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(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS AND BODIES

COURT OF JUSTICE

(2007/C 170/01)

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (First Chamber) of 7 June 2007 — Commission of the European Communities v Hellenic Republic

(Case C-156/04) [1]

(Failure of a Member State to fulfil obligations — Directive 83/182/EEC — Temporary import of means of transport — Tax exemptions — Normal residence in a Member State)

(2007/C 170/02)

Language of the case: Greek

Parties

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

Defendant: Hellenic Republic (represented by: P. Mylonopoulos and I. Pouli, Agents)

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 90 EC and of Council Directive 83/182/EEC of 28 March 1983 on tax exemptions within the Community for certain means of transport temporarily imported into one Member State from another — Temporary use on Greek territory of vehicles registered in another Member State — Application of customs provisions applicable to vehicles from non-member countries

Operative part of the judgment

The Court:

1. *Declares that in laying down:*

   — *in Article 18(A)(1) of Law No 2682/1999 that, in the event of possession or use in Greek territory of a vehicle registered in another Member State by an individual who has his normal residence in Greece, the criminal proceedings provided for as a matter of course will not be brought if the person concerned pays the registration fee charged and at the same time refrains from seeking, in relation to the act leading to the imposition of that fee, the legal remedies provided for under national law, and*

   — *in Article 18(C)(1) of Law No 2682/1999 that, where fines are imposed, vehicles are also to be temporarily immobilised, and released on payment of the fines and any other charges owed,*

   the Hellenic Republic has failed to fulfil its obligations under Council Directive 83/182/EEC of 28 March 1983 on tax exemptions within the Community for certain means of transport temporarily imported into one Member State from another;

2. *Dismisses the remainder of the action;*

3. *Orders the Commission of the European Communities and the Hellenic Republic to bear their own costs.*

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[1] OJ C 106, 30.4.2004.

Judgment of the Court (Grand Chamber) of 5 June 2007 (reference for a preliminary ruling from the Högsta domstolen — Sweden) — Klas Rosengren, Bengt Morelli, Hans Särman, Mats Åkerström, Åke Kempe, Anders Kempe, Mats Kempe, Björn Rosengren, Martin Lindberg, Jon Pierre, Tony Staf v Riksåklagaren

(Case C-170/04) [1]

(Free movement of goods — Articles 28 EC, 30 EC and 31 EC — National provisions prohibiting the importation of alcoholic beverages by private individuals — Rule relating to the existence and operation of the Swedish monopoly on sales of alcoholic beverages — Assessment — Measure contrary to Article 28 EC — Justification on grounds of protection of the health and life of humans — Review of proportionality))

(2007/C 170/03)

Language of the case: Swedish

Referring court

Högsta domstolen

Parties to the main proceedings

Applicants: Klas Rosengren, Bengt Morelli, Hans Särman, Mats Åkerström, Åke Kempe, Anders Kempe, Mats Kempe, Björn Rosengren, Martin Lindberg, Jon Pierre, Tony Staf

Defendant: Riksåklagaren

Re:

Reference for a preliminary ruling — Högsta Domstolen — Interpretation of Articles 28, 30 and 31 EC in the light of national provisions regarding a national retail monopoly for retail sales of alcoholic beverages which exclude the direct import of such beverages by individuals

Operative part of the judgment

1. *A national provision, such as that in the first subparagraph of Paragraph 2 of Chapter 4 of the Law on alcohol (alkohollagen) of 16 December 1994, under which private individuals are prohibited from importing alcoholic beverages must be assessed in the light of Article 28 EC and not in the light of Article 31 EC.*

2. *A measure, such as that in the first subparagraph of Paragraph 2 of Chapter 4 of the Law on alcohol, under which private individuals are prohibited from importing alcoholic beverages amounts to a quantitative restriction on imports within the meaning of Article 28 EC, even though that law requires the holder of the retail sale monopoly, on request, to supply and therefore, if necessary, to import the beverages in question.*

3. *A measure, such as that in the first subparagraph of Paragraph 2 of Chapter 4 of the Law on alcohol, under which private individuals are prohibited from importing alcoholic beverages,*

   — *as it is unsuitable for attaining the objective of limiting alcohol consumption generally, and*

   — *as it is not proportionate for attaining the objective of protecting young persons against the harmful effects of such consumption,*

   cannot be regarded as being justified under Article 30 EC on grounds of protection of the health and life of humans.

([1]) OJ C 156, 12.6.2004.

Judgment of the Court (First Chamber) of 7 June 2007 — Commission of the European Communities v Hellenic Republic

(Case C-178/05) ([1])

(Failure of a Member to fulfil obligations — Directive 69/335/EEC — Indirect taxes on the raising of capital — Capital duty — Exhaustive harmonisation — National legislation providing for taxation of any transfer of the effective centre of management or registered office, in so far as the company concerned is not subject to capital duty in the Member State of origin — National legislation under which agricultural cooperative organisations, and associations or consortia thereof of any kind, are exempted from the tax — National legislation under which co-ownership of vessels, shipping consortia and any form of shipping company are exempted from the tax — Prevention of tax avoidance — Abuse of rights — Limitation of the temporal effects of a judgment)

(2007/C 170/04)

Language of the case: Greek

Parties

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

Defendant: Hellenic Republic (represented by: S. Khala and M. Tassopoulou, acting as Agents)

Intervener in support of the defendant: Kingdom of Spain (represented by: N. Diaz Abad, acting as Agent)

Re:

Failure of a Member State to fulfil obligations — Breach of Council Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital (OJ, English Special Edition 1969 (II), p. 412) — Transfer of a company's effective centre of management or registered office — Exemption from capital duty for agricultural cooperatives and shipping companies

Operative part of the judgment

The Court:

1. *Declares that, as a result of its legislation relating to the charging of capital duty in the event of transfer of the registered office or the effective centre of management of a company and to the exemption from that duty of co-ownership of vessels, shipping consortia and any form of shipping company, the Hellenic Republic has failed to fulfil its obligations under Council Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital, as amended by Council Directive 85/303/EEC of 10 June 1985;*

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

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

([1]) OJ C 155, 25.6.2005.

Judgment of the Court (Fourth Chamber) of 7 June 2007 (reference for a preliminary ruling from the College van Beroep voor het bedrijfsleven — Netherlands) — J. van der Weerd, Maatschap Van der Bijl, J.W. Schoonhoven (C-222/05), H. de Rooy, sen., H. de Rooy, jun. (C-223/05), Maatschap H. en J. van 't Oever, Maatschap F. van 't Oever en W. Fien, B. van 't Oever, Maatschap A. en J. Fien, Maatschap K. Koers en J. Stellingwerf, H. Koers, Maatschap K. en G. Polinder, G. van Wijhe (C-224/05), B.J. van Middendorp (C-225/05) v Minister van Landbouw, Natuur en Voedselkwaliteit

(Joined Cases C-222/05 to C-225/05) ([1])

(Agriculture — Control of foot-and-mouth disease — Directive 85/511/EEC — National court raising Community law of its own motion — Procedural autonomy — Principles of equivalence and effectiveness)

(2007/C 170/05)

Language of the case: Dutch

Referring court

College van Beroep voor het bedrijfsleven

Parties to the main proceedings

Applicants: J. van der Weerd, Maatschap Van der Bijl, J.W. Schoonhoven (C-222/05), H. de Rooy, sen., H. de Rooy, jun. (C-223/05), Maatschap H. en J. van 't Oever, Maatschap F. van 't Oever en W. Fien, B. van 't Oever, Maatschap A. en J. Fien, Maatschap K. Koers en J. Stellingwerf, H. Koers, Maatschap K. en G. Polinder, G. van Wijhe (C-224/05), B.J. van Middendorp (C-225/05)

Defendant: Minister van Landbouw, Natuur en Voedselkwaliteit

Re:

Reference for a preliminary ruling — College van Beroep voor het bedrijfsleven — Interpretation of Council Directive 85/511/EEC of 18 November 1985 introducing Community measures for the control of foot-and-mouth disease (OJ 1985 L 315, p. 11) — First Indent of Article 11(1) and second indent of Article 13(1) and Annex B — Direct effect — Laboratory not mentioned in Annex B — Margin of discretion of the national authorities

Operative part of the judgment

Community law does not require the national court, in an action of the kind which forms the basis of the main proceedings, to raise of its own motion a plea alleging infringement of the provisions of Community legislation, since neither the principle of equivalence nor the principle of effectiveness require it to do so.

([1]) OJ C 193, 6.8.2005.

Judgment of the Court (Fourth Chamber) of 7 June 2007 — Commission of the European Communities v Kingdom of Belgium

(Case C-254/05) ([1])

(Failure of a Member State to fulfil obligations — Articles 28 EC and 30 EC — Quantitative restrictions on imports — Measures having equivalent effect — Automatic fire detection systems with point detectors — Requirement of conformity to a national standard — National approval procedure)

(2007/C 170/06)

Language of the case: French

Parties

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

Defendant: Kingdom of Belgium (represented by: M. Wimmer, Agent)

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 28 EC — National regulations requiring automatic fire detection systems with point detectors lawfully manufactured or marketed in another Member State which do not have the 'EC' mark to comply with the national standard, be subject to type approval and, in that connection, undergo tests and checks already carried out in another Member State

Operative part of the judgment

The Court:

1. *Declares that, by requiring that automatic fire detection systems with point detectors which were lawfully manufactured or marketed in another Member State but which do not have the CE marking:*

   — *conform with Belgian standard NBN S 21-100 relating to the design of general automatic fire detection systems with point detectors, of September 1986, as modified by Addendum No 2 thereto of August 1996,*

   — *be subject to approval by BOSEC (Belgian Organisation for Security Certification), an obstacle made worse by the disproportionate costs which that approval incurs, and*

   — *undergo tests and checks in connection with that type approval which, essentially, duplicate the controls which have already been carried out under other procedures in another Member State,*

   the Kingdom of Belgium has failed to fulfil its obligations under Article 28 EC;

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

([1]) OJ C 205, 20.8.2005.

Judgment of the Court (Third Chamber) of 12 June 2007 — Office for Harmonisation in the Internal Market (Trade Marks and Designs) v Shaker di L. Laudato & C. Sas, Limiñana y Botella, SL

(Case C-334/05 P) ([1])

(Appeal — Community trade mark — Regulation (EC) No 40/94 — Article 8(1)(b) — Likelihood of confusion — Application for a figurative Community trade mark with the word elements 'Limoncello della Costiera Amalfitana' and 'shaker' — Opposition by the proprietor of the national word mark LIMONCHELO)

(2007/C 170/07)

Language of the case: Italian

Parties

Appellant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: O. Montalto and P. Bullock, Agents)

Other parties to the proceedings: Shaker di L. Laudato & C. Sas (represented by: F. Sciaudone, avvocato), Limiñana y Botella, SL

Re:

Appeal against the judgment of the Court of First Instance (Third Chamber) of 15 June 2005 in Case T-7/04 *Shaker di L. Laudato & C. Sas* v *Office for Harmonisation in the Internal Market (Trade Marks and Designs)(OHIM)* by which the Court annulled decision R 993/2002-2 of the Second Board of Appeal of OHIM of 24 October 2003 dismissing the appeal against the decision of the Opposition Division which refused, in part, the registration of the figurative mark 'Limoncello della Costiera Amalfitana' in opposition proceedings brought by the proprietor of the national word mark LIMONCHELO for certain goods in Class 33

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the Court of First Instance of the European Communities of 15 June 2005, Case T-7/04 Shaker v OHIM — Limiñana y Botella (Limoncello della Costiera Amalfitana shaker);*

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

3. *Reserves the costs.*

([1]) OJ C 296, 26.11.2005.

Judgment of the Court (First Chamber) of 7 June 2007 (reference for a preliminary ruling from the Finanzgericht Köln — Germany) — Řízení Letového Provozu ČR, s.p. v Bundesamt für Finanzen

(Case C-335/05) ([1])

(Thirteenth VAT Directive — Article 2(2) — GATS — Most-favoured-nation clause — Interpretation of secondary Community law in the light of international agreements concluded by the Community)

(2007/C 170/08)

Language of the case: German

Referring court

Finanzgericht Köln

Parties to the main proceedings

Applicant: Řízení Letového Provozu ČR, s.p.

Defendant: Bundesamt für Finanzen

Re:

Reference for a preliminary ruling — Finanzgericht Köln — Interpretation of Article 2(2) of Thirteenth Council Directive 86/560/EEC of 17 November 1986 on the harmonisation of the laws of the Member States relating to turnover taxes — Arrangements for the refund of VAT to taxable persons not established in Community territory (OJ 1986 L 326, p. 40) — Possibility of making refunds of VAT to a taxable person established in the territory of a third State which is party to the WTO conditional upon reciprocity on the part of that State — Compatibility with the most-favoured-nation clause provided for in Article II(1) of the General Agreement on Trade in Services (GATS) — Interpretation in conformity with the directive

Operative part of the judgment

Article 2(2) of Thirteenth Council Directive 86/560/EEC of 17 November 1986 on the harmonisation of the laws of the Member States relating to turnover taxes — Arrangements for the refund of value added tax to taxable persons not established in Community territory must be interpreted as meaning that the 'third States' referred to in that provision include all third States and that that provision is without prejudice to the ability and the responsibility of the Member States to comply with their obligations under international agreements such as the General Agreement on Trade in Services.

([1]) OJ C 315 of 10.12.2005.

Operative part of the judgment

The Court hereby:

1. *Dismisses the main appeal and the cross-appeal.*

2. *Orders Mr Wunenburger to pay the costs of the main appeal.*

3. *Orders the Commission of the European Communities to pay the costs of the cross-appeal.*

([1]) OJ C 281, 12.11.2005.

Judgment of the Court (Fourth Chamber) of 7 June 2007 — Jacques Wunenburger v Commission of the European Communities

(Case C-362/05 P) ([1])

(Appeals — Staff cases — Promotion — Selection procedure — Rejection of the appellant's candidature — Retirement in the interests of the service — Obligation to state the reasons on which the decision is based — Error of law — Cross-appeal — Subject-matter of the dispute — Interest in bringing proceedings)

(2007/C 170/09)

Language of the case: French

Parties

Appellant: Jacques Wunenburger (represented by: E. Boigelot, avocat)

Other party to the proceedings: Commission of the European Communities (represented by: J. Currall and G. Berscheid, Agents and V. Dehin, avocat)

Re:

Appeal brought against the judgment of the Court of First Instance (First Chamber) of 5 July 2005 in Case T-370/03 *Wunenburger* v *Commission* which dismissed the appellant's application for annulment of the Commission's decision not to proceed with his candidature for the post of Director of Directorate 'Africa, Caribbean, Pacific' (AIDCO.C) and appointed another candidate to that post.

