 19) on the composition of the Appeal Chamber and the assignment of cases to that Chamber, the decision of 5 July 2006 (OJ 2006 C 190, p. 14) on the composition of the Grand Chamber and the designation of the Judge replacing the President of the Court of First Instance as the Judge hearing applications for interim measures and the decision of 15 January 2007 (OJ 2007 C 42, p. 22) on the assignment of Judges to Chambers and the criteria for the assignment of cases will continue to apply.

Judgment of the Court of First Instance of 24 May 2007 — Duales System Deutschland v Commission

(Case T-151/01) ([1])

(Competition — Abuse of a dominant position — Collection and recovery system for packaging carrying the Der Grüne Punkt logo and put into circulation in Germany — Decision finding abuse of a dominant position — Barrier to entry — Fee payable under the 'Trade Mark Agreement')

(2007/C 155/36)

Language of the case: German

Parties

Applicant: Der Grüne Punkt — Duales System Deutschland GmbH, formerly Der Grüne Punkt — Duales System Deutschland AG (Cologne, Germany) (represented by: W. Deselaers, B. Meyring, E. Wagner and C. Weidemann, lawyers)

Defendant: Commission of the European Communities (represented by: initially by S. Rating, and subsequently by P. Oliver, H. Gading and M. Schneider, and finally by W. Mölls and R. Sauer, Agents)

Interveners in support of the defendant: Vfw AG (Cologne, Germany) (represented by H.F. Wissel and J. Dreyer, lawyers); Landbell AG für Rückhol-Systeme (Mayence, Germany); and BellandVision GmbH (Pegnitz, Germany) (represented by: A. Rinne and A. Walz, lawyers)

Re:

Application for annulment of Commission Decision 2001/463/EC of 20 April 2001 relating to a proceeding pursuant to Article 82 [EC] (Case COMP D3/34493 — DSD) (OJ 2001 L 166, p. 1)

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the applicant, Der Grüne Punkt — Duales System Deutschland GmbH, to bear its own costs and those incurred by the Commission, Landbell AG Rückhol Systeme and BellandVision GmbH, including those relating to the interlocutory proceedings;*

3. *Orders Vfw AG to bear its own costs, including those relating to the interlocutory proceedings.*

([1]) OJ C 289, 13.10.2001.

Judgment of the Court of First Instance of 24 May 2007 — Duales System Deutschland v Commission

(Case T-289/01) ([1])

(Competition — Agreements, decisions and concerted practices — Collection and recovery system for packaging marketed in Germany bearing the Der Grüne Punkt logo — Decision granting exemption — Obligations imposed by the Commission to ensure competition — Exclusivity granted by the system operator to the collection undertakings used — Restriction of competition — Need to guarantee the access of competitors to the collection facilities used by the system operator — Commitments given by the system operator)

(2007/C 155/37)

Language of the case: German

Parties

Applicant: Der Grüne Punkt — Duales System Deutschland GmbH, formerly Der Grüne Punkt — Duales System Deutschland AG (Cologne, Germany) (represented by: W. Deselaerts, B. Meyring, E. Wagner, lawyers)

Defendant: Commission of the European Communities (represented initially by S. Rating, subsequently by P. Oliver, H. Gading and M. Schneider, and finally by W. Mölls and R. Sauer, Agents)

Intervener in support of the defendant: Landbell AG für Rückhol-Systeme (Mayence, Germany) (represented by: A. Rinne and A. Walz, lawyers)

Re:

Annulment of Article 3 of Commission Decision 2001/837/EC of 17 September 2001 relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Cases COMP/34493 — DSD, COMP/37366 — Hofman + DSD, COMP/37299 — Edelhoff + DSD, COMP/37291 — Rechmann + DSD, COMP/37288 — ARGE and five other undertakings + DSD, COMP/37287 — AWG and five other undertakings + DSD, COMP/37526 — Feldhaus + DSD, COMP/37254 — Nehlsen + DSD, COMP/37252 — Schönmakers + DSD, COMP/37250 — Altvater + DSD, COMP/37246 — DASS + DSD, COMP/37245 — Scheele + DSD, COMP/37244 — SAK + DSD, COMP/37243 — Fischer + DSD, COMP/37242 — Trienekens + DSD, COMP/37267 — Interseroh + DSD) (OJ 2001 L 319, p. 1), or, in the alternative, annulment of that decision in its entirety and of the applicant's commitment reproduced in recital 72 of that decision.

Operative part of the judgment

The Court:

1. *Dismisses the action;*
2. *Orders the applicant, Der Grüne Punkt — Duales System Deutschland GmbH, to bear three quarters of its own costs, three quarters of the costs incurred by the Commission, and the costs incurred by Landbell AG Rückhol-Systeme;*
3. *Orders the Commission to bear a quarter of its own costs and a quarter of the costs incurred by the applicant.*

([1]) OJ C 44, 16.2.2002.

Judgment of the Court of First Instance of 16 May 2007 — F v Commission

(Case T-324/04) ([1])

(Staff cases — Officials — Expatriation allowance — Action for annulment — Action for damages — Article 4(1)(a) of Annex VII to the Staff Regulations — Concept of international organisation — Habitual residence and main occupation — Retroactive refusal to pay the expatriation allowance — Recovery of amounts wrongly paid)

(2007/C 155/38)

Language of the case: French

Parties

Applicant: F (Rhodes-Saint-Genèse, Belgium) (represented by: É. Boigelot, lawyer)

Defendant: Commission of the European Communities (represented by: H. Krämer, Agent)

Re:

First, annul the decisions of the Commission refusing with retroactive effect to pay the applicant the expatriation allowance and determining the method for recovery of the amounts wrongly paid on that account and, second, order repayment of all the amounts which have been or will be deducted from the applicant's salary from February 2004, plus interest, and damages for the material and non-material loss allegedly suffered.

Operative part of the judgment

The Court:

1. *Dismisses the action;*
2. *Orders the parties to bear their own costs.*

([1]) OJ C 300, 4.12.2004.

Judgment of the Court of First Instance of 16 May 2007 — Merant v OHIM — Magazin Verlag (FOCUS)

(Case T-491/04) ([1])

(Community trade mark — Opposition proceedings — Application for the Community word mark FOCUS — Earlier national figurative mark MICRO FOCUS — Likelihood of confusion — Similarity of signs — Article 8(1)(b) of Regulation (EC) No 40/04)

(2007/C 155/39)

Language of the case: German

Parties

Applicant: Merant GmbH (Ismaning, Germany) (represented by: A. Schulz, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: initially, D. Schennen, subsequently, G. Schneider, acting as Agents)

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the Court: Focus Magazin Verlag GmbH (Munich, Germany) (represented by: U. Gürtler, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 18 October 2004 (Case R 542/2002-2) in opposition proceedings between Merant GmbH and Focus Magazin Verlag GmbH.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 18 October 2004 (Case R 542/2002-2);*

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

3. *Orders the intervener, Focus Magazin Verlag GmbH, to bear its own costs.*

([1]) OJ C 82 of 2.4.2005.

Judgment of the Court of First Instance (Second Chamber) of 22 May 2007 — Commission v IIC

(Case T-500/04) ([1])

(Arbitration clause — Jurisdiction of the Court of First Instance — Repayment of the advance paid by the Community for projects financed in the domain of trans-European telecommunications networks — Forfeiture — Eligibility of the costs purportedly incurred)

(2007/C 155/40)

Language of the case: German

Parties

Applicant: Commission of the European Communities (represented by: G. Braun, W. Wils and N. Knittlmayer, acting as Agents)

Defendant: IIC Informations-Industrie Consulting GmbH (established in Königswinter, Germany) (represented by: E. Rott and J. Wolff, lawyers)

Re:

Application under Article 238 EC for an order requiring the defendant to repay part of the advance paid by the Community in implementation of two financing contracts in relation to cultural programmes.

Operative part of the judgment

The Court:

1. *Orders IIC Informations-Industrie Consulting GmbH to pay the Commission of the European Communities the principal sum due of EUR 179 337, together with default interest at 4 % per annum as from 1 November 1998 until full payment of the sums due;*

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

3. *Dismisses the application by IIC Informations-Industrie Consulting GmbH for suspension of enforcement of this judgment;*

4. *Orders IIC Informations-Industrie Consulting GmbH to pay the costs.*

([1]) OJ C 82, 2.4.2005.

Judgment of the Court of First Instance of 16 May 2007 — La Perla v OHIM — Worldgem Brands (NIMEI LA PERLA MODERN CLASSIC)

(Case T-137/05) ([1])

(Community trade mark — Cancellation proceedings — Community word mark NIMEI LA PERLA MODERN CLASSIC — Earlier national figurative and word marks la PERLA and LA PERLA PARFUMS — Relative grounds for refusal — Article 52(1)(a) of Regulation (EC) No 40/94 — Article 8(5) of Regulation No 40/94)

(2007/C 155/41)

Language of the case: Italian

Parties

Applicant: Gruppo La Perla SpA (Bologna, Italy) (represented by: R. Morresi and A. Dal Ferro, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: initially M. Capostagno, and subsequently O. Montalto, Agents)

Other party to the proceedings before the OHIM Board of Appeal, intervener before the Court of First Instance: Worldgem Brands — Gestão e Investimentos L[da], formerly Cielo Brands — Gestão e Investimentos L[da], (Madeira, Portugal) (represented by: G. Bozzola et C. Bellomunno, lawyers)

Re:

Appeal lodged against the decision of the First Board of Appeal of OHIM of 25 January 2005 (Case R 537/2004-1) relating to cancellation proceedings between Gruppo La Perla SpA and Worldgem Brands — Gestão e Investimentos L[da].

Operative part of the judgment

1. *The decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 25 January 2005 (Case R537/2004-1) is annulled.*

2. *The intervener is ordered to bear its own costs and to bear one third of the applicant's costs.*

3. *The applicant is ordered to bear two thirds of its own costs.*

4. *OHIM is ordered to bear its own costs.*

(1) OJ C 132 of 28.5.2005.

Judgment of the Court of First Instance of 16 May 2007 — Trek Bicycle v OHIM — Audi (ALLTREK)

(Case T-158/05) (1)

(Community trade mark — Opposition proceedings — Application for the Community word mark ALLTREK — Earlier national word mark TREK — Relative ground for refusal — No likelihood of confusion — No similarity of goods — Article 8(1)(b) of Regulation (EC) No 40/04)

(2007/C 155/42)

Language of the case: German

Parties

Applicant: Trek Bicycle Corp. (Waterloo, Wisconsin, United States) (represented by: J. Kroher and A. Hettenkofer, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the Court: Audi AG (Ingolstadt, Germany) (represented by: L. von Zumbusch and M. Groebl, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 2 February 2005 (Case R 587/2004-4) relating to Opposition Proceedings between Trek Bicycle Corp. and Audi AG.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

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

(1) OJ C 171 of 9.7.2005.