Judgment of the Court (Third Chamber) of 7 June 2007 — Commission of the European Communities v Kingdom of the Netherlands

(Case C-50/06) ([1])

(Failure of a Member State to fulfil obligations — Citizenship of the Union — Freedom of movement for nationals of the Member States — Directive 64/221/EEC — Public policy — National legislation concerning expulsion — Criminal conviction — Expulsion)

(2007/C 170/10)

Language of the case: Dutch

Parties

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

Defendant: Kingdom of the Netherlands (represented by: H.G. Sevenster and M. de Grave, Agents)

Re:

Failure of a Member State to fulfil obligations — Infringement of Council Directive 64/221/EEC of 25 February 1964 on the co-ordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health (OJ, English Special Edition 1963-1964, p. 117) — National legislation applying without distinction to all foreign nationals and thus failing to take account of the special position of citizens of the European Union — Automatic connection between a criminal conviction and a measure a ordering expulsion.

Operative part of the judgment

The Court:

1. *Declares that, by not applying to citizens of the Union Council Directive 64/221/EEC of 25 February 1964 on the co-ordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health, but by applying to them general legislation relating to foreign nationals which makes it possible to establish a systematic and automatic connection between a criminal conviction and a measure ordering expulsion, the Kingdom of the Netherlands has failed to fulfil its obligations under that directive;*

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

([1]) OJ C 96, 22.4.2006.

Judgment of the Court (Fourth Chamber) of 7 June 2007 — Britannia Alloys & Chemicals Ltd v Commission of the European Communities

(Case C-76/06 P) ([1])

(Appeals — Competition — Agreements, decisions and concerted practices — Fines — 'Preceding business year' for determining the turnover on which the calculation of the fine is based)

(2007/C 170/11)

Language of the case: English

Parties

Appellant: Britannia Alloys & Chemicals Ltd (represented by: S. Mobley and M. Commons, solicitors)

Other party to the proceedings: Commission of the European Communities (represented by: F. Castillo de la Torre, Agent)

Re:

Appeal brought against the judgment of the Court of First Instance (Fifth Chamber) of 29 November 2005 in Case T-33/02 *Britannia Alloys and Chemicals Ltd v Commission of the European Communities*, dismissing as unfounded an application for partial annulment of Commission Decision C(2001)4237 final of 11 December 2001 relating to a proceeding under Article 81 of the EC Treaty (Case COMP/E-1/37.027 — Zinc phosphate) or, in the alternative, reduction of the amount of the fine imposed on the applicant — Infringement of Article 15(2) of Regulation No 17/62 — Breach of the principles of equality and legal certainty

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Britannia Alloys & Chemicals Ltd to pay the costs.*

([1]) OJ C 108, 6.5.2006.

Judgment of the Court (Third Chamber) of 7 June 2007 (reference for a preliminary ruling from the Tribunale ordinario di Novara — Italy) — Carp Snc di L. Moleri e V. Corsi, Associazione Nazionale Artigiani Legno e Arredamenti v Ecorad Srl

(Case C-80/06) ([1])

(Directive 89/106/EC — Construction products — Procedure for attestation of conformity — Commission Decision 1999/93/EC — Horizontal direct effect — No such effect)

(2007/C 170/12)

Language of the case: Italian

Referring court

Tribunale ordinario di Novara

Parties to the main proceedings

Applicant: Carp Snc di L. Moleri e V. Corsi, Associazione Nazionale Artigiani Legno e Arredamenti

Defendant: Ecorad Srl

Re:

Reference for a preliminary ruling — Tribunale ordinario di Novara — Interpretation of Articles 2 and 3 of Commission Decision 1999/93/EC of 25 January 1999 on the procedure for attesting the conformity of construction products pursuant to Article 20(2) of Council Directive 89/106/EEC as regards doors, windows, shutters, blinds, gates and related building hardware (OJ 1999 L 29, p. 51), and of Annexes II and III thereto — Manufacture of doors fitted with panic bars by fitters who have not complied with the attestation procedure laid down by the decision — Exclusion?

Operative part of the judgment

An individual cannot rely, in the context of legal proceedings against another individual concerning contractual liability, on the infringement by the latter of Articles 2 and 3 of Commission Decision 1999/93/EC of 25 January 1999 on the procedure for attesting the conformity of construction products pursuant to Article 20(2) of Council Directive 89/106/EEC as regards doors, windows, shutters, blinds, gates and related building hardware, and of Annexes II and III thereto.

([1]) OJ C 131, 3.6.2006.

Operative part of the judgment

Article 7(2) of Council Regulation (EEC) No 3950/92 of 28 December 1992 establishing an additional levy in the milk and milk products sector, as amended by Council Regulation (EC) No 1256/1999 of 17 May 1999, is to be interpreted as meaning that, on the expiry of a rural lease on a milk production holding, the attached reference quantity can revert to the lessor in so far as that lessor, not being a producer himself and having no intention to become one, transfers the reference quantity as soon as possible through a State sales office to a third party who has that status.

([1]) OJ C 96, 22.4.2006.

Judgment of the Court (Fifth Chamber) of 7 June 2007 (reference for a preliminary ruling from the Bundesverwaltungsgericht (Germany)) — Manfred Otten v Landwirtschaftskammer Niedersachsen

(Case C-278/06) ([1])

(Council Regulation (EEC) No 3950/92, as amended by Council Regulation (EC) No 1256/1999 — Article 7(2) — Expiry of a rural lease — Temporary acquisition of a reference quantity by a lessor who is not, and does not intend to become, a milk producer — Transfer of the reference quantity, as soon as possible, through the State sales office to a producer)

(2007/C 170/13)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Applicant: Manfred Otten

Defendant: Landwirtschaftskammer Niedersachsen

Re:

Reference for a preliminary ruling — Bundesverwaltungsgericht — Interpretation of Article 7(2) of Council Regulation (EEC) No 3950/92 of 28 December 1992 establishing an additional levy in the milk and milk products sector (OJ 1992 L 405, p. 1), as amended by Council Regulation (EC) No 1256/1999 of 17 May 1999 (OJ 1999 L 160, p. 73) — Transfer of a reference quantity on the expiry of a rural lease on a dairy holding to the lessor who is not a producer himself

Order of the Court (Fourth Chamber) of 10 May 2007 (reference for a preliminary ruling from the Regeringsrätten — Sweden) — Skatteverket v A and B

(Case C-102/05) ([1])

(First subparagraph of Article 104(3) of the Rules of Procedure — Free movement of capital — Freedom of establishment — Taxation — Dividends paid in respect of shares distributed by a 'close company' — 'Wage rules' — Taxation of those dividends as income from assets — Calculation of a flat-rate yield — Percentage of capital invested and fraction of salaries — Branch established in a third country — Failure to take into account employees' wages at this branch)

(2007/C 170/14)

Language of the case: Swedish

Referring court

Regeringsrätten

Parties

Applicant: Skatteverket

Defendant: A and B

Re:

Reference for a preliminary ruling — Regeringsrätten — Interpretation of Articles 56 EC and 58 EC — Taxation of dividends paid by small public limited companies — Tax allowance corresponding to a notional return on capital invested which takes account of salaries paid by the company and its subsidiaries or branches in so far as those salaries are taxable in Sweden — Taking into account of salaries paid by a branch in a non-member State

Operative part of the order

A national measure which, in the context of taxation on share dividends as income from assets up to the limits of a flat-rate yield calculated by applying a specific percentage to a base including, besides the capital invested by the shareholder, a fraction of the salaries paid to employees of the company issuing the dividends, does not permit salaries of workers employed in a branch of this company, or by one of its subsidiaries to be taken into account, in a third country, seriously restricts freedom of establishment within the meaning of Article 43 EC et seq. Those articles cannot be pleaded in circumstances involving the establishment of a company of a Member State in a third country.

([1]) OJ C 106, 30.4.2005.

Appeal brought on 13 February 2007 by Smanor SA, Hubert Ségaud and Monique Ségaud against the Order of the Court of First Instance (Fourth Chamber) of 14 December 2006 in Case T-150/06, Smanor and Others v Commission

(Case C-99/07 P)

(2007/C 170/15)

Language of the case: French

Parties

Appellants: Smanor SA, Hubert Ségaud, Monique Ségaud (represented by: J.P Ekeu and L. Roques, avocats)

Other party to the proceedings: Commission of the European Communities

By Order of 23 May 2007 the Court (Sixth Chamber) dismissed the appeal and ordered Smanor SA and Mr & Mrs Ségaud to bear their own costs.

Appeal brought on 16 April 2007 by France Télécom SA against the judgment of the Court of First Instance (Fifth Chamber, Extended Composition) of 30 January 2007 in Case T-340/03 France Télécom SA v Commission of the European Communities

(Case C-202/07 P)

(2007/C 170/16)

Language of the case: French

Parties

Appellant: France Télécom SA, formerly Wanadoo Interactive SA (represented by: O.W. Brouwer, H. Calvet, J. Philippe and T. Janssens, avocats)

Other party to the proceedings: Commission of the European Communities

Forms of order sought

— set aside the judgment of the Court of First Instance of the European Communities in Case T-340/03 *France Télécom SA* v *Commission of the European Communities*, which dismissed the appeal against the Commission of the European Communities decision of 16 July 2003 relating to a proceeding under Article 82 [EC] (Case COMP/38.233 — Wanadoo Interactive);

— accordingly:

  — either refer the case back to the Court of First Instance for a fresh decision;

  — or give final judgment and annul the decision of the Commission of the European Communities of 16 July 2003 relating to a proceeding under Article 82 [EC] (Case COMP/38.233 — Wanadoo Interactive), by granting the forms of order sought in the application filed by the appellant at first instance;

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

Pleas in law and main arguments

The appellant puts forward seven grounds in support of its appeal.

By its first ground of appeal the appellant claims that the Court of First Instance failed to comply with its duty to provide reasons both as regards the possibility for recoupment of losses, which must be proven, and as regards the right to align prices with those of competitors, which the Court ruled out without explanation.

By its second ground of appeal the appellant claims that the Court infringed Article 82 EC by refusing Wanadoo the right to align its prices, in good faith, with those of its competitors. That right is enshrined in the decision-making practice of the Commission and the case-law of the Court, as well as in the French Competition doctrine and authorities, and furthermore is the only means for the appellant to remain competitive in the market.

By its third ground of appeal the appellant claims that the Court also infringed Article 82 in failing to find fault with the Commission's method for calculating cost recovery, which involved a distortion of the test of predation required by the Court. The method which the Commission used made it impossible to know whether the Wanadoo subscribers generated a profit or loss for that business during their subscription period.

By its fourth ground of appeal the appellant claims that, by deciding that the costs and revenues subsequent to the period of the alleged infringement should not be taken into account, the Court misconstrued both Article 82 EC and its duty to provide reasons. The Commission wrongly concluded there had been an infringement on the basis of that temporal limitation on costs and revenues to be taken into account.

By its fifth ground of appeal the appellant also alleges the Court infringed Article 82 EC, and its duty to give reasons, by holding that a price may be predatory even when it is accompanied by a considerable reduction in the market share of the relevant undertaking. Such a price cannot be regarded as likely to lead to the exclusion of competitors.

By its sixth ground of appeal the appellant claims that, as regards the alleged plan of predation, the Court distorted the facts and the evidence submitted for its consideration, and at the same time infringed Article 82 EC. That article requires an objectively identifiable plan to remove competitors and cannot, in any circumstances, be satisfied by a subjective test of the concept of an abuse of a dominant position.

Finally by its seventh ground of appeal the appellant alleges that the Court infringed Article 82 EC not only in holding that proving the possibility for recoupment of losses was not a prerequisite for finding predatory pricing, but also in confusing the Commission's evidence on the possibility of recoupment of those losses with the relevant undertaking's evidence on the impossibility of recoupment of those losses.

Action brought on 23 April 2007 — Commission of the European Communities v French Republic

(Case C-214/07)

(2007/C 170/17)

Language of the case: French

Parties

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

Defendant: French Republic

Form of order sought

— declare that, by failing to implement, within the prescribed period, Decision of the Commission of 16 December 2003 on the aid scheme implemented by France for the takeover of firms in difficulty (State aid C(2003) 4636) ([1]), the French Republic has failed to perform its obligations under Articles 5 and 6 of that decision, the fourth paragraph of Article 249 of the EC Treaty and Article 10 of that Treaty;

— order the French Republic to pay the costs.

Pleas in law and main arguments

In support of its application, the Commission claims that the defendant has not taken the necessary measures to ensure the rapid and effective implementation of its decision, because, more than three years after its adoption, there has been no repayment whatsoever of the aid illegally granted by the French State. Such a situation also clearly contravenes the fourth paragraph of Article 249 EC and Article 14(1) and (3) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty ([2]).

Nor can the defendant rely, in respect of the period after 1993, on the absolute impossibility of implementing the decision of 16 December 2003. First, the French authorities did not truly take steps in order to recover the disputed aid, since orders for recovery were not even sent to the debtors. Secondly, those authorities cannot rely on the difficulty of identifying the recipients of the aid in question because, as tax authorities, they could easily quantify the amounts of the tax exemptions from which those recipients had benefited.

In any event, it is clear from the Court's case-law that the condition as to absolute impossibility of implementation is not satisfied where the defendant State merely informs the Commission of the legal, political or practical difficulties arising from the implementation of the decision ordering the recovery of the aid, without having truly taken steps against the undertakings concerned in order to recover the amount of that aid and without having proposed alternative methods to the Commission of implementing the decision which would have allowed the difficulties to be overcome.

([1]) OJ 2004 L 108, p. 38.
([2]) OJ 1999 L 83, p. 1.

Reference for a preliminary ruling from the Verwaltungsgerichtshof (Austria) lodged on 9 May 2007 — Jörn Petersen v Arbeitsmarktservice Niederösterreich

(Case C-228/07)

(2007/C 170/18)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Applicant: Jörn Petersen

Defendant: Arbeitsmarktservice Niederösterreich

Questions referred

1. Is a monetary unemployment benefit granted to unemployed persons who have applied for the grant of a benefit under the statutory pension and accident insurance scheme on the ground of reduced capacity to work or incapacity to work until a decision is made on their application which is an advance payment of such benefit and is to be subsequently set off against such benefit, and which, although subject to the conditions that the person is unemployed and has completed a minimum eligibility period, is not subject to the other requirements for the payment of unemployment benefit, namely capacity to work, willingness to work and readiness to work, and which is paid only if, having regard to the circumstances, it is likely that benefits will be granted under the statutory pension and accident insurance scheme, an unemployment benefit within the meaning of Article 4(1)(g) of Regulation (EEC) No 1408/71 [1] of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community, or an invalidity benefit within the meaning of Article 4(1)(b) of that Regulation?

2. If the answer to the first question is to the effect that the benefit referred to is an unemployment benefit within the meaning of Article 4(1)(g) of Regulation (EEC) No 1408/71: Does Article 39 EC preclude a national provision which provides that — apart from a discretion available on application by the unemployed person in cases of exceptional circumstances for up to three months — the claim to the benefit is suspended if the unemployed person lives abroad (in another Member State)?

[1] OJ L 149, p. 2.

Reference for a preliminary ruling from the Cour d'appel de Bruxelles (Belgium) lodged on 10 May 2007 — Tiercé Ladbroke SA v Belgian State

(Case C-231/07)

(2007/C 170/19)

Language of the case: French

Referring court

Cour d'appel de Bruxelles

Parties to the main proceedings

Applicant: Tiercé Ladbroke SA

Defendant: Belgian State

Question referred

Is the supply of the following services by an agent, acting on behalf of a principal who operates a business of taking bets on horse-races and other sporting events, exempt from VAT pursuant to Article 13(B)(d)(3) [1] of the Sixth Directive, which exempts transactions, including negotiation, concerning deposit accounts, …, payments …: namely, taking of the bets in the name of the principal; recording the bets; confirming to the customer, by the issue of a betting slip, that the bet has been made; collecting the monies; paying out the winnings; assuming sole responsibility, vis-à-vis the principal, for management of the collected monies and for any thefts or losses of money; and receiving remuneration for those activities in the form of a commission from the principal?

[1] Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1).

Reference for a preliminary ruling from the Cour d'appel de Bruxelles (Belgium) lodged on 10 May 2007 — Derby SA v Belgian State

(Case C-232/07)

(2007/C 170/20)

Language of the case: French

Referring court

Cour d'appel de Bruxelles

Parties to the main proceedings

Applicant: Derby SA

Defendant: Belgian State

Question referred

Is the supply of the following services by an agent, acting on behalf of a principal who operates a business of taking bets on horse-races and other sporting events, exempt from VAT pursuant to Article 13(B)(d)(3) [1] of the Sixth Directive, which exempts transactions, including negotiation, concerning deposit accounts, …, payments …: namely, taking of the bets in the name of the principal; recording the bets; confirming to the customer, by the issue of a betting slip, that the bet has been made; collecting the monies; paying out the winnings; assuming sole responsibility, vis-à-vis the principal, for management of the collected monies and for any thefts or losses of money; and receiving remuneration for those activities in the form of a commission from the principal?

[1] Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1).

Action brought on 11 May 2007 — Commission of the European Communities v Portuguese Republic

(Case C-233/07)

(2007/C 170/21)

Language of the case: Portuguese

Parties

Applicant: Commission of the European Communities (represented by: S. Pardo Quintillán and P. Andrade, Agents)

Defendant: Portuguese Republic

Form of order sought

— declare that

— by failing to subject, during the bathing season, the urban waste water from the agglomeration of the Estoril coast to at least advanced primary treatment and to a disinfection system as provided for by Article 2 of Decision 2001/720/EC [1],

— by failing to subject, outside the bathing season, the urban waste water from the agglomeration of the Estoril coast, prior to discharge, to at least primary treatments, as provided for by Article 3 of Decision 2001/720/EC,

— and by suffering the discharge of urban waste water from the agglomeration of the Estoril coast to produce adverse effects on the environment,

the Portuguese Republic has failed to fulfil its obligations under Articles 2, 3 and 5 of Decision 2001/720/EC;

— order the Portuguese Republic to pay the costs.

Pleas in law and main arguments

In 1999 Portugal made a request to the Commission for the discharge of waste water into the Atlantic Ocean near the estuary of the River Tagus, from the agglomeration of the Estoril coast, to be subject to less stringent treatment.

The Commission established that the requirements laid down in the provision derogating from Directive 91/271/EEC [2] had been satisfied and granted Portugal's request by means of Decision 2001/720/EC.

From the replies given by the Portuguese authorities to the formal notice and reasoned opinion it is apparent that the Portuguese Republic has failed to fulfil its obligations under the abovementioned articles of Decision 20001/720/EC.

[1] Commission Decision of 8 October 2001 granting Portugal a derogation regarding urban waste water treatment for the agglomeration of the Estoril coast (OJ 2001 L 269, p. 14).
[2] Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment (OJ 1991 L 135, p. 40).

Reference for a preliminary ruling from the Konstitucinis Teismas (Lithuania) lodged on 14 May 2007 — Sabatauskas and Others v Lietuvos Respublikos Seimas

(Case C-239/07)

(2007/C 170/22)

Language of the case: Lithuanian

Referring court

Lietuvos Respublikos Konstitucinis Teismas (Lithuania)

Parties to the main proceedings

Applicants: Group of members of the Seimas — Julius Sabatauskas and Others

Interested party: Lietuvos Respublikos Seimas

Question referred

Is Article 20 of Directive 2003/54/EC [1] of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC to be interpreted as obliging Member States to establish legal rules whereby any third party has the right, at his discretion, provided that the electricity system has 'the necessary capacity', to choose the system — electricity transmission system or electricity distribution system — to which he wishes to be connected, and the operator of that system has an obligation to grant access to the network?

[1] OJ L 176, p. 37.

Reference for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 16 May 2007 — Sony Music Entertainment (Germany) GmbH v Falcon Neue Medien Vertrieb GmbH

(Case C-240/07)

(2007/C 170/23)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Appellant: Sony Music Entertainment (Germany) GmbH

Respondent: Falcon Neue Medien Vertrieb GmbH

Questions referred

1. Does the term of protection granted by Directive 2006/116/EC [1] of the European Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights (Directive 2006/116) under the conditions set out in Article 10(2) thereof apply also in the case of subject-matter that has not at any time been protected in the Member State in which protection is sought?

2. If Question 1 is to be answered in the affirmative:

   (a) Do national provisions governing the protection of rightholders who are not Community nationals constitute national provisions within the meaning of Article 10(2) of Directive 2006/116?

   (b) Does the term of protection granted pursuant to Article 10(2) of Directive 2006/116 also apply to subject-matter that, on the date specified in Article 10(1) of that directive, fulfilled the criteria set out in Council Directive 92/100/EEC [2] of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property, but whose rightholder is not a Community national?

[1] OJ L 372, p. 12.
[2] OJ L 346, p. 61.

Reference for a preliminary ruling from the Riigikohus (Estonia) lodged on 21 May 2007 — JK Otsa Talu OÜ v Põllumajanduse Registrite ja Informatsiooni Amet (PRIA)

(Case C-241/07)

(2007/C 170/24)

Language of the case: Estonian

Referring court

Riigikohus

Parties to the main proceedings

Applicant: JK Otsa Talu OÜ

Defendant: Põllumajanduse Registrite ja Informatsiooni Amet (PRIA)

Questions referred

1. 'Is it compatible with the objective of agri-environmental support laid down in Articles 22 to 24 of Council Regulation (EC) No 1257/1999 [1] of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations:

   (a) to give continued support only to applicants for whom, within the framework of that programme, a decision awarding agri-environmental support has already been made in the previous budgetary year, and who have entered into an environmental commitment,

   or

(b) to support in each budgetary year also new applicants who are prepared to give a commitment of environment-friendly production and accordingly organise their production to comply with the requirements?

2. If the answer to Question 1 is variant (b), does Article 24(1) in conjunction with Article 37(4) and Article 39 of Council Regulation (EC) No 1257/1999 authorise a Member State, if in the context of the programme it becomes clear that there are no longer sufficient budgetary means for granting first-time support:

(a) to amend the original rules and requirements for applications for and grants of agri-environmental support and determine that support may be applied for only if the applicant has been the subject of a decision granting support in the previous budgetary year and an environment-friendly production obligation is therefore in force for him,

or

(b) to reduce proportionately the support of all applicants meeting the requirements for agri-environmental support?'

(1) OJ L 160, 26.6.1999, p. 80.

Appeal brought on 18 May 2007 by the Kingdom of Belgium against the order of the Court of First Instance (Fourth Chamber) of 15 March 2007 in Case T-5/07 Belgium v Commission

(Case C-242/07 P)

(2007/C 170/25)

Language of the case: French

Parties

Appellant: Kingdom of Belgium (represented by: L. Van den Broeck, acting as Agent, J.-P. Buyle and C. Steyaert, avocats)

The other party to the proceedings: Commission of the European Communities

Forms of order sought

— annul the contested order;

— declare that the action for annulment brought by the appellant against the European Commission (T-5/07) is admissible and, consequently, grant the forms of order sought by the appellant contained in its application for annulment and, if appropriate, refer the matter back to the Court of First Instance to rule on the merits of that application;

— order the Commission to pay the costs of the appeal and of the application before the Court of First Instance.

Pleas in law and main arguments

The appellant puts forward four grounds in support of its appeal.

By its first ground of appeal the appellant claims that the contested order is vitiated by a failure to state adequate reasons in so far as, infringing Article 111 of the Rules of Procedure of the Court of First Instance, the order cites the case-law relating to unforeseeable circumstances and excusable error without stating the reasons why the circumstances put forward by the appellant do not constitute such unforeseeable circumstances or are not the source of such an excusable error.

By its second ground of appeal the appellant further claims that the Court of First Instance erred in law in the application of the conditions for the existence of an excusable error, in deciding that issues linked to the functioning of the appellant's services cannot, of themselves, render the error committed excusable. Community case-law, relating to excusable error states that it covers exceptional circumstances, without any restrictions as to the context in which those circumstances occur.

By its third ground of appeal the appellant claims that the Court of First Instance erred in law, or, at the very least, failed to comply with its duty to give reasons, by failing to examine one of the arguments that had been raised before it, based on the excessive procedural rigour which the appellant would be subject to if its appeal was rejected as inadmissible even though, in the present action, it has shown great care and, in particular, sent the application by fax well before the expiry of the time-limit for bringing an appeal.

By its fourth ground of appeal the appellant claims that the rejection of an application, on the ground that it is out of time, when the application was sent beforehand, within the requisite period, by fax, to the registry is contrary to the principle of proportionality. Compliance with that principle means an application lodged with the Registry by fax within the requisite time period set down by the EC Treaty should not be declared inadmissible — even when the original signed application arrives at the Registry more than ten days later — as long as that application was lodged within ten days following the last day on which the lodging of the application by fax was possible.

Action brought on 23 May 2007 — Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland

(Case C-247/07)

(2007/C 170/26)

Language of the case: English

Parties

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

Defendant: United Kingdom of Great Britain and Northern Ireland

The applicant claims that the Court should:

— declare that by failing to adopt all of the laws, regulations or administrative provisions necessary to comply with Directive 2003/35/EC ([1]) of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC ([2]) and 96/61/EC ([3]), or, in any event, by failing to notify such provisions to the Commission, the United Kingdom has failed to fulfil its obligations under Article 6 of that Directive.

— order United Kingdom of Great Britain and Northern Ireland to pay the costs.

Pleas in law and main arguments

The period within which the directive had to be transposed expired on 25 June 2005.

([1]) OJ L 156, p. 17.
([2]) OJ L 175, p. 40.
([3]) OJ L 257, p. 26.

Reference for a preliminary ruling from the Hof van beroep te Antwerpen (Belgium) lodged on 23 May 2007 — Trespa International B.V. v Nova Haven-en Vervoerbedrijf N.V. and Meadwestvaco Europe B.V.B.A.

(Case C-248/07)

(2007/C 170/27)

Language of the case: Dutch

Referring court

Hof van beroep te Antwerpen

Parties to the main proceedings

Appellant: Trespa International B.V.

Respondents: Nova Haven-en Vervoerbedrijf N.V. and Meadwestvaco Europe B.V.B.A.

Questions referred

1. Under Article 291 of Regulation No 2454/93 laying down provisions for the implementation of the Community Customs Code ([1]), as applicable during the period from 1 July 1997 to 15 May 1998 inclusive, who is 'the person importing the goods or having them imported for free circulation'?: does this term include the customs agent which makes the customs declaration in its own name and for its own account or does it cover only the importer for which the goods are intended?

2. Is there a transfer of goods within the Community for the purposes of Articles 297 and 1a of Regulation No 2454/93 in the case where goods are imported into the European Union at Antwerp and then transported to the Netherlands and/or should the person referred to in Article 291 of Regulation No 2454/93 laying down provisions for the implementation of the Community Customs Code, as applicable during the period from 1 July 1997 to 15 May 1998 inclusive, in such a case hold the authorisation referred to in that article?

3. Does the term 'transferee' in Article 297 of Regulation No 2454/93 laying down provisions for the implementation of the Community Customs Code, as applicable during the period from 1 July 1997 to 15 May 1998 inclusive, refer to the customs agent which clears the goods inwards from outside the Community to a Member State of the European Union on behalf of the ultimate importer?

([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).

Reference for a preliminary ruling from the Högsta domstolen (Sweden) lodged on 29 May 2007 — Gävle Kraftvärme AB v Länsstyrelsen i Gävleborgs län

(Case C-251/07)

(2007/C 170/28)

Language of the case: Swedish

Referring court

Högsta domstolen

Parties to the main proceedings

Applicant: Gävle Kraftvärme AB

Defendant: Länsstyrelsen i Gävleborgs län

Questions referred

1. Where a combined power and heating plant consists of a number of units (furnaces), on interpretation of Directive 2000/76/EC [1] of the European Parliament and of the Council on the incineration of waste, is each unit to be assessed as a separate plant or is the assessment to cover the combined power and heating plant as a whole?

2. On interpretation of the Directive, is a plant constructed for waste incineration but having as its main purpose the production of energy to be classified as an incineration plant or as a co-incineration plant?

[1] OJ L 332, p. 91.

Action brought on 30 May 2007 — Commission of the European Communities v Kingdom of Spain

(Case C-254/07)

(2007/C 170/29)

Language of the case: Spanish

Parties

Applicant: Commission of the European Communities (represented by: A. Alcover San Pedro and D. Kukovec, acting as Agents)

Defendant: Kingdom of Spain

Form of order sought

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to transpose Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 [1] coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors, or in any event by failing to notify those provisions to the Commission, the Kingdom of Spain has failed to fulfil its obligations under that directive;

— order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

The period within which Directive 2004/17/EC had to be transposed expired on 31 January 2006.

[1] OJ 2004 L 134, p. 1.