Judgment of the Court of First Instance of 22 May 2007 — Mebrom v Commission

(Case T-198/05) (1)

(Non-contractual liability — Importation of methyl bromide into the European Union — Delay in setting up an Internet site for requesting and obtaining import licences and quotas — Articles 6 and 7 of Regulation (EC) No 2037/2000 — Damage resulting from loss of profit — Actual damage)

(2007/C 155/43)

Language of the case: English

Parties

Applicant: Mebrom NV (Rieme-Ertvelde, Belgium) (represented by: C. Mereu and K. Van Maldegem, lawyers)

Defendant: Commission of the European Communities (represented by: U. Wölker and X. Lewis, Agents)

Re:

Action for compensation for the damage allegedly suffered by the applicant as a result of the Commission's failure to set up a system allowing the applicant to import methyl bromide for critical uses into the European Union in January and February 2005

Operative part of the judgment

The Court:

1. *dismisses the action;*

2. *orders the applicant to bear its own costs and those incurred by the Commission.*

(1) OJ C 182, 23.7.2005.

Judgment of the Court of First Instance of 22 May 2007 — Mebrom v Commission

(Case T-216/05) (1)

(Protection of the ozone layer — Importation of methyl bromide into the European Union — Refusal to allocate an import quota to the applicant for critical use for 2005 — Action for annulment — Admissibility — Implementation of Articles 3, 4, 6 and 7 of Regulation (EC) No 2037/2000 — Legitimate expectations — Legal certainty)

(2007/C 155/44)

Language of the case: English

Parties

Applicant: Mebrom NV (Rieme-Ertvelde, Belgium) (represented by: C. Mereu and K. Van Maldegem, lawyers)

Defendant: Commission of the European Communities (represented by: U. Wölker and X. Lewis, Agents)

Re:

Action for annulment of an alleged decision addressed to the applicant relating to the allocation of import quotas for methyl bromide for 2005, contained in the Commission's letter to the applicant of 11 April 2005

Operative part of the judgment

The Court:

1. *dismisses the action;*

2. *orders the applicant to bear its own costs and those incurred by the Commission.*

([1]) OJ C 182, 23.7.2005.

Judgment of the Court of First Instance of 23 May 2007 — The Procter & Gamble Company v OHIM

(Joined Cases T-241/05, T-262/05 to T-264/05, T-346/05, T-347/05, T-29/06 to T-31/06) ([1])

(Community trade mark — Applications for three-dimensional trade marks — Square white tablets with coloured floral design — Absolute ground for refusal — Article 7(1)(b) of Regulation (EC) No 40/94 — Absence of distinctive character)

(2007/C 155/45)

Language of the case: English

Parties

Applicant: The Procter & Gamble Company (Cincinnati, Ohio, USA) (represented by: G.Kuipers, lawyer)

Defendant: Office for Harmonisation in the Internal Market (represented by: D. Schennen, then G. Schneider, Agents)

Re:

Nine Actions against the decisions of the First Board of Appeal of OHIM of 14 April 2005 (case R 843/2004-1), of 3 May 2005 (Case R 845/2004-1), of 4 May 2005 (Case R 849/2004-1), of 1 June 2005 (Case R 1184/2004-1), of 6 July 2005 (Cases R 1188/2004-1 and R 1182/2004-1), of 16 November 2005 (Case R 1183/2004-1), of 21 November 2005 (Case R 1072/2004-1) and of 22 November 2005 (Case R 1071/2004-1) concerning the application to register three-dimensional trade marks.

Operative part of the judgment

The Court:

1. *Dismisses the actions;*

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

([1]) OJ C 205, 20.8.2005.

Judgment of the Court of First Instance of 23 May 2007 — Henkel KGaA v OHIM — SERCA(COR)

(Case T-342/05) ([1])

('Community trade mark — Opposition proceedings — Application for Community word mark COR — Earlier national figurative mark including the word element "dor" in gothic script — Relative ground for refusal — No likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94')

(2007/C 155/46)

Language of the case: German

Parties

Applicant(s): Henkel KGaA (Düsseldorf, Germany) (represented by C. Osterrieth, lawyer)

Defendant(s): Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented initially by A. Folliard-Monguiral then by G. Schneider, agents)

Other party to the proceedings before the Board of Appeal of OHIM: Serra Y Roca, SA (SERCA) (Barcelona, Spain)

Re:

Action for annulment brought against the decision of the First Board of Appeal of OHIM of 14 July 2005 (Case R 556/2003-1) relating to opposition proceedings between Henkel KGaA and Serra y Roca, SA (SERCA).

Operative part of the judgment

The Court:

1. *Dismisses the action.*

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

([1]) OJ C 296 of 26.11.2005.

Judgment of the Court of First Instance of 23 May 2007 — Parliament v Eistrup

(Case T-223/06 P) ([1])

(Appeal — Application signed by a lawyer by means of a stamp — Inadmissibility of the action)

(2007/C 155/47)

Language of the case: Danish

Parties

Appellant: European Parliament (represented by: H. von Hertzen and L. Knudsen, Agents)

Other party to the proceedings: Ole Eistrup (Knebel, Denmark) (represented by: S. Hjelmborg and M. Honoré, lawyers)

Re:

Appeal against the order of the European Union Civil Service Tribunal (Second Chamber) of 13 July 2006 in Case F-102/05 *Eistrup* v *Parliament* ECR-SC I-A-0000 and II-0000, seeking to have that order set aside

Operative part of the judgment

The Court:

1. *Sets aside the order of the European Union Civil Service Tribunal of 13 July 2006 in Case F-102/05 Eistrup v Parliament (not yet published in the ECR);*

2. *Dismisses the action brought by Mr Eistrup before the Civil Service Tribunal in Case F-102/05 as inadmissible;*

3. *Orders each party to bear its own costs relating to both the proceedings at first instance and the appeal.*

([1]) OJ C 249, 14.10.2006.

Order of the President of the Court of First Instance of 21 May 2007 — Kronberger v Parliament

(Case T-18/07 R)

(Interim proceedings — Act concerning the election of Members of the European Parliament — Application for interim measures — Inadmissibility)

(2007/C 155/48)

Language of the case: German

Parties

Applicant: Hans Kronberger (Vienna, Austria) (represented by: W. Weh, lawyer)

Defendant: European Parliament (represented by: H. Krück, N. Lorenz and M. Windisch, Agents)

Re:

Application for interim measures seeking to obtain, first, a provisional declaration that the award of a seat in the European Parliament to its current holder is invalid, and second, a provisional award of that seat to the applicant.

Operative part of the judgment

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

2. *The costs are reserved.*

Action brought on 16 April 2007 — P.P.TV — Publicidade de Portugal e Televisão, SA v OHIM — Rentrak (PPT)

(Case T-118/07)

(2007/C 155/49)

Language in which the application was lodged: Portuguese

Parties

Applicant: P.P.TV — Publicidade de Portugal e Televisão, SA (Lisbon, Portugal), (represented by: I. de Carvalho Simões and J. Conceição Pimenta, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: RENTRAK Corp.

Form of order sought

— annulment of Decision No R. 1040/2005-1 of 7 February 2007 of the First Board of Appeal of the Office for Harmonisation in the Internal Market ('the Office') (related case: Decision No 2254/2005 of 28 June 2005 of the Opposition Division of the Office)

— an order that the Office should, in consequence, refuse to register Community trade mark No 1758382 in relation to all the services listed;

— an order that the intervener should pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: RENTRAK Corp.

Community trade mark concerned: Word mark PPT (Services for the distribution of video-cassettes on the basis of shared revenue or payment for use; rental of videos and DVDs; rental of video-recorders and DVD players; distribution of videotapes; on-line rental of videos, DVDs, video-recorders and DVD players by means of the world wide information net, Class 41)

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

Mark or sign cited in opposition: Portuguese national trade mark No 330 375, presenting the verbal element 'PPTV' (services relating to 'Education; providing of training; entertainment; sporting and cultural activities' within Class 41).

Decision of the Opposition Division: Upholding of the opposition and rejection of the application for registration of a Community trade mark

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

Pleas in law:

Similarity of services: the Board of Appeal's interpretation to the effect that the services relating to the trade mark at issue, being distribution services only, are not directed at the same consumers, so that they have no connection whatsoever with the services provided by the applicant, is too restrictive.

Graphic similarity and likelihood of confusion: The three first letters of each of the two distinctive signs are exactly the same. Neither of the trade marks has any immediate meaning for Portuguese consumers, so that they will be taken to be fanciful signs and therefore to be original.

The likelihood of confusion includes the risk of association.

Even if Portuguese consumers did succeed in distinguishing the marks, it is not inconceivable that they would ascribe to them the same origin or believe that there were commercial, economic or organisational relations between the proprietor undertakings, which might constitute unfair competition even if that were not the intention of the applicant for registration of the trade mark at issue.

Action brought on 24 April 2007 — Mohr & Sohn v Commission

(Case T-131/07)

(2007/C 155/50)

Language of the case: German

Parties

Applicant: Paul Mohr & Sohn, Baggerei und Schiffahrt (Niederwalluf (Rhg), Germany) (represented by: F. von Waldstein, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— Annul the defendant's decision of 28 February 2007 and order the European Commission to grant the applicant an exemption for the crane vessel 'Niclas', in accordance with Article 4(6) of Council Regulation (EC) No 718/1999 of 29 March 1999 on a Community-fleet capacity policy to promote inland waterway transport;

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

Pleas in law and main arguments

The applicant challenges the decision of the Directorate-General for Energy and Transport of the Commission (2007) D/200972 of 28 February 2007 in respect of the application which it made pursuant to Article 4(6) of Regulation (EC) No 718/1999 [1] for an exemption for the crane vessel 'Niclas'. The applicant applied for that specialised vessel to be exempted from the application of the 'old-for-new' rule. In the contested decision the defendant decided not to grant the relevant exemption for the vessel 'Niclas'.

In support of its action the applicant claims, in particular, that the crane vessel 'Niclas' is not a vessel which is subject to Regulation No 718/1999. It submits, in that regard, that the ship concerned is not in possession of a certificate of entitlement to operate on the Rhine, which is however a requirement for the legal transportation of goods on the European waterways. According to the applicant, the crane vessel 'Niclas' is no different from storage vessels under Article 2(2)(f) of Regulation No 718/1999 or from hopper vessels and floating construction plants within the meaning of Article 2(2)(g) of that regulation.

[1] Council Regulation (EC) No 718/1999 of 29 March 1999 on a Community-fleet capacity policy to promote inland waterway transport.