Appeal brought on 1 June 2007 by Tokai Europe GmbH against the order of the Court of First Instance (Fourth Chamber) delivered on 19 March 2007 in Case T-183/04 Tokai Europe GmbH v Commission of the European Communities

(Case C-262/07P)

(2007/C 170/30)

Language of the case: German

Parties

Appellant: Tokai Europe GmbH (represented by G. Kroemer, Rechtsanwalt)

Other party to the proceedings: Commission of the European Communities

Form of order sought

— set aside the order of the Court of First Instance of the European Communities of 19 March 2007 in Case T-183/04 [1] and declare the application to be admissible;

— in the alternative, set aside the order referred to above and refer the case back to the Court of First Instance in order for it to give a ruling on the substance;

— order the respondent to pay the costs.

Pleas in law and main arguments

By its appeal, the appellant raises the following complaints, which relate to the infringement by the order under appeal of procedural requirements of Community law, by which its interests were prejudiced and which went so far as to affect the content of the order under appeal. They relate to the observance of the right to be heard and measures of inquiry.

The Court of First Instance ordered that the decision on the respondent's objection of inadmissibility should be reserved until final judgment. Following the lodging of the response by the respondent, it closed the written procedure and indicated that the date for the hearing would be notified to the parties at a later date. The applicant had accordingly, in reliance on a date being fixed for a hearing and, above all, on the basis of the order made by the Court, waived its right to present a request under Article 47(1) of the Rules of Procedure of the Court of First Instance that the documents be supplemented. Notwithstanding its earlier indication, the Court ultimately made the order under appeal without there being a hearing.

The appellant proceeded on the basis that it would be able to provide further justification at the hearing that was to be notified for its claim that there are no products on the market that are similar to the small metal wheels that are supplied by its Japanese parent company to manufacturers in Hong Kong and Mexico. In addition, it was its intention to make it clear once again that the wheels in question are not 'friction wheels', as the respondent incorrectly indicated in its response. The appellant also wished to explain at the hearing that the small metal wheels that were represented in the disputed classification regulation could only have been produced by its parent company in Japan and that it was accordingly not a question of small metal wheels of a generic nature as the Court of First Instance indicated in the order under appeal. It also intended to rebut the Commission's contentions that it was not the sole importer of Tokai cigarette lighters.

However, as is clear from the order under appeal itself, the Court of First Instance adopted the Commission's arguments as to the admissibility of the action set out in its response, without, as mentioned, giving the appellant the opportunity to challenge the version of the events put forward by the respondent. The appellant claims that this represents an infringement of its right to a fair hearing.

The Court of First Instance is also under a duty to establish the facts. In so doing, it is not restricted in the proceedings before it simply to establishing the facts in reliance on the requests of the parties for measures of inquiry and to reach a decision on the basis of the evidence led before it alone. Therefore, not only can it take the initiative of its own motion, but it is also under a duty to take the initiative where this is necessary. Accordingly, the Court of First Instance was under a duty to clarify the evidence put forward by the applicant in its written pleadings and, by making the appropriate orders, to call upon the parties to submit relevant documents and evidence. Since this did not happen, the Court of First Instance infringed Article 64(3)(d) of its Rules of Procedure.

([1]) Not published.

Action brought on 1 June 2007 — Commission of the European Communities v Hellenic Republic

(Case C-264/07)

(2007/C 170/31)

Language of the case: Greek

Parties

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

Defendant: Hellenic Republic

Form of order sought

— declare that, by failing to draw up by 22 December 2004 for each river basin district falling within its territory an analysis of its characteristics, a review of the impact of human activity on the status of surface waters and on groundwater and an economic analysis of water use, in accordance with the technical specifications set out in Annexes II and III, the Hellenic Republic has failed to fulfil its obligations under Article 5(1) of Directive 2000/60/EC ([1]) establishing a framework for Community action in the field of water policy, while, by failing to submit summary reports of the analyses required under that article, it has also failed to fulfil its obligations under Article 15(2) of that directive;

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

Directive 2000/60 entered into force on 22 December 2000. Therefore the Member States were obliged to have completed the analyses and the review required under Article 5(1) of the Directive by 22 December 2004 at the latest, and to submit to the Commission a summary report concerning those analyses, as laid down by Article 15(2) of the directive, by 22 March 2005 at the latest.

In their response to the Commission's letter of formal notice, the Greek authorities acknowledged the failure to comply with Article 15(2) of the directive and undertook to forward the required report in June 2006. So far as concerns, however, the Hellenic Republic's compliance with the obligations flowing from Article 5(1) of the directive, the Greek authorities were silent, despite the fact that the Commission in its letter of formal notice cast doubt on whether the Hellenic Republic had fulfilled its obligations under that article.

It was apparent from analysing the report which was finally sent in June 2006 that the Hellenic Republic still had not complied with the obligations that flow from Articles 5(1) and 15(2) of Directive 2000/60.

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

Action brought on 5 June 2007 — Commission of the European Communities v Republic of Slovenia

(Case C-267/07)

(2007/C 170/32)

Language of the case: Slovene

Parties

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

Defendant: Republic of Slovenia

Form of order sought

— declare that, by failing to adopt the laws and other provisions necessary to comply with Directive 2004/50/EC ([1]) 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 (OJ 2004 L 164, p. 114), or at any event by failing to communicate those measures to the Commission, the Republic of Slovenia has failed to fulfil its obligations under that directive;

— order the Republic of Slovenia to pay the costs.

Pleas in law and main arguments

The period prescribed for the transposition into domestic law of Directive 2004/50/EC expired on 29 April 2006.

([1]) SL.ES Chapter 13 Volume 34 P. 838.

Order of the President of the Court of 15 May 2007 (reference for a preliminary ruling from the Conseil d'Etat — Belgium) — Clear Channel Belgium S.A. v City of Liège

(Case C-378/06) ([1])

(2007/C 170/33)

Language of the case: French

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

([1]) OJ C 261, 28.10.2006.

COURT OF FIRST INSTANCE

Order of the Court of First Instance of 12 June 2007 — Budějovický Budvar v OHIM — Anheuser-Busch, Inc. (BUDWEISER)

(Joined Cases T-53/04 to T-56/04, T-58/04 and T-59/04) ([1])

(Community trade mark — Opposition proceedings — Applications for a Community word mark BUDWEISER — Appellations of origin registered under the Lisbon Agreement — Article 8(4) of Regulation (EC) No 40/94 — Rejection of the opposition)

(2007/C 170/34)

Language of the case: English

Parties

Applicant: Budějovický Budvar, established in (České Budějovice, Czech Republic) (represented by: F. Fajgenbaum, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance: Anheuser-Busch, Inc. (Saint Louis, Missouri, United States) (represented by: initially V. von Bomhard, A. Renck, A. Pohlmann, D. Ohlgart and B. Goebel, and subsequently V. von Bomhard, A. Renck, D. Ohlgart and B. Goebel, lawyers)

Re:

Action brought against six decisions of the Second Board of Appeal of OHIM of 3 December 2003 (Cases R 820/2001-2, R 822/2001-2, R 823/2001-2, R 921/2001-2, R 29/2002-2 and R 32/2002-2), concerning opposition proceedings between Budějovický Budvar, národní podnik and Anheuser-Busch, Inc.

Operative part of the judgment

The Court:

1. *Dismisses the applications in Joined Cases T-53/04 to T-56/04, T-58/04 and T-59/04;*

2. *Orders Budějovický Budvar, národní podnik to pay the costs.*

([1]) OJ C 94, 17.4.2004.

Order of the Court of First Instance of 12 June 2007 — Budějovický Budvar and Anheuser-Busch v OHIM (AB GENUINE Budweiser KING OF BEERS)

(Joined Cases T-57/04 and T-71/04) ([1])

((Community trade mark — Opposition proceedings — Application for a Community figurative trade mark including the terms 'AB', 'genuine', 'Budweiser', 'king of beers' — Earlier international word mark BUDWEISER — Appellations of origin registered under the Lisbon Agreement — Article 8(1)(b) and (4) of Regulation (EC) No 40/94 — Partial acceptance and partial rejection of the opposition)

(2007/C 170/35)

Language of the case: English

Parties

Applicant in Case T-57/04: Budějovický Budvar, národní podnik (České Budějovice (Czech Republic)) (represented by: F. Fajgenbaum, lawyer)

Applicant in Case T-71/04: Anheuser-Busch, Inc. (Saint Louis, Missouri, United States) (represented by: initially V. von Bomhard, A. Renck, A. Pohlmann, D. Ohlgart and B. Goebel, and subsequently V. von Bomhard, A. Renck, D. Ohlgart and B. Goebel, lawyers)

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

Other parties to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance: Anheuser-Busch, Inc. (in Case T-57/04) and Budějovický Budvar, národní podnik (in Case T-71/04)

Re:

Action bought against the decision of the Second Board of Appeal of OHIM of 3 December 2003 (Cases R 1024/2001-2 and R 1000/2001-2), concerning opposition proceedings between Budějovický Budvar, národní podnik and Anheuser-Busch, Inc.

Operative part of the judgment

The Court:

1. *In Case T-57/04:*

   — *dismisses the application;*

   — *orders Budějovický Budvar, národní podnik to pay the costs.*

2. *In Case T-71/04:*

   — *holds that there is no longer any need to adjudicate in the case;*

   — *orders Anheuser-Busch, Inc. to pay the costs.*

([1]) OJ C 94, 17.4.2004.

Order of the Court of First Instance of 12 June 2007 — Budějovický Budvar v OHIM — Anheuser-Busch (BUD)

(Joined Cases T-60/04 to T-64/04) ([1])

(Community trade mark — Opposition proceedings — Applications for a Community word mark BUD — Appellation of origin registered under the Lisbon Agreement — Article 8(4) of Regulation (EC) No 40/94 — Rejection of the opposition)

(2007/C 170/36)

Language of the case: English

Parties

Applicant: Budějovický Budvar, národní podnik, (České Budějovice, Czech Republic) (represented by: F. Fajgenbaum, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance: Anheuser-Busch, Inc. (Saint Louis, Missouri, United States) (represented by: initially V. von Bomhard, A. Renck, A. Pohlmann, D. Ohlgart and B. Goebel, and subsequently V. von Bomhard, A. Renck, D. Ohlgart and B. Goebel, lawyers)

Re:

Action brought against five decisions of the Second Board of Appeal of OHIM of 3 December 2003 (Cases R 107/2003-2, R 111/2003-2, R 114/2003-2, R 115/2003-2 and R 122/2003-2), concerning opposition proceedings between Budějovický Budvar, národní podnik and Anheuser-Busch, Inc.

Operative part of the judgment

The Court:

1. *Dismisses the applications in Joined Cases T-60/04 to T-64/04;*

2. *Orders Budějovický Budvar, národní podnik to pay the costs.*

([1]) OJ C 94, 17.4.2004.

Judgment of the Court of First Instance of 6 June 2007 — Greece v Commission

(Case T-232/04) ([1])

(EAGGF — 'Guarantee' section — Decision ordering the reimbursement of sums paid as an advance)

(2007/C 170/37)

Language of the case: Greek

Parties

Applicant: Hellenic Republic (represented by: V. Kontolaimos, I. Chalkias and S. Chala, acing as Agents)

Defendant: Commission of the European Communities (represented by: M. Condou-Durande, acting as Agent, and by N. Korogiannakis, lawyer)

Re:

Application for annulment of Commission Decision 2004/302/EC of 30 March 2004 on a financial contribution from the Community to expenditure incurred by Greece in establishing the Community vineyard register (OJ 2004 L 98, p. 57)

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

([1]) OJ C 179, 10.7.2004 (formerly Case C-218/04).

Judgment of the Court of First Instance of 6 June 2007 — Parlante v Commission

(Case T-432/04) ([1])

(Staff case — Officials — Promotion — Promotions procedure 2003 — Refusal of promotion — Award of promotion points — Consideration of comparative merits — Equal treatment — General implementing provisions of Article 45 of the Staff Regulations — Plea of illegality — Legitimate expectations)

(2007/C 170/38)

Language of the case: French

Parties

Applicant: Walter Parlante (Enghien, Belgium) (represented by: L. Vogel, lawyer)

Defendant: Commission of the European Communities (represented by: C. Berardis-Kayser and M. Velardo, acting as Agents)

Re:

Application for annulment of (1) the Appointing Authority's decision of 5 July 2004 rejecting the applicant's complaint against that same authority's decision to refuse him promotion to Grade C1 under the 2003 procedure and (2), in so far as it is necessary, the decision which was the subject of that complaint.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders each party to bear its own costs.*

([1]) OJ C 6, 8.1.2005.

Judgment of the Court of First Instance of 6 June 2007 — Davi v Commission

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

(Staff cases — Officials — Promotion — 2003 Promotion procedure — Decision not to promote — Award of promotion points — Consideration of the comparative merits — Equal treatment — General provisions for implementing Article 45 of the Staff Regulations — Plea of illegality — Legitimate expectations)

(2007/C 170/39)

Language of the case: French

Parties

Applicant: Angela Davi (Brussels, Belgium) (represented by: L. Vogel, lawyer)

Defendant: Commission of the European Communities (represented by: J. Currall, initially, and subsequently by C. Berardis-Kayser and M. Velardo, acting as Agents)

Re:

Application for annulment, first, of the Appointing Authority's decision of 2 July 2004 rejecting the applicant's complaint against that authority's decision not to promote her to Grade C2 for the 2003 promotion procedure and, secondly, in so far as necessary, of the original decision which was the subject of that complaint.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

([1]) OJ C 6, 8.1.2005.

Judgment of the Court of First Instance of 6 June 2007 — Walderdorff v Commission

(Case T-442/04) ([1])

(Staff cases — Officials — Promotion — 2003 Promotion procedure — Decision not to promote — Award of promotion points — Consideration of the comparative merits — Equal treatment — General provisions for implementing Article 45 of the Staff Regulations — Plea of illegality — Legitimate expectations)

(2007/C 170/40)

Language of the case: French

Parties

Applicant: Andrea Walderdorff (Brussels, Belgium) (represented by: L. Vogel, lawyer)

Defendant: Commission of the European Communities (represented by: J. Currall, initially, and subsequently by G. Berscheid and M. Velardo, acting as Agents)

Re:

Application for annulment, first, of the Appointing Authority's decision of 19 July 2004 rejecting the applicant's complaint against that authority's decision not to promote her to Grade A4 for the 2003 promotion procedure and, secondly, in so far as necessary, of the original decision which was the subject of that complaint.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

(1) OJ C 6, 8.1.2005.

Judgment of the Court of First Instance of 12 June 2007 — Assembled Investments (Proprietary) v OHIM — Waterford Wedgwood (WATERFORD STELLENBOSCH)

(Case T-105/05) (1)

(Community trade mark — Opposition proceedings — Application for the figurative Community mark WATERFORD STELLENBOSCH — Earlier Community word mark WATERFORD — Relative ground for refusal — No likelihood of confusion — Absence of similarity between the goods — Absence of complementarity — Article 8(1)(b) of Regulation (EC) No 40/94)

(2007/C 170/41)

Language of the case: English

Parties

Applicant: Assembled Investments (Proprietary) Ltd (Stellenbosch, South Africa) (represented by: P. Hagmann and S. Ziegler, Lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the Court of First Instance: Waterford Wedgwood plc (Waterford, Ireland) (represented by: K. Manhaeve, Lawyer)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 15 December 2004 (Case R 240/2004-1) relating to opposition proceedings between Waterford Wedgwood and Assembled Investments (Proprietary) Ltd.

Operative part of the judgment

The Court:

1. *Annuls the decision of the First Board of Appeal of OHIM of 15 December 2004 (Case R 240/2004-1);*

2. *Orders the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) and Waterford Wedgwood plc to pay, in addition to their own costs, the costs incurred by the applicant.*

(1) OJ C 115, 14.5.2005.

Judgment of the Court of First Instance of 13 June 2007 — Grether v OHIM — Crisgo (FENNEL)

(Case T-167/05) (1)

(Community trade mark — Opposition proceedings — Application for the figurative Community trade mark FENNEL — Earlier Community word mark FENJAL — Relative ground for refusal — No likelihood of confusion — Article 8(1)(b), Article 73, second sentence, and Article 74(1) of Regulation (EC) No 40/94)

(2007/C 170/42)

Language of the case: English

Parties

Applicant: Grether AG (Binningen, Switzerland) (represented by: initially, V. von Bomhard, A. Pohlmann and A. Renck, and subsequently, V. von Bomhard, A. Pohlmann and T. Dolde, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance: Crisgo (Thailand) Co. Ltd (Samutsakom, Thailand) (represented by: A. Bensoussan, M. Haas and L. Tellier-Loniewski, lawyers)

Re:

Action brought against the decision of the Fourth Chamber of the Board of Appeal of OHIM of 14 October 2004 (Case R 250/2002-4) concerning opposition proceedings between Grether AG and Crisgo (Thailand) Co. Ltd.

Operative part of the judgment

The Court:

1. *dismisses the action;*

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

(1) OJ C 182, 23.7.2005.

Judgment of the Court of First Instance (Fifth Chamber) of 12 June 2007 — The Sherwin-Williams Company v OHIM (TWIST & POUR)

(Case T-190/05) ([1])

(Community trade mark — Application for Community word mark TWIST & POUR — Absolute ground for refusal of registration — Mark devoid of distinctive character — Article 7(1)(b) of Regulation (EC) No 40/94)

(2007/C 170/43)

Language of the case: Spanish

Parties

Applicant: The Sherwin-Williams Company (Cleveland, Ohio, United States) (represented by: E. Armijo Chávarri and A. Castán Pérez-Gómez, lawyers)

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

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 22 February 2005 (Case R 755/2004-2), relating to registration of the sign TWIST & POUR as a Community trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action*

2. *Orders the Sherwin-Williams Company to pay the costs.*

([1]) OJ C 171, 9.7.2005.

Judgment of the Court of First Instance of 6 June 2007 — Mediocurso v Commission

(Joined Cases T-251/05 and T-425/05) ([1])

(ESF — training programmes — Reduction in the assistance originally granted — Statement of reasons — Principles of legal certainty and the protection of legitimate expectations — Absence of a manifest error of assessment)

(2007/C 170/44)

Language of the case: Portuguese

Parties

Applicant: Mediocurso — Estabelecimento di Ensino Particular, SA (Lisbon, Portugal) (represented by C. Botelho Moniz and E. Maia Cadete, lawyers)

Defendant: Commission of the European Communities (represented by P. Andrade and A. Weimar, acting as Agents)

Re:

Action for the annulment of, first, Commission Decision C(2005) 1236 of 14 April 2005 reducing the assistance granted by Decision C(89) 0570 of 22 March 1989 and, secondly, Commission Decision C(2005) 3557 of 13 September 2005 reducing the assistance granted by Decision C(89) 0570 of 22 March 1989.

Operative part of the judgment

The Court:

1. *Joins Cases T-251/05 and T-425/05 for the purposes of the judgment;*

2. *Dismisses the actions;*

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

([1]) OJ C 217, 3.9.2005.

Judgment of the Court of First Instance of 12 June 2007 — MacLean-Fogg v OHIM (LOKTHREAD)

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

(Community trade mark — Application for the Community word mark LOKTHREAD — Absolute grounds for refusal of registration — Descriptive character — Article 7(1)(c) of Regulation (EC) No 40/94)

(2007/C 170/45)

Language of the case: English

Parties

Applicant: MacLean-Fogg Co. (Mundelein, Illinois, United States) (represented by: S. Prückner and A. Franke, lawyers)

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

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 20 June 2005 (Case R 1122/2004-1), concerning the registration of the word mark LOKTHREAD as a Community trade mark

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders MacLean-Fogg Co. to pay the costs.*

([1]) OJ C 296, 26.11.2005.

Judgment of the Court of First Instance of 13 June 2007 — IVG Immobilien AG v OHIM (I)

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

(Community trade mark — Figurative signs — Absolute grounds for refusal of registration — Lack of distinctiveness — Article 7(1)(b) of Regulation (EC) No 40/94)

(2007/C 170/46)

Language of the case: German

Parties

Applicant: IVG Immobilien AG (Bonn, Germany) (represented by: A. Okonek and U. Karpenstein, lawyers)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 1 September 2005 (Case R 559/2004-4) concerning an application for registration of the figurative sign I as a Community trade mark

Operative part of the judgment

The Court:

1. *Annuls the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 1 September 2005 (Case R 559/2004-4);*

2. *Orders OHIM to bear its own costs and to pay the costs incurred by IVG Immobilien AG.*

([1]) OJ C 60, 11.3.2006.

Judgment of the Court of First Instance of 14 June 2007 — Europig v OHIM (EUROPIG)

(Case T-207/06) ([1])

(Community trade mark — Application for Community word mark EUROPIG — Absolute grounds for refusal — Descriptive character — Absence of distinctive character — Article 7(1)(b) and (c) and Article 7(3) of Regulation (EC) No 40/94)

(2007/C 170/47)

Language of the case: French

Parties

Applicant: Europig SA (Josselin, France) (represented by: D. Masson, lawyer)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market of 31 May 2006 (Case R 1425/2005-4) concerning an application for registration of the word mark EUROPIG as a Community trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

([1]) OJ C 261, 28.1.2006.

Order of the Court of First Instance of 14 May 2007 — Gnemmi and Aguiar v Commission

(Case T-97/04) ([1])

(Staff cases — Officials — Reports procedure — Career development review — 2001/2002 Appraisal exercise — Action manifestly inadmissible and manifestly devoid of any legal basis)

(2007/C 170/48)

Language of the case: French

Parties

Applicants: Laura Gnemmi (Hünsdorf, Luxembourg) and Eugénia Aguiar (Brussels, Belgium) (represented by: initially G. Bounéou and F. Frabetti, lawyers, and subsequently by F. Frabetti alone)

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

Re:

Application for annulment, principally, of the 2001/2002 appraisal exercise in relation to the applicants and, alternatively, the applicants' career development reviews for that exercise.

Operative part of the order

1. *The action is dismissed as partly manifestly inadmissible and, for the rest, as manifestly devoid of any legal basis.*

2. *The applicants are ordered to bear their own costs.*

(1) OJ C 106, 30.4.2004.

Order of the Court of First Instance of 14 May 2007 — Ruiz Sanz and Others v Commission

(Case T-112/04) (1)

(Staff cases — Officials — Reports procedure — Career development review — 2001/2002 Appraisal exercise — Action manifestly inadmissible and manifestly devoid of any legal basis)

(2007/C 170/49)

Language of the case: French

Parties

Applicants: Manuel Ruiz Sanz (Tervuren, Belgium); Anna Maria Campogrande (Brussels, Belgium); and Friedrich Mühlbauer (Brussels) (represented by: G. Bounéou and F. Frabetti, lawyers, and subsequently by F. Frabetti alone)

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

Re:

Application for annulment, principally, of the 2001/2002 appraisal exercise in relation to the applicants; and, alternatively, of the applicants' career development reviews for that exercise.

Operative part of the order

1. *The action is dismissed as partly manifestly inadmissible and, for the rest, as manifestly devoid of any legal basis.*

2. *The applicants are ordered to bear their own costs.*

(1) OJ C 106, 30.4.2004.

Order of the Court of First Instance of 14 May 2007 — Czigàny and Others v Commission

(Case T-149/04) (1)

(Staff cases — Officials — Reports procedure — Career development review — 2001/2002 Appraisal exercise — Action manifestly inadmissible and manifestly devoid of any legal basis)

(2007/C 170/50)

Language of the case: French

Parties

Applicants: Imre Czigàny (Rhode-Saint-Genèse, Belgium); Isabel Alves (Luxembourg, Luxembourg); Georgette Henningsen (Brussels, Belgium); and Michel Lucas (Tervuren, Belgium) (represented by: initially G. Bounéou and F. Frabetti, lawyers, and subsequently by F. Frabetti alone)

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

Re:

Application for annulment, principally, of the 2001/2002 appraisal exercise in relation to the applicants; and, alternatively, of the applicants' career development reviews for that exercise.

Operative part of the order

1. *The action is dismissed as partly manifestly inadmissible and, for the rest, as manifestly devoid of any legal basis.*

2. *The applicants are ordered to bear their own costs.*

(1) OJ C 168, 26.6.2004.

Order of the Court of First Instance of 14 May 2007 — Wauthier and Deveen v Commission

(Case T-164/04) ([1])

(Staff cases — Officials — Reports procedure — Career development review — 2001/2002 Appraisal exercise — Action manifestly inadmissible and manifestly devoid of any legal basis)

(2007/C 170/51)

Language of the case: French

Parties

Applicants: Patricia Wauthier (Tubize, Belgium) and Viviane Deveen (Overijse, Belgium) (represented by: G. Bounéou and F. Frabetti, lawyers, and subsequently by F. Frabetti alone)

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

Re:

Application for annulment, principally, of the 2001/2002 appraisal exercise in relation to the applicants; and, alternatively, of the applicants' career development reviews for that exercise.

Operative part of the order

1. *The action is dismissed as partly manifestly inadmissible and, for the rest, as manifestly devoid of any legal basis.*

2. *The applicants are ordered to bear their own costs.*

([1]) OJ C 190, 24.7.2004.

Order of the Court of First Instance of 14 May 2007 — Gnemmi v Commission

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

(Staff cases — Officials — Reports procedure — Career development review — 2003 Appraisal exercise — Action manifestly inadmissible and manifestly devoid of any legal basis)

(2007/C 170/52)

Language of the case: French

Parties

Applicant: Laura Gnemmi (Arona, Italy) (represented by: initially G. Bounéou and F. Frabetti, lawyers, and subsequently F. Frabetti alone)

Defendant: Commission of the European Communities (represented by: J. Berscheid and M. Velardo, acting as Agents)

Re:

Application for annulment, principally, of the 2003 appraisal exercise in relation to the applicant; and, alternatively, of the applicant's career development review for that exercise.

Operative part of the order

1. *The action is dismissed as partly manifestly inadmissible and, for the rest, as manifestly devoid of any legal basis.*

2. *The applicant is ordered to bear her own costs.*

([1]) OJ C 193, 6.8.2005.

Order of the Court of First Instance of 22 May 2007 — Italy v Commission

(Case T-335/06) ([1])

(Health requirements — Italian market for poultrymeat — Failure of the Commission to take exceptional measures to alleviate the consequences of the epidemic of avian influenza — Action for a declaration of failure to act — Definition of position bringing the failure to act to an end — No need to adjudicate)

(2007/C 170/53)

Language of the case: Italian

Parties

Applicant: Italian Republic (represented by G. Aiello, acting as Agent)

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

Re:

Action for a declaration of failure to act brought on the basis of Article 232 EC and seeking a declaration that the Commission failed to comply with the obligations imposed on it under Article 14 of Council Regulation (EEC) No 2777/75 of 29 October 1975 on the common organisation of the market in poultrymeat (OJ 1975 L 282, p. 77) by failing to adopt exceptional measures to support the market in the poultrymeat sector, in the form of compensation for the producers of day-old chickens affected by veterinary measures taken in order to alleviate the consequences of avian influenza and restricting their movement during the period from December 1999 to September 2003.

Operative part of the order

1. *There is no longer any need to adjudicate on the present action;*

2. *Each party is to bear its own costs.*

(1) OJ C 326, 30.12.2006.

Action brought on 18 May 2007 — Far Eastern Textile v Council

(Case T-167/07)

(2007/C 170/54)

Language of the case: English

Parties

Applicant: Far Eastern Textile Ltd (Taipei, Taiwan) (represented by: P. De Baere, lawyer)

Defendant: Council of the European Union

Form of order sought

— Annul Council Regulation (EC) No 192/2007 of 22 February 2007 imposing a definitive anti-dumping duty on imports of polyethylene terephthalate (PET) originating, *inter alia*, in Taiwan, insofar as it relates to the applicant; and

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

Pleas in law and main arguments

The applicant, who is a Taiwanese producer and exporter of polyethylene terephthalate ('PET'), seeks the annulment of Council Regulation (EC) No 192/2007 of 22 February 2007 imposing a definitive anti-dumping duty on imports of certain polyethylene terephthalate originating in India, Indonesia, Malaysia, the Republic of Korea, Thailand and Taiwan following an expiry review and a partial interim review pursuant to Article 11(2) and Article 11(3) of Regulation (EC) No 384/96 (1).

In support of its application, the applicant, first of all, submits that the Council violated Article 2(11) of the Basic Regulation (2) by applying the asymmetrical method to calculate the applicant's dumping margin.

Secondly, the applicant alleges that the Council violated Article 253 EC by failing to provide adequate reasons why the symmetrical comparison methods did not reflect the full degree of dumping.

Thirdly, the applicant contends that the Council violated Article 2(10), (11) and (12) of the Basic Regulation by calculating the applicant's dumping margin using zeroing techniques zeroing any negative dumping margins when calculating the weighted average dumping margin pursuant to Article 2(12).

Finally, the applicant alleges that the Council violated Article 253 EC by failing to state adequate reasons why the applicant's dumping margin must be calculated using zeroing techniques.