Action brought on 2 May 2007 — Portela — Comércio de artigos ortopédicos e hospitalares v Commission

(Case T-137/07)

(2007/C 155/51)

Language of the case: Portuguese

Parties

Applicant: Portela — Comércio de artigos ortopédicos e hospitalares, Lda. (Queluz, Portugal) (represented by: C. Mourato, lawyer)

Defendant: the Commission of the European Communities

Form of order sought

— that the Court of First Instance should impose on the Commission the obligation to act in accordance with Article 14b of Council Directive 93/42/EEC of 14 June 1993 ([1]), in particular by requiring the notified body, through the German State, to activate the civil liability insurance provided for in point 6 of Annex XI to Directive 93/42 of 14 June and in point 7(a) of the document MEDDEV 2.10-2 Rev 1 April 2001, so as to indemnify the applicant for the damage sustained;

— or, in case the applicant is not indemnified for the damage sustained by means of that compulsory civil liability insurance, an order that the Commission should pay the applicant the sum of EUR 2 419 665,42 as compensation for the damage sustained;

— an order that the Commission should pay the applicant default interest calculated on the basis of the reference rate of the European Central Bank, increased by two percentage points, from the date this action was lodged;

— an order that the Commission should pay the costs, in accordance with Article 87(2) of the Rules of Procedure of the Court of First Instance, in particular expenses necessarily incurred by the applicant for the purpose of the proceedings, in particular the travel and subsistence expenses and the remuneration and expenses of lawyers, in accordance with Article 91(b) of those Rules.

Pleas in law and main arguments

In carrying on its commercial activity, the applicant, a commercial company with its seat in Portugal, imported from Taiwan in the first half of 2002 two batches of 5 184 digital thermometers manufactured by the undertaking Geon Corporation ('Geon') which proved to be faulty.

Geon's system of quality control was monitored by the TÜV Rheinland (***T**echnischer **Ü**berwachungs-**V**erein, Technical Monitoring Association of the Rhineland*) which, as the notified body responsible for that process, was under a legal duty to carry out adequate inspections and assessments for the purpose of making sure that the manufacturer applied the approved quality system, possibly making unannounced visits to the manufacturer during which it could, if necessary, carry out or ask for tests in order to check that the quality control system worked properly, in accordance with Articles 4.2 and 4.3 of Annex V to the Directive.

The notified body in question, TÜV Rheinland, was unable to ensure that the product it certified was fit to be marketed safely in Europe, being unwilling also to assume its repsonsibilities when alerted by the applicant to the serious problems caused by that product.

That body thus infringed point 4 of Annex V to the Directive and points 1, 2 and 4, in particular 4.1, 4.3 and 4.4 of Module D (production quality assurance) in Council Decision 93/465/EEC of 22 July 1993 ([2]).

The procedure to be adopted by the Commission and the Member States when any doubt arises as to the competence of a notified body consists, as stated in the first subparagraph of point 6.2.2. of the Guide to the implementation of directives based on the new approach and the global approach, in reassessing that body's ability to undertake the actions for which it was notified.

It fell within the Commission's powers to require the competent German authority, in accordance with point A, Chapter I of the Annex to Decision 93/465, to take appropriate measures as provided for by the document MEDDEV 2.10-2 Rev 1 of April 2001, it being obliged to act with regard to the body it had itself designated.

For circumstances such as those of the present case, in which there transpires a fault in the procedure for assessing the production quality of the undertaking in question which leads to the placing on the market of goods that are not in conformity with requirements and that pose a threat to the health of consumers, as happened, point 6 of Annex XI to the Directive provides that the notified body must take out civil liability insurance to be activated when any accident occurs, covering in particular those cases in which the notified body is obliged to withdraw or suspend certificates, as is also provided by point 7 of document MEDDEV 2.10-2 Rev 1.

Regardless of the responsibilities of the national bodies entrusted with surveillance of the market in the examination of the notified body's competence, and despite the fact that the Commission may not act directly in respect of that notified body, it fell to the Commission, automatically advised of the serious problem that had arisen, to act together with the Member State in whose territory the body in question had its headquarters, obliging it to take the corrective measures necessary in order that the safety and health of European citizens might be assured, in accordance with Article 152(1) of the EC Treaty.

The applicant requested only that the Commission should oblige the competent German national authority, the BfArM (Bundesinstitut für Arzneimittel und Medizinprodukte, the Federal Institute for Drugs and Medical Devices), through the German State, to make use of the civil liability insurance provided for by law, so allowing the applicant to be compensated for the damage caused by the placing on the market of goods carrying the EC marking when they were not in fact in conformity.

Point 8.3.3 of the Guide states that 'The Commission is responsible for administering the safeguard clause at Community level, and for ensuring that it applies to the whole of the Community.'

Infarmed (Instituto Nacional da Farmácia e do Medicamento, the National Institute of Pharmacy and Medicine) suspended the marketing in Portugal of the goods in question and ordered them to be withdrawn in accordance specifically with Article 14b of the Directive.

The Commission thus infringed the following provisions of law: Article 152(1) of the EC Treaty, Article 14b of Directive 93/42, points 6.2.2, first paragraph, 8.2.2, 8.2.3., 8.3.2 and 8.3.3 of the Guide to the implementation of directives based on the new approach and the global approach and point 1, Chapter I, of the Annex to Decision 93/465.

By failing to fulfil its obligations under the abovementioned provisions of law, the Commission has prevented the applicant from being compensated for the loss sustained by means of recourse to the abovementioned compulsory civil liability insurance.

The applicant had expected to sell at least 500 000 thermometers a year.

From the moment the decision was taken to withdraw those goods from the market, the doors of that market were closed to the applicant, since its image was irreparably associated with the non-conformity [with the requirements] of the goods it had placed on the market.

The damage suffered by the applicant amounts to a total of EUR 2 419 665,42.

([1]) Council Directive 93/42/EEC of 14 June 1993 concerning medical devices (OJ 1993 L 169, p. 1).
([2]) OJ 1993 L 220, p. 23.

Action brought on 4 May 2007 — Schindler Holding and Others v Commission

(Case T-138/07)

(2007/C 155/52)

Language of the case: German

Parties

Applicants: Schindler Holding Ltd (Hergiswil, Switzerland), Schindler Management AG (Ebikon, Switzerland), S.A. Schindler N.V. (Brussels, Belgium), Schindler Sàrl (Luxembourg, Luxembourg), Schindler Liften B.V. (The Hague, Netherlands) and Schindler Deutschland Holding GmbH (Berlin, Germany) (represented by: R. Bechtold, W. Bosch, U. Soltész and S. Hirsbrunner, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— annul the decision of 21 February 2007 in Case COMP/E-1/38.823 — PO/Elevators and Escalators, pursuant to the first paragraph of Article 231 EC;

— in the alternative, reduce the fines imposed in that decision;

— order the Commission to pay the costs of the applicants, in accordance with Article 87(2) of the Rules of Procedure of the Court of First Instance.

Pleas in law and main arguments

The applicants are challenging Commission Decision C(2007) 512 final of 21 February 2007 in Case COMP/E-1/38.823 — PO/Elevators and Escalators. In the contested decision, fines were imposed on the applicants and other undertakings on the ground of their participation in cartels relating to the installation and maintenance of lifts and escalators in Belgium, Germany, Luxembourg and the Netherlands. In the view of the Commission, the undertakings concerned acted in breach of Article 81 EC.

In support of their action, the applicants put forward the following pleas in law:

— Infringement of the principle of legal certainty by Article 23(2) of Regulation (EC) No 1/2003 ([1]) inasmuch as that provision confers on the Commission unlimited discretion in setting fines;

— Breach of the prohibition of retroactive effect by the fine imposed by the Commission;

— Lack of effectiveness of the Guidelines on the method of setting fines ('the 1998 Guidelines') ([2]) in that they fail adequately to take account of individual circumstances in connecting the basic amounts of fines with the respective infringements and confer too great a discretion on the Commission in determining fines;

— Illegality of the evidence adduced by cooperative undertakings on the basis of the Notice on immunity from fines and reduction of fines ([3]) by reason of the infringement of the *nemo tenetur* principle, of the right against self-incrimination, of the *in dubio pro reo* principle and the principle of proportionality, and by reason of the manner in which the Commission exceeded its competence by adopting that rule;

— Infringement of the principle of the division of powers and of the requirements of due process;

— Illegality of the contested decision under international law by reason of the expropriatory nature of the fines imposed;

— Infringement of the 1998 Guidelines on the ground that the basic amounts used to calculate the fines were unduly high in the light of the specific offences;

— Infringement of the 1998 Guidelines on the ground that inadequate account/no account was taken of extenuating circumstances;

— Infringement of the 2002 rules relating to cooperative undertakings on grounds of unduly low cooperation discounts or unjustified refusal of such discounts;

— Disproportionate nature of the level of the fines;

— Illegality of the contested decision in so far as it is addressed to Schindler Holding Ltd and Schindler Management AG on the ground that, in the absence of an international-law agreement with Switzerland, it was not effectively notified to those companies;

— Absence of conditions for the joint and several liability of Schindler Holding Ltd;

— Breach of Article 23(2) of Regulation No 1/2003 on the ground that the maximum limits for fines were exceeded.

(1) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1).
(2) Guidelines on the method of setting fines imposed pursuant to Article 15(2) of Regulation No 17 and Article 65(5) of the ECSC Treaty (OJ 1998 C 9, p. 3).
(3) Commission notice on immunity from fines and reduction of fines in cartel cases (OJ 2002 C 45, p. 3).

Action brought on 2 May 2007 — Pioneer Hi-Bred International v Commission

(Case T-139/07)

(2007/C 155/53)

Language of the case: English

Parties

Applicant: Pioneer Hi-Bred International Inc. (Johnston, USA) (represented by: J. Temple Lang, Solicitor)

Defendant: Commission of the European Communities

Form of order sought

— Find that the Commission has failed to act in accordance with Article 18 of Directive 2001/18 on the deliberate release into the environment of genetically modified organisms, in having failed to submit to the Regulatory Committee a draft of the measures to be taken pursuant to Article 5(2) of the Council decision;

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

Pleas in law and main arguments

The applicant claims, pursuant to Article 232 EC, that the Commission has failed to act, in infringement of Article 18 of Directive 2001/18/EC on the deliberate release into the environment of genetically modified organisms (1), to ensure the adoption of a decision concerning the applicant's notification for the placing on the market of insect-resistant genetically modified maize 1507.

The applicant contends that under the procedure set out in the directive, the Commission is obliged to ensure that a decision on a notification is adopted and published within the period of time prescribed in the directive. The applicant furthermore submits that by failing to submit to the Regulatory Committee a draft of the measures to be taken the Commission failed to ensure that such a decision was adopted even though all requirements on the applicant and other parties under the directive had been completed in accordance with the directive.