(1) OJ 2007 L 59, p. 1.
(2) Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (OJ 1996 L 56, p. 1).

Action brought on 16 May 2007 — Professional Tennis Registry v OHIM — Registro Profesional de Tenis (PTR PROFESSIONAL TENNIS REGISTRY)

(Case T-168/07)

(2007/C 170/55)

Language in which the application was lodged: English

Parties

Applicant: Professional Tennis Registry, Inc. (Hilton Head Island, United States) (represented by: M. Vanhegan, Barrister)

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

Other party to the proceedings before the Board of Appeal: Registro Profesional de Tenis, SL (Madrid, Spain)

Form of order sought

— Annulment of paragraph (1) of the First Board of Appeal's decision of 28 February 2007 (Case R 1050/2005-1), in which the applicant's Community trade mark application No 2 826 709 for the class 16 and 41 products and services was rejected;

— order that the opposition to the applicant's Community trade mark application No 2 826 709 be rejected in its entirety;

— order that the applicant's Community trade mark application No 2 826 709 proceed to grant in respect of all of the goods and services in classes 16, 25 and 41; and

— order that the defendant pays the applicant its costs incurred before the Board of Appeal and the Court of First Instance.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The figurative mark 'PTR PROFESSIONAL TENNIS REGISTRY' for goods and services in classes 16, 25 and 41 — application No 2 826 709

Proprietor of the mark or sign cited in the opposition proceedings: Registro Profesional de Tenis, SL

Mark or sign cited: The national figurative marks 'RPT Registro Profesional de Tenis, S.L' and 'RPT European Registry of Professional Tennis' for services in class 41

Decision of the Opposition Division: Rejection of the opposition in its entirety

Decision of the Board of Appeal: Partial annulment of the Opposition Division's decision and rejection of the trade mark application for the products and services in classes 16 and 41

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 40/94 as the Board of Appeal concluded that there was confusing similarity between the applicant's Community trade mark application and Registro Profesional de Tenis' earlier trade marks. The Board of Appeal failed to give proper consideration to the principles to be applied where the trade marks in issue are complex marks.

Action brought on 8 May 2007 — Opus Arte UK v OHMI — Arte (OPUS ARTE)

(Case T-170/07)

(2007/C 170/56)

Language in which the application was lodged: English

Parties

Applicant: Opus Arte UK Ltd (Waldron, England) (represented by: D. McFarland, Barrister, and J.A. Alchin, Solicitor)

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

Other party to the proceedings before the Board of Appeal: Arte G.E.I.E. (Strasbourg, France)

Form of order sought

The applicant requests the Court to:

— annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade marks and Designs) of 8 March 2007 in Case R 733/2005-1; 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: The applicant

Community trade mark concerned: The Community figurative mark 'Opus Arte' for goods and services in Class 9, 16, 25 and 41 — Application No 2 551 778

Proprietor of the mark or sign cited in the opposition proceedings: ARTE G.E.I.E.

Mark or sign cited: The Community and national figurative and word marks containing the word 'ARTE' for goods and services in Classes 9, 16, 25 and 41 among other Classes not concerned by the proceedings

Decision of the Opposition Division: Rejected the opposition in its entirety

Decision of the Board of Appeal: Upheld the appeal limited to Class 41 for 'film and television production and distribution' services and allowed registration to proceed for the remaining goods and services applied for.

Pleas in law:

The applicant advances two pleas in law in support of its application.

On the basis of its first plea, the applicant submits that the contested decision violates Articles 73 and 74 of Council Regulation (EC) No 40/94 (hereinafter 'the CTMR'). According to the applicant, the Board should have neither refused to take into account relevant facts, evidence and arguments submitted by the applicant, nor based its decision on assumptions of facts not previously raised by either party or on vague and unsubstantiated allegations made by the opponent.

By its second plea, the applicant contends that the contested decision infringes Article 8(1)(b) CTMR in finding a likelihood of confusion between 'ARTE' and 'OPUS ARTE'. According to the applicant, such a finding could not be based on the arguable similarity of the marks, nor could it properly rebut the presumptions by the positive evidence of lack of confusion and the actual lack of any evidence of confusion and the peaceful co-existence of the marks in the market place in Europe.

Action brought on 14 May 2007 — Avaya v OHMI — ZyXEL Communications (VANTAGE CNM)

(Case T-171/07)

(2007/C 170/57)

Language in which the application was lodged: English

Parties

Applicant: Avaya Inc. (Basking Ridge, USA) (represented by: A. Beschorner, B. Glaser, C. Thomas, lawyers)

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

Other party to the proceedings before the Board of Appeal: ZyXEL Communications Corp. (Hsin-Chu, Taiwan)

Form of order sought

— To annul the decision of the Second Board of Appeal No R 156/2006-2 of 14 March 2007 regarding Community trade mark application No 3 291 457 'VANTAGE CNM'; and

— to order the defendant to pay the costs incurred in the proceedings before the Court and to order the intervener to pay the costs of the administrative proceedings before the Board of Appeal.

Pleas in law and main arguments

Applicant for the Community trade mark: ZyXEL Communications Corp.

Community trade mark concerned: The Community figurative mark 'VANTAGE' for goods and services in Classes 9 and 42 — application No 3 291 457

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

Mark or sign cited: The Community word mark 'MULTIVANTAGE' for goods and services in Classes 9, 38 and 42 — application No 2 409 589

Decision of the Opposition Division: Rejected in its entirety

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: The applicant advances two different pleas in support of its application, namely, a breach of the principle of equal treatment and case-law consistency on the one hand, as well as the infringement of Article 8(1)(b) CTMR and the general principles of trade mark law on the other hand.

On the basis of its first plea, the applicant submits that the Board has departed from a previous decision rendered in a parallel case dealing with a nearly identical issue without giving any reasons for its sudden change in practice.

Furthermore, the applicant claims on the basis of its second plea, that the Board did not sufficiently consider the identity of the goods and services of the opposing marks as well as the high similarity of the marks themselves.

Action brought on 11 May 2007 — Atlantic Dawn and Others v Commission

(Case T-172/07)

(2007/C 170/58)

Language of the case: English

Parties

Applicants: Atlantic Dawn Ltd (Killybegs, Ireland), Antarctic Fishing Co. Ltd (Killybegs, Ireland), Atlantean Ltd (Killybegs, Ireland), Killybegs Fishing Enterprises Ltd (Killybegs, Ireland), Doyle Fishing Co. Ltd (Killybegs, Ireland), Western Seaboard Fishing Co. Ltd (Killybegs, Ireland), O'Shea Fishing Co. Ltd (Killybegs, Ireland), Aine Fishing Co. Ltd (Burtonport, Ireland), Brendelen Ltd (Lifford, Ireland), Cavankee Fishing Co. Ltd (Lifford, Ireland), Ocean Trawlers Ltd (Killybegs, Ireland), Eileen Oglesby (Burtonport, Ireland), Noel McGing (Killybegs, Ireland), Mullglen Ltd (Balbriggan, Ireland), Bradan Fishing Co. Ltd (Sligo, Ireland), Larry Murphy (Castletownbere, Ireland), Pauric Conneelly (Claregalway, Ireland), Thomas Flaherty (Kilronan, Ireland), Carmarose Trawling Co. Ltd (Killybegs, Ireland), Colmcille Fishing Ltd (Killybegs, Ireland) (represented by: D. Barry, Solicitor, G. Hogan, SC, N. Travers and T. O'Sullivan, Barristers)

Defendant: Commission of the European Communities

Form of order sought

The applicants respectfully request the Court to:

— Annul Commission Regulation (EC) No 147/2007 of 15 February 2007 adapting certain fish quotas from 2007 to 2012 pursuant to Article 23(4) of Council Regulation (EC) No 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy; in the alternative

— annul Article 1 of and Annex I to Commission Regulation (EC) No 147/2007 of 15 February 2007 adapting certain fish quotas from 2007 to 2012 pursuant to Article 23(4) of Council Regulation (EC) No 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy in so far and to the extent that the said provisions reduce the quota allocated to Ireland for mackerel (*Scomber scombrus*) for the years 2007 to 2012;

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

Pleas in law and main arguments

By means of their application, the applicants seek pursuant to Article 230 EC, the annulment of Commission Regulation (EC) No 147/2007 of 15 February 2007 adapting certain fish quotas from 2007 to 2012 pursuant to Article 23(4) of Council Regulation (EC) No 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy ([1]).

The applicants submit that the contested regulation should be invalidated on the basis of four grounds:

First, the applicants claim that the Commission lacked power to adopt the contested regulation reducing quotas in 2007 to 2012 on the basis of Article 23(4) of Council Regulation 2371/2002.

In the alternative, the applicants submit that should the Court conclude that the Commission was empowered to effect quota deductions for several years into the future on the basis of historic over-fishing, the Commission has allegedly misused its power in this case. In fact, the applicants contend that the Commission has not established that the Member States concerned by the contested regulation, namely, Ireland and the United Kingdom, have exceeded the fishing opportunities allocated to them, as required by Article 23(4) of the said regulation for deduction of quotas. Moreover, the applicants maintain that the Commission's sudden change of its established policy of deducting quotas on a 'previous year basis' departing from the wording and derived practice of Article 5 of Council Regulation 874/96, has breached the principle of legitimate expectations.

Furthermore, the applicants claim that the Commission failed to provide reasons motivating its decision as required by Article 253 EC. On this basis, they submit that the contested regulation is inadequately reasoned, in particular, since it represents a clear and radical shift of policy with seriously adverse implications for the applicants.

Finally, the applicants submit that the Commission has acted in breach of the principle of equal treatment by not taking measures equivalent to those contained in the contested regulation against any other fishing fleet, in circumstances where significant over-fishing of similarly threatened fish stock was reported.

([1]) OJ L 46, 16.2.2007, p. 10.

Action brought on 18 May 2007 — Reno Schuhcentrum v OHIM — Payless ShoeSource Worldwide (Payless ShoeSource)

(Case T-173/07)

(2007/C 170/59)

Language in which the application was lodged: English

Parties

Applicant: Reno Schuhcentrum GmbH (Thaleischweiler-Fröschen, Germany) (represented by: S. Schäffner, lawyer)

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

Other party to the proceedings before the Board of Appeal: Payless ShoeSource Worldwide, Inc. (Topeka, United States)

Form of order sought

The applicant claims the Court to:

— annul the decision of the First Board of Appeal of the OHIM of 28 February 2007 (Case R 1209/2005-1), dismissing the appeal relating to revocation proceedings No 731C 0000 186 163/1 (Community trade mark No 186 163 — Payless ShoeSource);

— order the OHIM to pay the costs.

Pleas in law and main arguments

Registered Community trade mark subject of the application for revocation: The figurative Community trade mark 'Payless ShoeSource' for goods and services in Classes 25, 35 and 42 — application No 186 163

Proprietor of the Community trade mark: Payless ShoeSource Worldwide, Inc.

Party requesting the revocation of the Community trade mark: Reno Schuhcentrum GmbH

Decision of the Cancellation Division: Rejected the revocation request partially, maintaining registration for goods and services in Class 25 in force.

Decision of the Board of Appeal: Dismissed the appeal directed against the remaining goods and services in Class 25.

Pleas in law: The applicant claims that the contested decision is vitiated by an essential procedural requirement in respect of Article 74 CTMR and the burden of proof. According to the applicant, in revocation proceedings, the burden of proof in respect of genuine use lies with the proprietor of the trade mark. Moreover, the applicant submits that the Office cannot examine the facts on its own motion but its examination should be confined to the assessment of the facts, evidence and arguments provided by the parties and the relief sought. Thus, the applicant claims that the Board's communication of 18 October 2006 on the basis of which the trade mark proprietor was invited to submit the originals of specific statutory declarations should be declared inadmissible, in particular since the Board had previously found the initial evidence submitted by the trade mark proprietor to be insufficient to establish genuine use.

Furthermore, the applicant claims that the said originals were not submitted within the required deadline, in accordance to Article 74(2) CTMR and therefore should not be admitted.

In addition, the applicant submits that the Board erred in its interpretation of the concept of genuine use infringing thereby Article 15 CTMR.

Action brought on 23 May 2007 — Mediaset v Commission

(Case T-177/07)

(2007/C 170/60)

Language of the case: English

Parties

Applicant: Mediaset SpA (Milan, Italy) (represented by: D. O'Keeffe, Solicitor, K. Adamantopoulos and G. Rossi, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Annul, on the basis of Article 230 of the EC Treaty, (ex Article 173), the Commission's decision of 24 January 2007 on the State aid C 52/2005 which the Republic of Italy has implemented in relation to the subsidy of digital decoders in Italy, in particular Articles 1 to 3 thereof;

— order that all the costs occasioned by the applicant in the course of the present proceedings be borne by the defendant.

Pleas in law and main arguments

The applicant seeks the annulment of Commission Decision C(2006) 6634 final [1] of 24 January 2007 by which the Commission found that the scheme put in place by Italy in favour of digital terrestrial broadcasters offering Pay-TV services and cable Pay-TV operators constitutes State aid which is incompatible with the common market.

The applicant, who is a beneficiary of the State aid in question, invokes the following pleas in law.

First of all, the applicant submits that the Commission committed an error of law in the application and interpretation of Article 87(1) EC insofar as i) the Commission considered aid granted directly to the consumers to fall within the ambit of Article 87(1) EC; ii) the Commission concluded that the measure conferred a selective 'economic advantage' on the applicant; iii) the Commission concluded that the measure is selective because it allegedly is discriminatory, and iv) the Commission considered the measure to distort competition in the common market.

The applicant furthermore claims that the Commission committed a manifest error of appraisal and a manifest error of law by concluding that the measure was not compatible with the common market pursuant to Article 87(3)(c) EC.

Moreover, the applicant alleges that the Commission infringed an essential procedural requirement by giving contradictory and insufficient reasoning contrary to Article 253 EC.

Finally, the applicant argues that the Commission infringed Article 14 of Council Regulation No 659/1999 [2] in ordering recovery of the measure, because it failed to see that i) the applicant had legitimate expectations to assume the alleged aid was lawful and ii) because it is impossible to establish the amount of the aid and identify the potential indirect beneficiaries.

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[1] C 52/2005 (ex NN 88/2005, ex CP 101/2004).