The applicant moreover submits that the Commission has been called upon to define its position within the terms of Article 232 EC which the Commission has failed to do. This has, according to the applicant, had adverse effects on the applicant's legal situation.

(1) 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 (OJ 2001 L 106, p. 1).

Action brought on 26 April 2007 — Chi Mei Optoelectronics Europe and Chi Mei Optoelectronics UK v Commission

(Case T-140/07)

(2007/C 155/54)

Language of the case: English

Parties

Applicants: Chi Mei Optoelectronics Europe BV (Hoofddorp, The Netherlands), Chi Mei Optoelectronics UK Ltd (Havant, United Kingdom) (represented by: S. Völcker, F. Louis, A. Vallery, lawyers)

Defendant: Commission of the European Communities

Form of order sought

The applicants respectfully ask the Court to

— annul the contested decision in its entirety; and

— order the Commission to bear the costs.

Pleas in law and main arguments

By means of their application the applicants seek annulment of Commission Decision C (2007)546 of 15 February 2007 on the basis of which the Commission, has compelled the applicants, pursuant to Article 18(3) of Council Regulation No 1/2003 (1), to provide specific information and documents related to practices under investigation in Case COMP/F/39309 — Thin Films Transistors Liquid Crystal Displays.

The applicants submit that the contested decision is unlawful in that the Commission lacks the investigative and enforcement power to compel EU subsidiaries to produce documents and to provide information under the sole custody and control of legal entities located outside the Commission's jurisdiction. It is, hence, submitted that the Commission erred in law by addressing a formal request for information to the applicants, thereby compelling them to provide documents and information under the sole control and possession of their parent company located outside the EU territory.

Precisely, the applicants claim that the contested decision infringes Article 18(1) and (3) of Council Regulation No 1/2003 because it disregards the document ownership and control doctrine and thus the inherent limitation of these provisions. In addition, the applicants contend that the contested decision violates the general principles of international law of territoriality, of sovereignty, of non-intervention and of equality of States by allegedly asserting enforcement jurisdiction over a company located outside the EU.

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

Action brought on 7 May 2007 — ThyssenKrupp Liften Ascenseurs v Commission

(Case T-144/07)

(2007/C 155/55)

Language of the case: Dutch

Parties

Applicant: ThyssenKrupp Liften Ascenseurs NV/SA (Brussels, Belgium) (represented by: V. Turner and D. Mes, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— annul the contested decision in so far as it relates to the applicant;

— in the alternative, reduce the amount of the fine for which the applicant is held to be jointly and severally liable;

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

Pleas in law and main arguments

The applicant is challenging Commission Decision C(2007) 512 final (Case COMP/E-1/38.823 — PO/Elevators and Escalators). It seeks the annulment of the decision to the extent to which the latter concerns it, or alternatively a reduction in the fine imposed on it.

In support of its action the applicant first of all submits that the Commission was not empowered to apply Article 81 EC inasmuch as the infringement did not have any significant effect on inter-State trade within the EU.

In the alternative, the applicant submits that the Commission was not the appropriate competition authority for the application of Article 81 EC within the terms of the Commission Notice on cooperation within the network of competition authorities (1). According to the applicant, by initiating yet another set of proceedings, the Commission infringed the legitimate expectations which the applicant was able to derive from the application of that notice.

Third, by instituting proceedings and imposing a fine, the Commission infringed the *ne bis in idem* principle, the principle of legal certainty, the principle of the protection of legitimate expectations and the principle of sound administration inasmuch as the Belgian competition authority had conferred on the applicant immunity from fines with regard to participation in the cartel-related offence which forms the subject-matter of the contested decision.

Further, it is alleged that the Commission improperly concluded that the applicant, ThyssenKrupp Elevators AG and ThyssenKrupp AG were jointly and severally liable for the infringement which the applicant itself had committed.

The applicant also submits that, in fixing the fine to be imposed, the Commission infringed Article 23 of Regulation No 1/2003 (2), the Commission's guidelines on setting fines (3), the principle of equality and the principle of proportionality. The Commission, it alleges, also failed to comply with the maximum level for fines laid down in Article 23.

The applicant further submits that the Commission breached the leniency notice (4) and the principle of equality when determining the amount of the reduction in the fine to be imposed on the applicant by reason of its cooperation within the framework of the leniency notice.

Finally, the applicant alleges that the Commission infringed the principles of equality, proportionality, protection of legitimate expectations and sound administration when determining the amount of the reduction in the fine to be imposed on the applicant by reason of its cooperation outwith the framework of the leniency notice.

(1) OJ 2004 C 101, p. 43.
(2) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1).
(3) Commission notice: Guidelines on the method of setting fines imposed pursuant to Article 15(2) of Regulation No 17 and Article 65(5) of the ECSC Treaty (OJ 1998 C 9, p. 3).
(4) Commission notice on immunity from fines and reductions of fines in cartel cases (OJ 2002 C 45, p. 3).

Action brought on 7 May 2007 — OTIS and Others v Commission

(Case T-145/07)

(2007/C 155/56)

Language of the case: English

Parties

Applicants: Otis SA (Dilbeek, Belgium), Otis GmbH & Co. OHG (Berlin, Germany), Otis BV (Amersfoort, The Netherlands) and Otis Elevator Co. (Farmington, United States) (represented by: A. Winckler, lawyer, and J. Temple Lang, Solicitor)

Defendant: Commission of the European Communities

Form of order sought

— Annul or substantially reduce the fine imposed on Otis pursuant to the decision;

— order the Commission to pay Otis' legal and other costs and expenses in relation to this matter; and

— take any other measures that the Court considers appropriate.

Pleas in law and main arguments

By means of their application, the applicants seek partial annulment, pursuant to Article 230 EC, of Commission Decision C(2007)512 final of 21 February 2007 (Case COMP/E-1/38.823 — PO/Elevators and Escalators), on the basis of which the applicants, among other undertakings were held liable for participating in four single, complex and continuous infringements of Article 81(1) EC through the sharing of markets by virtue of agreeing and/or concerting to allocate tenders and contracts for the sale, installation, service and modernisation of elevators and escalators.

In support of their application, the applicants invoke the following nine pleas in law without contesting the factual findings in the contested decision.

The Commission misapplied the relevant legal test when holding Otis Elevator Company liable for the conduct of the local entities as Otis Elevator Company did not exercise decisive influence over the day-to-day commercial conduct of these local affiliates and could not have been aware of their infringing conduct.

The Commission misapplied the fining guidelines ([1]) and violated the proportionality principle:

— when increasing the fine for deterrence based on the entire group's turnover; and

— when determining the starting amount relating to Germany, as the Commission failed to take into account that the illegal arrangements only concerned escalators and 'high-value'/high-speed elevators, which only account for a small part of the overall total elevators.

The Commission violated the leniency notice ([2]):

— by not granting Otis immunity for the illegal arrangements in Germany, as Otis was the only company to have submitted evidence and information about the *full* scope and duration of the elevator and escalator arrangements; or

— by not granting partial immunity concerning respectively escalators and elevators in certain periods and by failing to state reason therefore.

In the alternative, the Commission should have granted a 50 % reduction and, in any event, a reduction significantly greater than 25 %. The applicants allege that the Commission failed to appreciate the extent and significant added value of the evidence Otis provided.

Furthermore, the Commission violated Otis' legitimate expectations and the proportionality principle:

— by failing to grant the usual reduction of 10 % for not contesting the facts concerning Belgium, Germany and Luxembourg; and

— by failing to grant a reduction for providing clarifying and supplementary information.

Finally, the Commission misapplied the leniency notice and the fining guidelines when determining the fine relating to Belgium, Germany and Luxembourg.

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

([2]) Commission notice on immunity from fines and reduction of fines in cartel cases (OJ 2002 C 45, p. 3).

Action brought on 7 May 2007 — United Technologies v Commission

(Case T-146/07)

(2007/C 155/57)

Language of the case: English

Parties

Applicant: United Technologies Corp. (Hartford, United States) (represented by: A. Winckler, lawyer, and J. Temple Lang, Solicitor)

Defendant: Commission of the European Communities

Form of order sought

— Annul or substantially reduce the fine imposed on UTC pursuant to the decision;

— order the Commission to pay UTC's legal and other costs and expenses in relation to this matter; and

— take any other measures that the Court considers appropriate.

Pleas in law and main arguments

By means of its application, the applicant seeks partial annulment, pursuant to Article 230 EC, of Commission Decision C (2007)512 final of 21 February 2007 (Case COMP/E-1/38.823 — PO/Elevators and Escalators), on the basis of which the applicant, among other undertakings were held liable for participating in four single, complex and continuous infringements of Article 81(1) EC through the sharing of markets by virtue of agreeing and/or concerting to allocate tenders and contracts for the sale, installation, service and modernisation of elevators and escalators.

In support of its application, the applicant first of all submits that the Commission wrongly held that mere legal ownership of a wholly owned subsidiary justifies a finding of parental liability. The applicant alleges in this connection that i) Article 23(2) of Regulation No 1/2003 [1] requires evidence of intention or negligence, ii) that the parent company has to exercise actual control over the subsidiary's commercial policy during the infringement period or be aware of the conduct and do nothing to terminate it, and iii) that the parent company's liability for its subsidiaries' antitrust infringements must be based on its actual behaviour and not the ability to influence.

The applicant thereafter contends that it has rebutted any presumption of liability as its subsidiaries autonomously determined their day-to-day commercial conduct and the relevant employees disobeyed instructions after the applicant had taken every reasonable step to ensure compliance with the competition rules. Furthermore the Commission failed, according to the applicant, to state reasons for its finding that the applicant did not rebut the presumption of liability.

The applicant moreover alleges that the 70 % increase of the fine imposed on the applicant for size and deterrence is unjustified and disproportionate.

Finally, the applicant submits that the Commission violated the principle of equal treatment in holding the applicant responsible for the illegal conduct of its subsidiaries whereas the Commission applied a different legal test to find that Mitsubishi Electric Corporation Japan was not responsible for the conduct of its subsidiary.

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

Action brought on 7 May 2007 — ThyssenKrupp Aufzüge and ThyssenKrupp Fahrtreppen v Commission

(Case T-147/07)

(2007/C 155/58)

Language of the case: German

Parties

Applicants: ThyssenKrupp Aufzüge GmbH (Neuhausen auf den Fildern, Germany) and ThyssenKrupp Fahrtreppen GmbH (Hamburg, Germany) (represented by: U. Itzen and K. Blau-Hansen, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— annul the contested decision in so far as it relates to the applicants;

— in the alternative, reduce as appropriate the amount of the fine imposed jointly and severally on the applicants in the contested decision;

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

Pleas in law and main arguments

The applicants are challenging Commission Decision C(2007) 512 final of 21 February 2007 in Case COMP/E-1/38.823 — PO/Elevators and Escalators. In the contested decision, fines were imposed on the applicants and other undertakings on the ground of their participation in a cartel relating to the installation and maintenance of lifts and escalators in Germany. In the view of the Commission, the undertakings concerned acted in breach of Article 81 EC.

In support of their action, the applicants put forward the following pleas in law:

— Lack of competence on the part of the Commission in the absence of any significance at inter-State level of the local infringement of which the applicants are accused;

— Absence of the conditions required to establish that the applicants bear joint and several liability with the companies hierarchically above them, inasmuch as they are legally and economically independent;

— Disproportionate nature of the basic amounts taken into consideration in the calculation of the fine in comparison with the *de facto* market volume concerned;

— Illegality of the deterrent multiplication factor as the applicants' turnover was the only relevant factor in the calculation of the fine and that turnover did not justify application of that multiplication factor;

— Lack of justification for the repeat offender surcharge in the context of the fine calculation by reason of errors of law in the inclusion of previous fines and errors of appraisal;

— Breach of Article 23(2) of Regulation (EC) No 1/2003 ([1]), inasmuch as, with regard to the upper fine limit of 10 % of the undertaking's turnover, the Commission based itself on the turnover of the concern and not on that of the applicants;

— Legally defective application of the Notice on immunity from fines and reduction of fines ([2]) inasmuch as insufficient account was taken of the added value provided by the cooperation of the applicants.

([1]) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1).
([2]) Commission notice on immunity from fines and reduction of fines in cartel cases (OJ 2002 C 45, p. 3).

Action brought on 7 May 2007 — ThyssenKrupp Ascenseurs Luxembourg v Commission

(Case T-148/07)

(2007/C 155/59)

Language of the case: German

Parties

Applicant: ThyssenKrupp Ascenseurs Luxembourg Sàrl (Howald, Luxembourg) (represented by: K. Beckmann, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— annul the contested decision in so far as it relates to the applicant;

— in the alternative, reduce as appropriate the amount of the fine imposed jointly and severally on the applicant in the contested decision;

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

Pleas in law and main arguments

The applicant is challenging Commission Decision C(2007) 512 final of 21 February 2007 in Case COMP/E-1/38.823 — PO/Elevators and Escalators. In the contested decision, fines were imposed on the applicant and other undertakings on the ground of their participation in a cartel relating to the installation and maintenance of lifts and escalators in Luxembourg. In the view of the Commission, the undertakings concerned acted in breach of Article 81 EC.

In support of its action, the applicant puts forward the following pleas in law:

— Lack of competence on the part of the Commission in the absence of any significance at inter-State level of the local infringement of which the applicant is accused;

— Infringement of the *ne bis in idem* principle inasmuch as the Commission failed to take into account the amnesty decision which the Luxembourg cartel authority adopted in the applicant's favour before the present proceedings were instituted;

— Absence of the conditions required to establish that the applicant bears joint and several liability with the companies hierarchically above it, inasmuch as it is legally and economically independent;

— Disproportionate nature of the amount of the fine as set when considered in the light of the applicant's *de facto* market significance;

— Illegality of the deterrent multiplication factor as the applicant's turnover was the only relevant factor for the purpose of calculating the fine and that turnover did not justify application of that multiplication factor;

— Lack of justification for the repeat offender surcharge in the context of the fine calculation by reasons of errors of law in the inclusion of previous fines and errors of appraisal;

— Breach of Article 23(2) of Regulation (EC) No 1/2003 ([1]), inasmuch as, with regard to the upper fine limit of 10 % of the undertaking's turnover, the Commission based itself on the turnover of the concern and not on that of the applicant;

— Legally defective application of the Notice on immunity from fines and reduction of fines ([2]) inasmuch as insufficient account was taken of the added value represented by the applicant's cooperation;

— Failure to take adequate account of the applicant's cooperation outside the context of the Notice on immunity from fines and reduction of fines.

([1]) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1).
([2]) Commission notice on immunity from fines and reduction of fines in cartel cases (OJ 2002 C 45, p. 3).

Action brought on 7 May 2007 — ThyssenKrupp Elevator v Commission

(Case T-149/07)

(2007/C 155/60)

Language of the case: German

Parties

Applicant: ThyssenKrupp Elevator AG (Düsseldorf, Germany) (represented by: T. Klose and J. Ziebarth, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— annul the contested decision in so far as it relates to the applicant;

— in the alternative, reduce as appropriate the amount of the fine imposed jointly and severally on the applicant in the contested decision;

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

Pleas in law and main arguments

The applicant is challenging Commission Decision C(2007) 512 final of 21 February 2007 in Case COMP/E-1/38.823 — PO/Elevators and Escalators. In the contested decision, fines were imposed on the applicant and other undertakings on the ground of their participation in cartels relating to the installation and maintenance of lifts and escalators in Belgium, Germany and Luxembourg. In the view of the Commission, the undertakings concerned acted in breach of Article 81 EC.

In support of its action, the applicant puts forward the following pleas in law:

— Lack of competence on the part of the Commission in the absence of any significance at inter-State level of the local infringement of which the applicant is accused;

— Infringement of the *ne bis in idem* principle inasmuch as the Commission failed to take account of the amnesty decisions which the national cartel authorities in Belgium and Luxembourg adopted in the applicant's favour before the present proceedings were instituted;

— Absence of the conditions required to establish that the applicant bears joint and several liability with its subsidiaries, inasmuch as it was not itself involved in the offences, its subsidiaries operate on a legally and economically independent basis and there is no objective justification for extending liability to the applicant;

— Disproportionate nature of the basic amounts used for the calculation of the fine when compared with the *de facto* market volume concerned;

— Disproportionate nature of the deterrent multiplication factor, inasmuch as this differs significantly from the treatment accorded to other undertakings of comparable scale in comparable cases decided at the same time;

— Lack of justification for the repeat offender surcharge in the context of the fine calculation by reason of errors of law in regard to the inclusion of previous fines;

— Breach of Article 23(2) of Regulation (EC) No 1/2003 ([1]), inasmuch as, with regard to the upper fine limit of 10 % of the undertaking's turnover, the fine ought to have been calculated solely on the basis of the turnover of the subsidiaries concerned;

— Legally defective application of the Notice on immunity from fines and reduction of fines ([2]) inasmuch as insufficient account was taken of the added value represented by the applicant's cooperation.

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

([2]) Commission notice on immunity from fines and reduction of fines in cartel cases (OJ 2002 C 45, p. 3).

Action brought on 7 May 2007 — ThyssenKrupp v Commission

(Case T-150/07)

(2007/C 155/61)

Language of the case: German

Parties

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

Defendant: Commission of the European Communities

Form of order sought

— annul the contested decision in so far as it relates to the applicant;

— in the alternative, reduce as appropriate the amount of the fine imposed jointly and severally on the applicant in the contested decision;

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

Pleas in law and main arguments

The applicant is challenging Commission Decision C(2007) 512 final of 21 February 2007 in Case COMP/E-1/38.823 — PO/Elevators and Escalators. In the contested decision, fines were imposed on the applicant and other undertakings on the ground of their participation in cartels relating to the installation and maintenance of lifts and escalators in Belgium, Germany, Luxembourg and the Netherlands. In the view of the Commission, the undertakings concerned acted in breach of Article 81 EC.

In support of its action, the applicant puts forward the following pleas in law:

— Lack of competence on the Commission's part in the absence of any significance at inter-State level of the local infringement of which the applicant is accused;

— Infringement of the *ne bis in idem* principle inasmuch as the Commission disregarded the amnesty decisions which the cartel authorities in Belgium, Luxembourg and the Netherlands had adopted in the applicant's favour before the present proceedings were brought;

— Absence of the conditions required to establish that the applicant bears joint and several liability with its subsidiaries, inasmuch as it was not itself involved in the offences, its subsidiaries operate on a basis of legal and economic independence, and there is no objective justification for extending liability to the applicant;

— Disproportionate nature of the basic amounts used for calculation of the fine when compared with the *de facto* market volume in question;

— Disproportionate nature of the deterrent multiplication factor inasmuch as this differed significantly from the treatment accorded to other undertakings of comparable scale in comparable cases decided at the same time;

— Lack of justification for the repeat offender surcharge in the context of the fine calculation by reason of errors of law in regard to the inclusion of previous fines;

— Breach of Article 23(2) of Regulation (EC) No 1/2003 [1] inasmuch as, with regard to the upper fine limit of 10 % of the undertaking's turnover, the fine ought to have been calculated solely on the basis of the turnover posted by the subsidiaries concerned;

— Legally defective application of the Notice on immunity from fines and reduction of fines [2] inasmuch as insufficient account was taken of the added value of the applicant's cooperation in all four countries concerned.

---

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

[2] Commission notice on immunity from fines and reduction of fines in cartel cases (OJ 2002 C 45, p. 3).

Action brought on 8 May 2007 — KONE and Others v Commission

(Case T-151/07)

(2007/C 155/62)

Language of the case: English

Parties

Applicants: KONE Corp. (Helsinki, Finland), KONE GmbH (Hannover, Germany) and KONE BV (The Hague, The Netherlands) (represented by: T. Vinje, Solicitor, D. Paemen, J. Schindler, B. Nijs, lawyers, J. Flynn, QC and D. Scannell, Barrister)

Defendant: Commission of the European Communities

Form of order sought

The applicants request the Court to:

— annul Article 2(2) of the decision in so far as it imposes a fine on KONE Corporation and KONE GmbH, and impose either no fine or a fine at a lower amount than determined in the Commission decision;

— annul Article 2(4) of the Commission decision in so far as it imposes a fine on KONE Corporation and KONE BV, and set the fine at a lower amount than determined by the Commission decision;

— order the Commission to pay the costs.

Pleas in law and main arguments

By means of their application, the applicants seek partial annulment, pursuant to Article 230 EC, of Commission Decision C(2007)512 final of 21 February 2007 (Case COMP/E-1/38.823 — PO/Elevators and Escalators), on the basis of which the applicants, among other undertakings, were held liable for participating in four single, complex and continuous infringements of Article 81(1) EC through the sharing of markets by virtue of agreeing and/or concerting to allocate tenders and contracts for the sale, installation, service and modernisation of elevators and escalators.

The applicants, KONE Corporation and its subsidiaries, KONE GmbH and KONE BV, challenge the contested decision only in respect of its imposition of fines on KONE as a whole for its participation in infringements in Germany and in the Netherlands.