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

Action brought on 21 May 2007 — Euro-Information v OHIM

(Case T-178/07)

(2007/C 170/61)

Language of the case: French

Parties

Applicant: Société Européenne de traitement de l'Information SAS (Strasbourg, France) (represented by P. Greffe and J. Schouman, laywers)

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

Form of order sought

— annul the decision of the First Board of Appeal of OHIM of 15 March 2007, Case R 1249/2006-1, in so far as it refused to grant its Community trade mark application CYBER-HOME No 4 114 666 for part of the goods and services applied for in Classes 9, 36 and 38;

— the granting of its Community trade mark application CYBERHOME No 4 114 666 for all the goods and services applied for

Pleas in law and main arguments

Community trade mark concerned: Word mark 'CYBERHOME' for goods and services in Classes 9, 36 and 38 (application No 4 114 666)

Decision of the Examiner: Registration refused

Decision of the Board of Appeal: Appeal dismissed

Pleas in law: The applicant submits that, contrary to the Board of Appeal of OHIM's finding in the contested decision, its mark is arbitrary and is sufficiently distinctive in relation to the goods and services applied for to meet the requirements of Council Regulation No 40/94 ([1]).

([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 23 May 2007 — Anvil Knitwear v OHIM — Aprile e Aprile (Aprile)

(Case T-179/07)

(2007/C 170/62)

Language in which the application was lodged: English

Parties

Applicant: Anvil Knitwear, Inc. (New York, USA) (represented by: G. Würtenberger, T. Wittmann, lawyers, and R. Kunze, Solicitor)

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

Other party to the proceedings before the Board of Appeal: Aprile e Aprile Srl (Frazione Funo, Italy)

Form of order sought

— The decision of the Second Board of Appeal of 22 March 2007 in Case R 1076/2006-2 concerning the opposition based on German trade mark registration No 30 011 766 'ANVIL' against Community trade mark application No 3 800 232 'Aprile' & device be annulled;

— the opposition against Community trade mark application No 3 800 232 'Aprile' & device be granted and application for registration of Community trade mark No 3 800 232 'Aprile' & device be rejected;

— defendant pay the costs of the proceedings.

Pleas in law and main arguments

Applicant for the Community trade mark: Aprile e Aprile Srl

Community trade mark concerned: The figurative mark 'Aprile' for goods in classes 18 and 25 — application No 3 800 232

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

Mark or sign cited: The national word mark 'ANVIL' for goods in class 25

Decision of the Opposition Division: Rejection of the opposition in its entirety

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Articles 8(1), 73 and 74 of Council Regulation No 40/94 as the Board of Appeal did not evaluate the aspects of the partial identity and partial similarity of the goods in question as well as the increased distinctiveness of the earlier mark. Furthermore the Board of Appeal did neither objectively nor without prejudice state the reasons on which its decision was based, nor did it take the uncontested facts of the proceedings properly into account.

Action brought on 25 May 2007 — Eurocopter v OHIM (STEADYCONTROL)

(Case T-181/07)

(2007/C 170/63)

Language of the case: French

Parties

Applicant: Eurocopter (Marignane, France) (represented by E. Soler Borda, lawyer)

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

Form of order sought

— annulment of the decision of the Fourth Board of Appeal of OHIM of 12 March 2007 concerning the application for a Community trade mark STEADYCONTROL No 3 560 935 (R 8/2006-4) in its entirety.

Pleas in law and main arguments

Community trade mark concerned: Word mark 'STEADYCONTROL' in respect of goods in Classes 9, 12 and 38 (application No 3 560 935)

Decision of the Examiner: Partial refusal of registration in respect of products in Classes 9 and 12

Decision of the Board of Appeal: Appeal dismissed

Pleas in law: Infringement of Article 7(1)(b) and (c) and of Article 7(2) of Council Regulation No 40/94 ([1]) in so far as, according to the applicant and in contrast to the grounds of the contested decision, the word 'STEADYCONTROL' is not descriptive and allows the goods applied for to be distinguished.

([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 29 May 2007 — Borco-Marken-Import Matthiesen v OHMI — Tequilas del Señor (TEQUILA GOLD Sombrero Negro)

(Case T-182/07)

(2007/C 170/64)

Language in which the application was lodged: English

Parties

Applicant: Borco-Marken-Import Matthiesen GmbH & Co. KG (Hamburg, Germany) (represented by: M. Wolter, laywer)

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

Other party to the proceedings before the Board of Appeal: Tequilas del Señor S A de CV (Guadalajara, Mexico)

Form of order sought

The applicant requests that:

— 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 in Case R 1285/2005-1 be annulled;

— the Office for Harmonisation in the Internal Market (Trade Marks and Designs) be ordered to pay the costs incurred by the applicant.

Pleas in law and main arguments

Applicant for the Community trade mark: Tequilas del Señor SA de CV

Community trade mark concerned: The figurative Community trade mark 'TEQUILA GOLD Sombrero Negro' for goods in Class 33 — application No 2 722 122

Proprietor of the mark or sign cited in the opposition proceedings: Borco-Marken-Import Matthiesen GmbH & Co. KG

Mark or sign cited: The figurative national trade marks containing the word elements 'SIERRA' and 'CACTUS JACK SHOOTER' as well as the figurative national trade mark picturing a 'red sombrero hat' for goods in Class 33

Decision of the Opposition Division: Rejected the opposition

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation (EC) No 40/94.

Action brought on 25 May 2007 — Avon Products v OHIM (ANEW ALTERNATIVE)

(Case T-184/07)

(2007/C 170/65)

Language of the case: English

Parties

Applicant: Avon Products, Inc. (New York, United States) (represented by: C. Heitmann-Lichtenstein, lawyer)

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

Form of order sought

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 22 March 2007 in Case R 1471/2006-2;

— order the defendant to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: The word mark 'ANEW ALTERNATIVE' for goods in class 3 — application No 4 357 919

Decision of the examiner: Refusal of the application

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 7(1)(b) and (c) of Council Regulation No 40/94 and of the principle of equal treatment.

Action brought on 29 May 2007 — Calvin Klein Trademark Trust v OHIM — Zafra Marroquineros (CK CREACIONES KENNYA)

(Case T-185/07)

(2007/C 170/66)

Language in which the application was lodged: Spanish

Parties

Applicant: Calvin Klein Trademark Trust (Delaware, United States) (represented by: T. Andrade Boué, M.I. Lehmann Novo and A. Hernández Lehmann, 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: Zafra Marroquineros, S.L.

Form of order sought

— annulment of the contested decision of 29 March 2007 in Case R 314/2006-2;

— rejection of Community word mark No 3 386 604 CK CREACIONES KENNYA;

— order OHIM to pay the costs including those of the intervener.

Pleas in law and main arguments

Applicant for a Community trade mark: Zafra Marroquineros, S.L.

Community trade mark concerned: The word mark 'CK CREACIONES KENNYA' for goods in Classes 18 and 25 (application No 3.386.604).

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

Mark or sign cited in opposition: Primarily the Community figurative mark 'CK Calvin Klein' (mark No 66.712) for goods and services in Classes 3, 4, 8, 9, 14, 16, 20, 21, 24-27, 35 and 42 and the national marks 'CK' for goods in Classes 18 and 25.

Decision of the Opposition Division: Rejection of the opposition.

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

Pleas in law: Infringement of Article 8(1) and (5) of Regulation (EC) No 40/94 [1] since there exists a likelihood of confusion between the marks in dispute and the mark 'CK' is well known.

[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 29 May 2007 — Ashoka v OHIM (DREAM IT, DO IT!)

(Case T-186/07)

(2007/C 170/67)

Language of the case: English

Parties

Applicant: Ashoka (Arlington, United States) (represented by: A. Link and A. Jaeger-Lenz, lawyers)

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) (OHIM) of 15 March 2007 (Case R 635/2006-1);

— order OHIM to bear its own costs and to pay those incurred by the applicant.

Pleas in law and main arguments

Community trade mark concerned: The word mark 'DREAM IT, DO IT!' for services in classes 35, 36, 41 and 45 — application No 3 844 792

Decision of the examiner: Refusal of the application

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 7(1)(b) of Council Regulation No 40/94 as the trade mark applied for will be perceived by the relevant public as coming from a particular undertaking since it has not become customary in the current language or in the practices of trade as a designation of the services covered by it.

Action brought on 28 May 2007 — Fastweb v Commission

(Case T-188/07)

(2007/C 170/68)

Language of the case: Italian

Parties

Applicant: Fastweb SpA (represented by: M. Merloa, of its Legal Service, T. Ubalidi, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— annul the Commission's decision (C(2006) 6634 final) of 24 January 2007 relating to State aid C52/2005 (ex NN 88/2005, ex CP 101/2004) in so far as it classifies as unlawful State aid which is incompatible with the common market measures which Italy implemented by providing subsidies for the purchase of digital decoders to terrestrial broadcasters offering pay-TV services and cable pay-TV operators (Article 1 of the decision);

— annul the Commission's decision (C(2006) 6634 final) of 24 January 2007 in so far as it orders Italy to recover the aid declared incompatible from the beneficiaries and in particular from the applicant (Articles 2 and 3 of the decision);

— order the Commission to pay the costs.

Pleas in law and main arguments

The contested decision in the present case is the same as that in Case T-96/07 *Telecom Italia Media* v *Commission* [1].

The following grounds of annulment are submitted in support of the action:

— infringement of Article 87(1) of the EC Treaty, inadequate reasoning and failure to conduct a proper investigation concerning the classification of the measures as State aid. The applicant submits in particular that the measures in question do not constitute State aid in that they do not entail a transfer of State resources to the alleged beneficiaries and do not confer on them a selective advantage to the detriment of competitors.

— Infringement of Article 87(1) of the EC Treaty, contradictory and inadequate reasoning with regard to the identification and existence of an economic advantage in favour of the alleged beneficiaries of the aid. The applicant states that the Commission's assessment of the identification of the form of aid, that is, the economic advantage which the alleged beneficiaries would have enjoyed, is inadequate and that the statement of reasons is manifestly contradictory. The decision is also vitiated in that if fails to demonstrate in what manner the subsidies granted to consumers to purchase decoders necessarily, automatically and indisputably conferred an economic advantage on the alleged beneficiaries of the measures.

— A failure to state adequate reasons with regard to the quantification of the aid to be recovered from the beneficiaries and unlawfulness of the order for recovery on the basis that it infringes the rules of the Treaty on State aid and Article 14 of Council Regulation (EC) No 659/1999 of 22 March 1999. The applicant submits that the Commission's quantification of the advantage which would have been conferred on the alleged beneficiaries of the proposed measures is based on inadequate reasoning and goes beyond the powers conferred on the Commission by the EC Treaty and by the procedural regulation for State aid.

— Unlawfulness of the order for recovery in that it is absolutely and objectively impossible from the outset to implement it, a failure to state adequate reasons and infringement of Article 14(1) of Council Regulation (EC) No 659/1999 of 22 March 1999 and of the principle of proportionality.

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[1] OJ L 117, 29.5.2007, p. 32.

Action brought on 4 June 2007 — Comité de défense de la viticulture charentaise v Commission

(Case T-192/07)

(2007/C 170/69)

Language of the case: French

Parties

Applicant: Comité de défense de la viticulture charentaise (Committee for the protection of wine-growing in the Charente) (Sainte-Sévère, France) (represented by: C.-E. Gudin, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— annul Commission decision No SG-Greffe (2007) D-20276 of 3 April 2007 addressed to the applicant's representative and thus declare void the measure contested in this action;

— declare null and void in its entirety the Commission's decision by which it dismisses the applicant's complaint.

Pleas in law and main arguments

By decision of 3 April 2007 the Commission decided not to allow the applicant's complaint concerning the alleged infringement of Article 81 EC by the Institut National des Appellations d'Origine (INAO) (National Institute of Designations of Origin) in France and the alleged infringement of Articles 81 EC and 82 EC by the major firms trading in cognac spirit (Case COMP/38863/B2-MODEF). By this action, the applicant is seeking the annulment of that decision.

In support of its action, the applicant puts forward three pleas.

The first plea relates to the alleged lack of competence of the Commission member who was the signatory to the contested measure, when he signed it 'on behalf of the Commission'.

Second, the applicant submits that the decision did not contain a sufficient statement of reasons in so far as the Commission did not respond in the letter rejecting the complaint to all the information submitted by the applicant.

By its third plea, the applicant claims that the Commission did not give sufficiently serious consideration to the complaint.

Action brought on 5 June 2007 — Górażdże Cement v Commission

(Case T-193/07)

(2007/C 170/70)

Language of the case: English

Parties

Applicant: Górażdże Cement S.A. (Chorula, Poland) (represented by: R. Forbes, Solicitor and P. Muñiz, lawyer)

Defendant: Commission of the European Communities

Form of order sought

The applicant claims the Court should:

— annul the contested decision;

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

Pleas in law and main arguments

The applicant submits five grounds on the basis of which the Commission decision of 26 March 2007 rejecting the national allocation plan (hereinafter 'the NAP') for the allocation of greenhouse gas emission allowances notified by Poland in accordance with directive 2003/87/EC of the European Parliament and Council [1] (hereinafter 'the Directive') should be invalidated:

a) The applicant claims that the contested decision infringes Article 9(3) of the Directive since a negative decision could only have been taken within three months of the NAP notification. The applicant further claims that it had a legitimate expectation that any rejection decision would have been adopted within three months, and that the NAP should be considered as having been accepted at the expiry of this deadline.

b) The applicant submits that the contested decision is contrary to Articles 9(3) and 11(2) of the Directive in that it restricts the type of amendments that can be proposed by the Member State concerned and, in particular, since it allegedly prevents amendments to the total amount of allowances. However, according to the applicant, the Directive does not limit the freedom of Member States to propose amendments.

c) According to the applicant the contested decision usurps the Member State's competence as it leads to the Commission effectively unilaterally deciding on the final content of the NAP. This infringes the distribution of competences in Articles 9 and 11 of the Directive, as well as Article 10 EC on the principle of loyal cooperation.

d) Moreover, the applicant contends that the contested decision has incorrectly applied criteria 2 and 3 in Annex III to the Directive by not trying on the most representative emission figures which led to an error of assessment of the facts.

e) Finally, the applicant claims that the contested decision has infringed Article 30(2)(i) and Criterion 1 in Annex III of the Directive ignoring the special situation of Poland as a new Member State and imposing stricter obligations than those required under the Kyoto Protocol.

(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 2003 L 275, p. 32).

Action brought on 5 June 2007 — Lafarge Cement v Commission

(Case T-195/07)

(2007/C 170/71)

Language of the case: Polish

Parties

Applicant: Lafarge Cement SA (represented by: P.K. Rosiak, legal adviser, and F. Puel, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— annul the Commission's decision 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;

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicant seeks the 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. The decision in question reduces the carbon dioxide emission limit in 2008-2012 by 26.7 % compared to the limit proposed by Poland in the national allocation plan for emission allowances notified to the Commission.