In respect of the infringement which took place in Germany, the applicants submit that the Commission erred in determining the amount of the fine. In particular, the applicants claim first, that the Commission has improperly applied the 2002 Leniency Notice [1] in that (i) it ought to have granted KONE immunity under point 8(b) and point 8(a) of the Notice; or alternatively, (ii) it ought to have reduced the applicants' fine in accordance with the last paragraph of point 23 of the said Notice.

The applicants claim, secondly, that the Commission has improperly applied the Guidelines on the method of setting fines imposed pursuant to Article 15(2) of Regulation (EC) No 17 and Article 65(5) of the ECSC Treaty of 1998 [2] (hereinafter, 'the 1998 Fining Guidelines') in that (i) it allegedly failed to take into account the size of the affected market in setting the fine; and in that (ii) it failed to acknowledge properly the applicants' non-contestation of the facts, as shown by its grant of a reduction of only 1 % in respect of this contribution.

Thirdly, the applicants contend that the Commission has failed to observe basic principles of EC law in that (i) it disregarded the principle of legitimate expectations by failing to inform them in a timely manner of the unavailability of the immunity; in that (ii) it disregarded the principle of equal treatment by giving differential treatment to similarly situated immunity applicants; and in that (iii) it disregarded the applicants' rights of defence by refusing access to documents.

In respect of the infringement which took place in the Netherlands, the applicants submit that the Commission erred in denying them any reduction of the fine and in setting the fine at EUR 79 750 000. In particular, the applicants suggest, first, that the Commission misapplied the 2002 Leniency Notice in that it failed to reduce the applicants' fine in recognition of the fact that the applicants provided information and cooperated during the administrative procedure. Secondly, the applicants allege that the Commission disregarded the principle of legitimate expectations and of equal treatment. Finally, the applicants put forward that the Commission has improperly applied the 1998 Fining Guidelines both in failing to take into account the attenuating circumstances in the applicants' favour, and in failing to properly acknowledge the fact that the applicants did not contest the facts.

(1) Commission Notice on immunity from fines and reduction of fines in cartel cases (OJ 2002 C 45, p. 3).
(2) OJ 1998 C 9, p. 3.

Action brought on 7 May 2007 — Lange Uhren v OHIM (Figurative mark representing a watch)

(Case T-152/07)

(2007/C 155/63)

Language of the case: German

Parties

Applicant: Lange Uhren GmbH (Glashütte, Germany) (represented by M. Schaeffer, Rechtsanwalt)

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

Form of order sought

— annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market of 15 February 2007 in Case R 1176/2005-1;

— declare that the provisions of Article 7(1)(b) of Regulation (EC) No 40/94 (1) do not preclude publication of the Community trade mark applied for under No 2542694 for goods in class 14 ('luxury watches and chronometric instruments; watchfaces for luxury watches');

— in the alternative, declare that the Community trade mark applied for under No 2542694 has become distinctive in respect of the goods applied for in class 14 as a result of the use which has been made of it, in accordance with Article 7(3) of Regulation No 40/94;

— order the Office for Harmonisation in the Internal Market to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: A figurative mark representing a watch for goods in class 14 (registration No 2542694).

Decision of the Examiner: Application refused.

Decision of the Board of Appeal: Appeal dismissed.

Pleas in law:

— Infringement of Article 7(1)(b) of Regulation No 40/94, as the mark applied for does not lack the requisite distinctive character;

— Infringement of Article 7(3) of Regulation No 40/94, as, due to an error in law, the mark applied for has been held not to have become distinctive as a result of the use which has been made of it.

(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 8 May 2007 — ThyssenKrupp Liften v Commission

(Case T-154/07)

(2007/C 155/64)

Language of the case: Dutch

Parties

Applicant: ThyssenKrupp Liften BV (Krimpen aan den IJssel, Netherlands) (represented by: O.W. Brouwer and A.C.E. Stoffer, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— annul the contested decision in so far as it relates to the applicant;

— in the alternative, reduce the fine imposed on the applicant;

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

Pleas in law and main arguments

The applicant is challenging Commission Decision C(2007) 512 final (Case COMP/E-1/38.823 — PO/Elevators and Escalators).

In support of its application the applicant invokes the same pleas in law as those put forward in Case T-144/07 *ThyssenKrupp Liften Ascenseurs* v *Commission*.

The applicant also submits that, by increasing the basic amount of the fine by a deterrence factor of 100 %, the Commission infringed Article 23(1) of Regulation No 1/2003 ([1]) and the guidelines for setting fines based thereon ([2]), as well as the principles of proportionality and equality. The applicant contends further that, contrary to Article 23(1) of Regulation No 1/2003 and the guidelines on fines, the Commission imposed a 50 % increase in the fine in respect of repeat offences.

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

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

Action brought on 7 May 2007 — COFAC v Commission

(Case T-158/07)

(2007/C 155/65)

Language of the case: Portuguese

Parties

Applicant: COFAC — Cooperativa de Formação e Animação Cultural, crl (Lisbon, Portugal) (represented by: Luís Gomes, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— annulment, pursuant to Article 230 EC, of Commission Decision D(2004) 24253 of 9 November 2004, reducing the amount of the financial assistance granted by the European Social Fund ('the ESF') to the applicant by Decision C(87) 0860 of 30 April 1987 (file No 880707 P1);

— an order that the Commission should pay the costs.

Pleas in law and main arguments

On 1 March 2007 the applicant was notified of the Commission's decision to reduce by EUR 25 291,75 the financial assistance granted to it by Decision C(87) 0860 of 30 April 1987, on the ground that 'evidence has come to light of irregularities in the performance of certain vocational training actions co-financed by the ESF, … after the conclusion of the criminal prosecutions relating to the management and specific application of the aid granted … and after the adjustments to the costs and funding structures relating to the file in accordance with the judicial decisions or the audits/re-examinations carried out in respect of the bodies in question.'

None the less, the Portuguese legal proceedings brought against the applicant ended in an inconclusive verdict that the prosecution was time-barred, from which of course no inference may be drawn as to any reduction.

That having been said, the applicant has never been notified by the national authorities of any final preparation arising out of the audit or re-assessment, in the conclusions of which it played no part, and it has never been able to defend itself against the charges of failing to observe the criteria for costs and funding in the file.

According to the settled case-law of the Court of First Instance, a Commission decision reducing or cancelling financial assistance granted by the ESF is capable of affecting the beneficiaries of that assistance directly and individually.

The applicant has never been given the chance effectively to make known its views to the Commission on the reduction of the assistance, with the result that the Commission's contested decision is vitiated by unlawfulness and must, accordingly, be annulled.

That decision was adopted in breach of the rights of the defence, which constitute a fundamental principle of Community law, according to which all addressees in respect of whom decisions may be adopted adversely affecting their interests to an appreciable extent must be placed in a position in which they can effectively make known their views on the matters on which the decision at issue was based.

Action brought on 7 May 2007 — COFAC v Commission

(Case T-159/07)

(2007/C 155/66)

Language of the case: Portuguese

Parties

Applicant: COFAC — Cooperativa de Formação e Animação Cultural, crl (Lisbon, Portugal) (represented by: Luís Gomes, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— annulment, pursuant to Article 230 EC, of Commission Decision D(2004) 24253 of 9 November 2004, reducing the amount of the financial assistance granted by the European Social Fund ('the ESF') to the applicant by Decision C(87) 0860 of 30 April 1987 (file No 880707 P1);

— an order that the Commission should pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are the same as those put forward in Case T-158/07.

Action brought on 9 May 2007 — Group Lottuss v OHIM — Ugly (COYOTE UGLY)

(Case T-161/07)

(2007/C 155/67)

Language in which the application was lodged: Spanish

Parties

Applicant: Group Lottuss Corporation, SL (Barcelona, Spain) (represented by: J. Grau Mora, A. Angulo Lafora, M. Ferrándiz Avendaño and J Arribas García, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: UGLY, INC

Form of order sought

— annul (in part) the decision of the Second Board of Appeal of OHIM of 2 March 2007 in so far as that relates to the refusal of the Community trade mark application No 2.428.795 'COYOTE UGLY' by Group Lottuss Corporation, SL

— order OHIM to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Group Lottuss Corporation, SL.

Community trade mark concerned: Figurative mark 'COYOTE UGLY' (application No 2.428.795) for goods and services in Classes 9, 41 and 42.

Proprietor of the mark or sign cited in the opposition proceedings: Ugly, Inc.

Mark or sign cited in opposition: Community word mark 'COYOTE UGLY' for goods in Classes 14, 16, 21, 25, 32 and 34, and earlier well-known unregistered word and figurative marks 'COYOTE UGLY' for goods and services in Classes 14, 16, 21, 25, 32, 33, 34, 41 and 42.

Decision of the Opposition Division: Opposition upheld in part, in so far as the Community trade mark application was refused in relation to services in Class 42.

Decision of the Board of Appeal: Annulment of the contested decision, in so far as it rejected the opposition to 'entertainment services, services for discos, night clubs' applied for in Class 41, and rejection of the application for such services.

Pleas in law: Incorrect application of Article 8(1)(b) of Council Regulation (EC) No 40/94 on the Community trade mark.

Action brought on 8 May 2007 — Pigasos Alieftiki Naftiki Etairia v Council and Commission

(Case T-162/07)

(2007/C 155/68)

Language of the case: Greek

Parties

Applicant: Pigasos Alieftiki Naftiki Etairia (Moskhato, Greece) (represented by: N. Skandamis, lawyer)

Defendants: Council of the European Union and Commission of the European Communities

Form of order sought

— a declaration that, by a series of unlawful acts and omissions, the Council of the European Union and the Commission of the European Communities have infringed the fundamental Community law principles of freedom of movement, economic freedom, proportionality, protection of legitimate expectations and provision of effective legal protection in connection with fishing activities in a zone contiguous to a third country (Tunisia) and the transport of fishing catches made in the Community customs territory through the territory of that third country, which is associated to the Community, under customs supervision (in transit);

— an order that the Community institutions pay the applicant company an amount of 23 608,551 dinars and an amount (EUR 188 583,18 + 10 806 323,44 + 1 000 000 = EUR 11 994 906,62 as compensation pursuant to Articles 235 EC and the second paragraph of Article 288 EC.