In support of its application, the applicant submits that the contested decision was adopted after the expiry of the three-month period for its adoption defined in Article 9(3) of Directive 2003/87/EC. As a result, according to the applicant, on 26 March 2007 the Commission was not entitled to adopt the contested decision or at least breached essential procedural requirements.

The applicant criticises the Commission, secondly, in that the contested decision infringes criteria 1 and 2 in Annex III to Directive 2003/87/EC, unjustifiably reducing the allocation of allowances made by Poland to a level markedly lower than that first notified, which had been consistent with the obligations assumed by Poland on the basis of the Kyoto Protocol.

The applicant further submits that, by adopting the contested decision, the Commission infringed the provisions of Article 9(3) in conjunction with Article 11(2) of Directive 2003/87/EC and the principle of legitimate expectations and the principle of cooperation, in so far as, instead of exercising the limited powers defined in Article 9(3) of Directive 2003/87/EC, without taking into account the methodologies contained in the National Allocation Plan II, it applied in the contested decision its own method of determining the average annual maximum number of allowances allocated to Poland and imposed it on Poland, usurping powers which the directive confers on the Member State. According to the applicant, the Commission infringed the principle of cooperation between the institutions of the Community and of the Member States by not informing Poland of the application of its own economic model before adopting the contested decision, thereby depriving Poland and the interested undertakings of the possibility of expressing an opinion on the subject of its appropriateness and possibly calling into question the data and bases underlying the Commission's conclusions.

In the fourth place, the applicant submits that the Commission infringed criterion 3 in Annex III to Directive 2003/87/EC by making use in the contested decision of out-of-date data concerning the forecast growth of the GNP, using too general data for calculating the CO_2 emission index, and arbitrarily reducing the annual degree of CO_2 emissions by an additional 2.5 %.

Finally, the applicant submits that the contested decision is not adequately reasoned and for that reason infringes Article 253 EC.

(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).

Action brought on 5 June 2007 — Dyckerhoff Polska v Commission

(Case T-196/07)

(2007/C 170/72)

Language of the case: Polish

Parties

Applicant: Dyckerhoff Polska sp. z o. o. (represented by: P.K. Rosiak, legal adviser, and F. Puel, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— annul the Commission's decision 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;

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicant seeks the 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. The decision in question reduces the carbon dioxide emission limit in 2008-2012 by 26.7 % compared to the limit proposed by Poland in the national allocation plan for emission allowances notified to the Commission.

The pleas in law and main arguments put forward by the applicant are the same as those of the applicant in Case T-195/07.

(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).

Action brought on 5 June 2007 — Grupa Ożarów v Commission

(Case T-197/07)

(2007/C 170/73)

Language of the case: Polish

Parties

Applicant: Grupa Ożarów SA (represented by: P.K. Rosiak, legal adviser, and F. Puel, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— annul the Commission's decision 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;

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicant seeks the 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. The decision in question reduces the carbon dioxide emission limit in 2008-2012 by 26.7 % compared to the limit proposed by Poland in the national allocation plan for emission allowances notified to the Commission.

The pleas in law and main arguments put forward by the applicant are the same as those of the applicant in Case T-195/07.

(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).

Action brought on 5 June 2007 — Cementownia 'Warta' v Commission

(Case T-198/07)

(2007/C 170/74)

Language of the case: Polish

Parties

Applicant: Cementownia 'Warta' SA (represented by: P.K. Rosiak, legal adviser, and F. Puel, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— annul the Commission's decision 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;

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicant seeks the 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. The decision in question reduces the carbon dioxide emission limit in 2008-2012 by 26.7 % compared to the limit proposed by Poland in the national allocation plan for emission allowances notified to the Commission.

The pleas in law and main arguments put forward by the applicant are the same as those of the applicant in Case T-195/07.

(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).

Action brought on 5 June 2007 — Cementownia 'Odra' v Commission

(Case T-199/07)

(2007/C 170/75)

Language of the case: Polish

Parties

Applicant: Cementownia 'Odra' SA (represented by: P.K. Rosiak, legal adviser, and F. Puel, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— annul the Commission's decision 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;

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicant seeks the 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. The decision in question reduces the carbon dioxide emission limit in 2008-2012 by 26.7 % compared to the limit proposed by Poland in the national allocation plan for emission allowances notified to the Commission.

The pleas in law and main arguments put forward by the applicant are the same as those of the applicant in Case T-195/07.

(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).

Action brought on 5 June 2007 — Cemex Polska v Commission

(Case T-203/07)

(2007/C 170/76)

Language of the case: Polish

Parties

Applicant: Cemex Polska sp. z o. o. (represented by: F. Puel and M. Szpunar, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— annul the Commission's decision 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;

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicant seeks the 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. The decision in question reduces the carbon dioxide emission limit in 2008-2012 by 26.7 % compared to the limit proposed by Poland in the national allocation plan for emission allowances notified to the Commission.

The pleas in law and main arguments put forward by the applicant are the same as those of the applicant in Case T-195/07.

(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).

Action brought on 4 June 2007 — Italy v Commission

(Case T-204/07)

(2007/C 170/77)

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 Memorandum No 03059 of 26 March 2007 of the European Commission, Directorate General for Regional Policy — Programmes and projects in Cyprus, Greece, Hungary, Italy, Malta and the Netherlands, concerning POR Sardegna 2000-20006 (No CCI 1999 IT 16 1PO 010) — Payments made by the Commission which differ from the amount requested;

— annul Memorandum No 04718 of 14 May 2007 of the European Commission, Directorate General for Regional Policy — Programmes and projects in Cyprus, Greece, Hungary, Italy, Malta and the Netherlands, concerning POR Sardegna 2000-2006 (No CCI 1999 IT 16 1PO 010) — Payments made by the Commission which differ from the amount requested;

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

Pleas in law and main arguments

The pleas in law and main arguments are the same as those relied on in Case T-345/04 *Italian Republic* v *Commission* (1).

(1) OJ C 262, 23.10.2004, p. 55.

Action brought on 4 June 2007 — Italy v Commission

(Case T-205/07)

(2007/C 170/78)

Language of the case: Italian

Parties

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

Defendant: Commission of the European Communities

Form of order sought

— Annul the Call for expressions of interest to constitute a database of candidates to be recruited as contracts agents carrying out various activities within the European institutions and agencies, EPSO/CAST/EU/27/07, published only in English, French and German on the EPSO website http://europe.eu.epso/cast27/call on 27 March 2007.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those relied on in Case T-156/07 *Spain* v *Commission*.

Action brought on 12 June 2007 — Foshan Shunde Yongjian Housewares & Hardware v Council

(Case T-206/07)

(2007/C 170/79)

Language of the case: French

Parties

Applicant: Foshan Shunde Yongjian Housewares & Hardware (represented by: J.-F. Bellis, lawyer, and G. Vallera. Barrister)

Defendant: Council of the European Union

Form of order sought

— Annul the antidumping duty imposed with respect to the applicant by Council Regulation (EC) No 452/2007 of 23 April 2007 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of ironing boards originating in the People's Republic of China and Ukraine;

— order the Council to pay the costs.

Pleas in law and main arguments

On 23 April 2007, the Council adopted, on the basis of the Commission's proposal, Regulation (EC) No 452/2007 of 23 April 2007 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of ironing boards originating in the People's Republic of China and Ukraine ([1]). That regulation, which is the subject of this action, establishes anti-dumpting duty with respect to the applicant.

In its action, the applicant claims that the definitive anti-dumping duty which was imposed on it is illegal inasmuch as the proposal for definitive measures submitted by the Commission to the Council, on which the contested regulation is founded, is flawed in two ways.

First of all, the applicant submits that the proposal sent to the Council by the Commission was not founded on the definitive findings reached by the Commission, but on the provisional findings. The applicant maintains that the Commission erred in interpreting Article 2(7)(c) of Regulation (EC) No 384/96 ([2]) as prohibiting it from correcting the initial determination of the treatment to be given to an undertaking in the light of that provision. The applicant therefore alleges that the Commission's proposal on definitive measures is vitiated by a manifest error in law.

In addition, the applicant submits that the proposal for definitive measures is vitiated by an infringement of the essential procedural requirements in so far as it was adopted in breach of the rights of the defence and of Article 20(5) of Regulation No 384/96. In support of that plea, the applicant submits that the Commission sent its proposal to the Council *before* the expiry of the period for lodging its representations on the revised final disclosure on which the proposal is founded.

([1]) OJ 2000 L 109, p. 12.

([2]) Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Judgment of the Civil Service Tribunal (Second Chamber) of 14 June 2007 — De Meerleer v Commission

(Case F-121/05) ([1])

(Staff case — Officials — Open Competition — Non-admission to the written tests — Professional experience — Obligation to state reasons — Communication of the decision of the selection board — Request for re-examination)

(2007/C 170/80)

Language of the case: French

Parties

Applicant: Michel De Meerleer (Ophain-Bois-Seigneur-Isaac, Belgium) (represented by: E. Boigelet, lawyer)

Defendant: Commission of the European Communities (represented by: C. Berardis-Kayser and K. Herrmann, Agents)

Re:

First, annulment of the decisions of the Selection Board in competition EPSO/A/19/04 not to accept the applicant's candidature and not to reach a decision on his request for re-examination, and second, an application for damages

Operative part of the judgment

The Tribunal:

1. *Dismisses the application;*

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

([1]) OJ C 60, 11.3.2006, p. 52.

Action brought on 18 May 2007 — Tzirani v Commission of the European Communities

(Case F-46/07)

(2007/C 170/81)

Language of the case: French

Parties

Applicant: Marie Tzirani (Brussels, Belgium) (represented by: E. Boigelot, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— Annul the decision of the European Commission of 30 August 2006 to reappoint Mr X to the post of Director of the Directorate 'Staff Regulations: Policy, Management and Advisory Services' of the Directorate-General 'Personnel and Administration' and consequently to reject the applicant's candidature for that post;

— Order the defendant to pay, in compensation for non-material and material damage and impairment to the applicant's career, a sum of EUR 25 000, with interest at the rate of 7 % per annum since 29 November 2006, the date of the complaint;

— Order the defendant to pay the costs.

Pleas in law and main arguments

The applicant, after requesting and obtaining, in Case T-45/04 ([1]), the annulment of the decision of the Commission of 21 January 2003 to appoint Mr X to the above-mentioned post, now challenges the lawfulness of the procedure according to which, following this annulment, the Commission reappointed the same person to the post in question.

In support of her action, the applicant pleads first the infringement of Article 233 EC, as a result of the Commission failing to take the necessary measures to comply with the judgment of the Court of First Instance. According to the applicant, the procedure should have been reopened not only at the final stage of the interview with the Commissioner but already at the stage of the checking of the eligibility of the candidates in the light of the criteria established by the vacancy notice.

The applicant furthermore pleads the infringement of Articles 7, 14, 29 and 45 of the Staff Regulations of Officials of the European Communities, the disregard of several general legal principles and the misuse of powers.

(1) Judgment of the Court of First Instance of 4 July 2006, *Tzirani* v *Commission* (not yet published in the ECR).

Action brought on 21 May 2007 –Behmer v Parliament

(Case F-47/07)

(2007/C 170/82)

Language of the case: French

Parties

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

Defendant: European Parliament

Form of order sought

— Declare unlawful the decision of the Bureau of the European Parliament relating to the 'Policy on promotion and on career planning' of 6 July 2005 and the 'Implementing measures relating to the award of merit points and to promotion' of 25 July 2005;

— Annul the decision of the appointing authority not to promote the applicant to grade A*13 with effect from 1 January 2005 in the 2005 promotions procedure;

— Order the defendant to pay the costs.

Pleas in law and main arguments

The applicant, a grade AD12 official of the European Parliament who is currently Vice-President of the Trade Union of the European Public Service, Luxembourg (Union Syndicale Luxembourg), pleads in the first place the unlawfulness of the decisions referred to in the first indent above, which are in his opinion general provisions for giving effect to the Staff Regulations of Officials of the European Communities ('Staff Regulations') for the purposes of Article 110 thereof.

The applicant also pleads infringement of Article 45 of the Staff Regulations and of the principles governing reasonable career prospects, equality of treatment and the duty to give reasons, and he also pleads a manifest error of assessment. In particular, he asserts that the administration, after annulling, following his first complaint, the decision to award him 2 merit points, should have promoted him to grade AD13.

Finally, the applicant contends that he was discriminated against because of his activities as a representative of the personnel, contrary to Article 1d and 24b of the Staff Regulations, to the sixth paragraph of Article 1 of Annex II of the Staff Regulations and to Article 17 of the Agreement of 12 July 1990 between the European Parliament and the trade unions or staff associations of the personnel of the institution.

Action brought on 30 May 2007 — Bui Van v Commission

(Case F-51/07)

(2007/C 170/83)

Language of the case: French

Parties

Applicant: Philippe Bui Van (Hettange Grande, France) (represented by: S. Rodrigues and R. Albelice, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— annul the decision of the Appointing Authority of 5 March 2007 not to accept the applicant's complaint;

— annul the decision of the Director General of the Joint Research Centre (JRC) of 4 October 2006 in so far as it reclassifies the applicant in Grade AST 3, Step 2, whereas he had initially been classified in Grade AST 4, Step 2;

— state to the Appointing Authority the consequences of the annulment of the contested decisions and, in particular, classification in Grade AST 4, Step 2, the retroactive effect of appointment in Grade AST 4, Step 2, from the date the post was first taken up, the consequences in regard to different remuneration and default interest on the payment of the difference, as well as consequences in regard to promotion;

— award the applicant the symbolic sum of one euro by way of compensation for his non-material loss;

— order the defendant to pay the costs.

Pleas in law and main arguments

The applicant, a successful candidate in Open Competition EPSO/B/23/04 ([1]) for the establishment of a reserve list for the recruitment of laboratory technicians in Grade B5/B4, was appointed as a probationary official after 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 of the European Communities ([2]). An initial decision of 28 June 2006 classifying the applicant in Grade AST 4 was withdrawn and replaced by the contested decision classifying the applicant in Grade AST 3.

In support of his application, the applicant relies first on infringement of the principles of equal treatment and non-discrimination, in particular in so far as some of his colleagues, who had been similarly downgraded, were reclassified in Grade AST 4 at the end of the pre-litigation procedure.

Second, the applicant pleads a manifest error of assessment and breach of the principles of legal certainty and protection of legitimate expectations. The applicant submits, in particular, that the decision of 28 June 2006 was not withdrawn within a reasonable time.

([1]) OJ C 81 A, 31.3.2004, p. 17.
([2]) OJ L 124, 27.4.2004, p. 1.