Pleas in law and main arguments

The applicant maintains that it has suffered economic damage because it was unable to import into the customs territory of the Community products of Community origin resulting from its business activities because of a series of unlawful acts and conduct on the part of the Community institutions, that is to say, of:

(a) the European Commission, on the ground that it adopted Regulation (EEC) No 2454/93 ([1]), which requires presentation of Community Customs Document T2M completed in its entirety as the sole proof of origin of Community catches substantiating the right to free movement;

(b) the European Commission, which conducted on behalf of the Community the negotiations with Tunisia for setting up the Association Agreement, and the Council of the European Union, which ratified that Agreement, on the ground that they failed to ensure that catches of Community origin resulting from Community fishing activities outside the territorial waters of Tunisia would not be deprived of the right to free movement;

(c) the European Commission and the Council of the European Union, on the ground that although they are members of the body competent to amend the Agreement, they failed, in the applicant's view, to ensure that provision was made for regulating the question of the above-mentioned specific category of fish, even though they were aware of the problem that had arisen;

(d) the European Commission, on the ground that it omitted to exercise the necessary supervision over the Greek authorities as requested by the company.

Furthermore, the applicant maintains that the above acts and omissions infringe higher-ranking rules of law which have been laid down for the protection of individuals as follows:

(a) the right to free movement of goods, in the exercise of which administrative formalities are of a procedural not substantive nature;

(b) the right of commercial freedom, the essence of which is affected by the prohibition on alternative proof of origin;

(c) the principle of proportionality, which is not compatible with the exclusion of any means of proof of origin other than the T2M;

(d) the principle of protection of legitimate expectations since, although the company conducted itself as a prudent observer of the market, it suffered serious damage by reason of the fact that it availed itself of its rights under Community law:

(e) the principle of effective legal protection, which is contrary to the 'denial of justice' which the company encountered on the part of the Greek, Tunisian and Community authorities.

In addition to the value of the compensation sought, the applicant points out that the unusual and special character of the harm it has sustained allows reparation of the above damage and considers that the circumstances in this case warrant the Community being held liable in the absence of fault.

([1]) 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).

Appeal brought on 14 May 2007 by Sundholm against the judgment of the Civil Service Tribunal delivered on 1 March 2007 in Case F-30/05, Sundholm v Commission

(Case T-164/07 P)

(2007/C 155/69)

Language of the case: French

Parties

Applicant: Asa Sundholm (Brussels, Belgium) (represented by S. Orlandi, A. Coolen, J.-N. Louis and E. Marchal, lawyers)

Defendant: Commission of the European Communities

Forms of order sought

— Annul the judgment of the Civil Service Tribunal (Second Chamber) of 1 March 2007 in the Case F-30/05 (*Sundholm v Commission*);

— Give judgment again, and annul the Commission decision drawing up her Career Development Report for 2003 and order the defendant to pay the costs incurred at first instance and on appeal.

Pleas in law and main arguments

By her appeal the applicant seeks to annul the judgment of the Civil Service Tribunal dismissing the action in which she had sought the annulment of her Career Development Report for the period from 1 January 2003 to 31 December 2003.

In support of her appeal, the applicant claims that the Civil Service Tribunal erred in law in rejecting the plea alleging infringement of the rights of the defence.

Action brought on 8 May 2007 — Red Bull v OHIM — Grupo Osborne (TORO)

(Case T-165/07)

(2007/C 155/70)

Language in which the application was lodged: English

Parties

Applicant: Red Bull GmbH (Fuschl am See, Austria) (represented by: H. O'Neill, Solicitor, V. von Bomhard and A. Renck, lawyers)

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

Other party to the proceedings before the Board of Appeal: Grupo Osborne SA (El Puerto de Santa Maria, Spain)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 20 February 2007 in case No R 147/2005-4; and

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

Pleas in law and main arguments

Applicant for the Community trade mark: Grupo Osborne SA

Community trade mark concerned: The figurative mark 'TORO' for products and services in classes 32, 33 and 42 — application No 1 500 917

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

Mark or sign cited: The national word marks 'TORO ROSSO' and 'TORO ROJO' for products in class 32 as well as national, international and Community word and figurative marks containing the word 'BULL' on its own or in combination with other words for goods and services in classes 32, 33 and 42

Decision of the Opposition Division: Opposition upheld for all the contested goods and services with the exception of 'providing of temporary accommodation'

Decision of the Board of Appeal: Annulment of the Opposition Division's decision insofar as it upholds the opposition with regard to 'beers' (class 32), 'alcoholic beverages, except wine and beer' (class 33) and 'providing of food and drink, including bars, snack-bars, restaurants, cafeterias, public houses, canteens and wine bars' (class 42); the registration of the Community trade mark applied for can proceed for these products and services

Pleas in law: Violation of Article 73, second sentence, of Council Regulation No 40/94, as the Board of Appeal did not set out clearly the basis of its decision in that it did not fully define the material submitted by the parties.

Furthermore, a violation of Article 8(1)(b) of the regulation, as the Board of Appeal excluded the relevance of the reputation despite the conceptual identity of the conflicting marks and the reputation of the earlier marks.

Finally, a violation of Article 8(5) of the regulation, as the Board of Appeal applied the assumption that the conflicting trade marks must be confusingly similar while it, according to the applicant, is sufficient that the consumer may 'establish a link' between the two marks.

Action brought on 18 May 2007 — Italian Republic v Commission

(Case T-166/07)

(2007/C 155/71)

Language of the case: Italian

Parties

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

Defendant: Commission of the European Communities

Form of order sought

— Annul Notice of Open Competition EPSO/AD/94/07 for the drawing up of a reserve list for the recruitment of 125 Administrators (AD5) in the field of information, communication and the media;

— annul Notice of Open Competition EPSO/AST/37/07 for the drawing up of a reserve list for the recruitment of 110 Assistants (AST3) in the field of communication and information.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those relied on in Case T-156/03 *Spain* v *Commission*.

Action brought on 16 May 2007 — Longevity Health Products v OHIM — Celltech Pharma (Cellutrim)

(Case T-169/07)

(2007/C 155/72)

Language in which the application was lodged: German

Parties

Applicant: Longevity Health Products Inc. (Nassau, Bahamas) (represented by: J.E. Korab, Rechtsanwalt)

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

Other party to the proceedings before the Board of Appeal of OHIM: Celltech Pharma GmbH & Co. KG

Form of order sought

— declaration that the application is admissible;

— annulment of the decision of the First Board of Appeal of 7 March 2007 and dismissal of the application by Celltech Pharma GmbH & Co. KG that Community trade mark registration No 3979036 be declared invalid; and

— order that the Office for Harmonisation in the Internal Market pay the costs.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: The word mark 'Cellutrim' for goods and services in classes 3, 5 and 35 (Community trade mark No 3979036).

Proprietor of the Community trade mark: The applicant.

Applicant for the declaration of invalidity: Celltech Pharma GmbH & Co. KG.

Trade mark right of applicant for the declaration: The word mark 'Cellidrin' for goods in class 5.

Decision of the Cancellation Division: Cancellation of the Community trade mark concerned in relation to goods in class 5.

Decision of the Board of Appeal: Appeal dismissed.

Pleas in law: Faulty reasoning of the Board of Appeal, since there is no likelihood of confusion between the conflicting marks.

Action brought on 21 May 2007 — Volkswagen AG v OHIM

(Case T-174/07)

(2007/C 155/73)

Language of the case: German

Parties

Applicant: Volkswagen AG (Wolfsburg, Germany) (represented by S. Risthaus, Rechtsanwalt)

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

Form of order sought

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 7 March 2007, notified on 23 March 2007 (Case R 1479/2005-1);

— Order the defendant to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: The word mark 'TDI' for goods and services in classes 4, 7 and 37.

Decision of the Examiner: Refusal of the application.

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

Pleas in law:

— Infringement of Article 62(2) of Regulation (EC) No 40/94 by disregarding the decision of the Board of Appeal of 12 May 2003 in Case R 53/2002-4;

— Infringement of the first sentence of Article 74(1) of Regulation No 40/94 by improperly examining the facts of its own motion;

— Infringement of Article 7(1)(b) of Regulation No 40/94 by deciding that the trade mark applied for is devoid of any distinctive character;

— Infringement of Article 7(1)(c) of Regulation No 40/94 by deciding that the mark applied for has a descriptive function;

— Infringement of Article 7(3) of Regulation No 40/94 by deciding that the trade mark applied for has not become distinctive in consequence of the use which has been made of it.

Action brought on 24 May 2007 — Promomadrid Desarrollo Internacional de Madrid v OHIM (MADRIDEXPORTA)

(Case T-180/07)

(2007/C 155/74)

Language of the case: Spanish

Parties

Applicant: Promomadrid Desarrollo Internacional de Madrid, S.A. (Madrid) (Represented by: M. Aznar Alonso, lawyer)

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

Forms of order sought

— A declaration that the decision of the First Board of Appeal of OHIM, of 7 March 2007, in which it rejected the application No 4.659.553 for registration of the composite Community trade mark MADRIDEXPORTA, in classes 16, 35, 36, 38, 39, 41 and 42 does not comply with Council Regulation (EC) 40/94 on the Community Trade Mark.

— A declaration that Article 7(1)(c) of Regulation No 40/94 does not apply to composite Community trade mark MADRIDEXPORTA NO 4.659.553, and that Article 7(3) of Regulation No 40/94 applies instead.

— Order the defendant and, if appropriate, the intervener, to pay the costs.

Pleas in law and main arguments

Community trade mark applied for: Composite mark 'MADRIDEXPORTA' (application No 4.659.553), for goods and services in classes 16, 35, 36, 38, 39, 41 and 42.

Decision of the examiner: Reject the application.

Decision of the Board of Appeal: Reject the appeal.

Pleas in law: Incorrect application of Article 7(1)(c) and Article 7(3) of Council Regulation (EC) No 40/94 on the Community Trade Mark.

Action brought on 28 May 2007 — Poland v Commission

(Case T-183/07)

(2007/C 155/75)

Language of the case: Polish

Parties

Applicant: Republic of Poland (represented by E. Ośniecka-Tamecka, Agent)

Defendant: Commission of the European Communities

Form of order sought

— annul, on the basis of Article 230 EC, in whole or in part, Commission decision C(2007) 1295 final of 26 March 2007 concerning the national allocation plan for greenhouse gas emission allowances notified by Poland in accordance with Directive 2003/87/EC of the European Parliament and of the Council;

— give judgment in Polish in accordance with Article 35(2) of the Rules of Procedure of the Court;

— order the Commission to pay the costs incurred by Poland.

Pleas in law and main arguments

The applicant seeks annulment of Commission Decision C(2007) 1295 final of 26 March 2007 concerning the national allocation plan for greenhouse gas emission allowances notified by Poland in accordance with Directive 2003/87/EC of the European Parliament and of the Council [1], in which the Commission decided that certain aspects of the Polish National Allocation Plan for CO_2 Emission Allowances for 2008-2012, notified to the Commission on 30 June 2006, were not compatible with Articles 9(1) and (3), 10 and 13(2) of and the criteria set out in Annex III to Directive 2003/87/EC. That decision sets the average annual allocation of emission allowances in Poland for 2008-2012 at approximately 208.5 million tonnes of carbon dioxide equivalent. It thereby reduces by 26.7 % the carbon dioxide emission limit of 284.6 million tonnes in 2008-2012 proposed by Poland in the national allocation plan for emission allowances notified to the Commission.

The applicant submits, as grounds of the application, that the Commission, by taking the decision after the expiry of the three-month period for rejection of the national allocation plan notified by Poland in whole or in one aspect of it, infringed Article 9(3) of Directive 2003/87/EC. The applicant thereby complains that the Commission breached essential procedural requirements and exceeded its powers.

The applicant moreover complains that the Commission, when assessing the national allocation plan for allowances for 2008-2012 submitted by Poland, unjustifiably failed to assess the facts submitted by Poland in the national allocation plan and replaced an analysis of those facts by an analysis of its own facts obtained as a result of the inconsistent application of the model of economic analysis chosen by the Commission, and thereby infringed Article 9(1) of Directive 2003/87/EC and criterion 3 set out in Annex III to Directive 2003/87/EC. The applicant thereby complains that the Commission infringed essential procedural requirements.

In addition, the applicant complains that the Commission breached essential procedural requirements, and asserts that, by failing to take account when adopting the contested decision of international decisions binding on the Community (in particular the Kyoto Protocol), it infringed criteria 1, 2 and 12 set out in Annex III to Directive 2003/87/EC.

The applicant further criticises the Commission for unjustifiably limiting, in the contested decision, the possibility of transferring CO_2 emission allowances from the first period (2005-2007) to the second (2008-2012), thereby infringing Articles 9(3) and 13(2) of Directive 2003/87/EC. The applicant thereby raises a complaint of exceeding of powers by the Commission.

The applicant further complains that the Commission infringed essential procedural requirements in connection with the fact that the applicant did not have before it, before the decision was taken, the actual grounds on which the Commission proposed to take its decision. Consequently, according to the applicant, it was not in a position inter alia to assess the compatibility of the contested decision with Article 175(2)(c) EC in conjunction with Article 7(1) EC.

Finally, the applicant submits that, by taking the decision without any previous consultations with it, and also by not taking Poland's specific energy balance into account, the Commission may by the contested decision affect the applicant's energy security, and it thereby exceeded its powers.

(1) Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32).

Order of the Court of First Instance (First Chamber) of 11 May 2007 — Daishowa Seiki v Tengelmann Warenhandelsgesellschaft (BIG PLUS)

(Case T-438/05) (1)

(2007/C 155/76)

Language of the case: English

The President of the Court of First Instance (First Chamber) has ordered that the case be removed from the register.

(1) OJ C 96, 22.4.2006.

Order of the Court of First Instance (Second Chamber) of 22 May 2007 — Marie Claire v OHIM — Marie Claire Album (MARIE CLAIRE)

(Case T-148/06) (1)

(2007/C 155/77)

Language of the case: Spanish

The President of the Court of First Instance (Second Chamber) has ordered that the case be removed from the register.

(1) OJ C 190, 12.8.2006.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Judgment of the Civil Service Tribunal (First Chamber) of 22 May 2007 — López Teruel v OHIM

(Case F-97/06) ([1])

(Officials — Invalidity — Rejection of a request for an Invalidity Committee to be convened)

(2007/C 155/78)

Language of the case: French

Parties

Applicant: Adelaida López Teruel (Guadalajara, Spain) (represented by: G. Vandersanden, L. Levi and C. Ronzi, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (represented by: M.I. de Medrano Caballero, Agent)

Re:

Annulment of OHIM's decision of 6 October 2005 refusing the applicant's request for an Invalidity Committee to be convened for the purpose of assessing her incapacity to perform the duties corresponding to her post and her right to an invalidity pension.

Operative part of the judgment

The Tribunal:

1. *Annuls the decision of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 6 October 2005 refusing Mrs López Teruel's request for an Invalidity Committee to be convened;*

2. *Orders OHIM to pay the costs.*

([1]) OJ C 237, 30.9.2006, p. 24.

Judgment of the Civil Service Tribunal (First Chamber) of 22 May 2007 — López Teruel v OHIM

(Case F-99/06) ([1])

(Officials — Sick leave — Unauthorised absence — Arbitration proceedings — Period in which to appoint an independent doctor)

(2007/C 155/79)

Language of the case: French

Parties

Applicant: Adelaida López Teruel (Guadalajara, Spain) (represented by: G. Vandersanden, L. Levi and C. Ronzi, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (represented by: M.I. de Medrano Caballero, Agent)

Re:

Annulment of the Appointing Authority's decision of 20 October 2005 concerning the applicant's sick leave and adopted further to the conclusions of the independent doctor referred to in Article 59(1) of the Staff Regulations.

Operative part of the judgment

The Tribunal:

1. *Annuls the decision of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 20 October 2005 inasmuch as it treats Mrs López Teruel's absence as unauthorised absence from 8 to 20 February 2005 and from 7 April to 2 August 2005;*

2. *Dismisses the remainder of the application;*

3. *Orders OHIM to bear its own costs and to pay one third of Mrs López Teruel's costs.*

([1]) OJ C 249, 14.10.2006, p. 18.

Order of the Civil Service Tribunal (First Chamber) of 2 May 2007 — Marcuccio v Commission

(Case F-2/06) ([1])

(Officials — Social Security — Insurance against the risk of occupational disease and of accident — Accident at work — Termination of the application procedure under Article 73 of the Staff Regulations)

(2007/C 155/80)

Language of the case: Italian

Parties

Applicant: Luigi Marcuccio (Tricase, Italy) (represented by: I. Cazzato, lawyer)

Defendant: Commission of the European Communities (represented by: C. Berardis-Kayser, Agent, and A. Dal Ferro, lawyer)

Re:

Annulment of the Commission's decision to terminate the procedure for granting the applicant the benefits provided for by Article 73 of the Staff Regulations and linked to an accident he suffered on 10 September 2003.

Operative part of the order

1. *The action is dismissed as manifestly inadmissible.*

2. *The parties shall bear their own costs.*

([1]) OJ C 86, 8.4.2006, p. 48.

Order of the Civil Service Tribunal (Third Chamber) of 24 May 2007 — Lofaro v Commission

(Joined Cases F-27/06 and F-75/06) ([1])

(Officials — Member of temporary staff — Extension of probationary period — Dismissal at the end of the probationary period — Acts adversely affecting the applicant — Period for lodging a complaint — Inadmissibility)

(2007/C 155/81)

Language of the case: French

Parties

Applicant: Alessandro Lofaro (Brussels, Belgium) (represented by: J.-L. Laffineur, lawyer)

Defendant: Commission of the European Communities (represented by: J. Currall and K. Herrmann, Agents, assisted in Case F-27/06 by F. Longfis, lawyer)

Re:

In Case F-27/06:

First, annulment of the Commission's decisions to extend the applicant's probationary period and to terminate his contract at the end of that period and, second, a claim for damages.

In Case F-75/06:

First, annulment of the Commission's decision of 28 September 2005 to dismiss the applicant at the end of his probationary period and the report at the expiry of the probationary period on which that decision was based and, second, a claim for damages.

Operative part of the order

1. *The actions are dismissed as inadmissible.*

2. *The parties shall bear their own costs.*

([1]) F-27/06: OJ C 208, 6.5.2006, p. 35 and F-75/06: OJ C 212, 2.9.2006, p. 48.

Action brought on 9 May 2007 — Korjus v Court of Justice

(Case F-43/07)

(2007/C 155/82)

Language of the case: French

Parties

Applicant: Nina Korjus (Luxembourg, Luxembourg) (represented by: J. Ortlinghaus, lawyer)

Defendant: Court of Justice of the European Communities

Form of order sought

The applicant claims that the Tribunal should:

— annul the decision appointing the applicant, in so far as it fixes her grade under Article 13(1) of Annex XIII to the Staff Regulations;

— restructure the applicant's career (including valuation of her experience in the grade as thus corrected, her rights to advancement to a higher step and her pension rights), on the basis of the grade at which she would have been appointed on the basis of the competition notice in pursuance of which she was placed on the list of suitable candidates, either to the grade mentioned on that competition notice or to the grade corresponding to its equivalent according to the classification in the new Staff Regulations, as from the date of the decision to appoint her;

— award the applicant interest for late payment on the basis of the rate set by the European Central Bank on all sums corresponding to the difference between the salary corresponding to her classification in the decision to appoint her and the classification to which she ought to have been entitled, until the date on which the decision to classify her in her proper grade is taken.

Pleas in law and main arguments

As a successful candidate in competition CJ/LA/32 ([1]), the notice for which was published before 1 May 2004, the applicant was recruited before the entry into force of Council Regulation (EC, Euratom) No 723/2004 of 22 March 2004 amending the Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants ([2]). Pursuant to the provisions of Annex XIII to the Staff Regulations of the European Communities ('the Staff Regulations') as amended by the above regulation, she was classified in grade AD7 instead of the grades LA7 or LA6 set out in the competition notice.

In her application, the applicant relies on, inter alia, infringement of Article 5(5) of the Staff Regulations, of the principles of equal treatment, proportionality, sound administration and the protection of legitimate expectations and of Article 31(1) of the Staff Regulations, in so far as, first, she was recruited at a grade lower than that referred to in the competition notice and, secondly, the classification of successful candidates in the same competition was set at different levels depending on whether they were recruited before or after the entry into force of Regulation No 723/2004.

In addition, the applicant pleads infringement of Article 10 of the Staff Regulations, in so far as the Committee referred to by that provision was not consulted on the issue of the classification of successful candidates in the competitions, the notices for which referred to the old career structure.

([1]) OJ C 221 A, 3.8.1999, p. 7.
([2]) OJ L 124, 27.4.2004, p. 1.

Action brought on 14 May 2007 — Barbin v Parliament

(Case F-44/07)

(2007/C 155/83)

Language of the case: French

Parties

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

Defendant: European Parliament

Form of order sought

The applicant claims that the Tribunal should:

— declare that paragraph I.2(c) of the 'Implementing measures relating to the allocation of merit and promotion points' of the European Parliament of 10 May 2006 is illegal;

— annul the appointing authority's decision of 16 October 2006 to allocate the applicant one merit point under the 2005 promotion procedure;

— order the defendant to pay the costs.

Pleas in law and main arguments

The applicant, a European Parliament official of grade AD11, puts forward very similar pleas to those put forward in Case F-148/06 ([1]).

([1]) OJ C 42 of 24.2.2007, p. 48.

Order of the Civil Service Tribunal of 25 May 2007 — Antas v Council

(Case F-92/06) ([1])

(2007/C 155/84)

Language of the case: French

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

([1]) OJ C 237, 30.9.2006, p. 21.