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(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS AND BODIES

COURT OF JUSTICE

(2007/C 211/01)

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

OJ C 199, 25.8.2007

Past publications

OJ C 183, 4.8.2007

OJ C 170, 21.7.2007

OJ C 155, 7.7.2007

OJ C 140, 9.6.2007

OJ C 129, 9.6.2007

OJ C 117, 26.5.2007

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Second Chamber) of 18 July 2007 — Commission of the European Communities v Federal Republic of Germany

(Case C-503/04) ([1])

(Failure of a Member State to fulfil obligations — Judgment of the Court establishing the failure to fulfil obligations — Non-implementation — Article 228 EC — Measures necessary to comply with the judgment of the Court — Rescission of a contract)

(2007/C 211/02)

Language of the case: German

Parties

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

Defendant: Federal Republic of Germany (represented by: W.-D. Plessing and C. Schulze-Bahr, Agents, and H.-J. Prieß, lawyer)

Interveners in support of the defendant: French Republic (represented by G. de Bergues and J.-C. Gracia, Agents), Kingdom of the Netherlands (represented by H.G. Sevenster and D.J.M. de Grave, Agents), Republic of Finland (represented by T. Pynnä, Agent)

Re:

Failure of a Member State to fulfil obligations — Article 228 EC — Failure to comply with the Court's judgment of 10 April 2003 in Joined Cases C-20/01 and C-28/01 — Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts (OJ 1992 L 209, p. 1) — Award of public service contracts by the City of Brunswick and the Municipality of Bockhorn without calls for tenders — Request that a periodic penalty payment be imposed

Operative part of the judgment

The Court:

1. *Declares that, by having failed, at the date on which the period laid down in the reasoned opinion issued by the Commission of the European Communities pursuant to Article 228 EC, to adopt all the necessary measures to comply with the judgment of 10 April 2003 in Joined Cases C-20/01 and C-28/01 Commission v Germany regarding the conclusion of a contract for waste disposal by the City of Brunswick (Germany), the Federal Republic of Germany has failed to fulfil its obligations under that article;*

2. *Orders the Federal Republic of Germany to pay the costs;*

3. *Orders the French Republic, the Kingdom of the Netherlands and the Republic of Finland to bear their own costs.*

([1]) OJ C 45, 19.2.2005.

Judgment of the Court (Fourth Chamber) of 12 July 2007 — Commission of the European Communities v Republic of Austria

(Case C-507/04) ([1])

(Failure of a Member State to fulfil obligations — Conservation of wild birds — Directive 79/409/EEC — Measures transposing the directive)

(2007/C 211/03)

Language of the case: German

Parties

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

Defendant: Republic of Austria (represented by: H. Dossi, acting as Agent)

Re:

Failure of a Member State to fulfil obligations — Incomplete and incorrect transposition of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (OJ 1979 L 103, p. 1)

Operative part of the judgment

The Court:

1. *Declares that, by failing to transpose correctly*

   — *Article 1(1) and (2) of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds, in Burgenland, Carinthia, Lower Austria, Upper Austria and Styria;*

   — *Article 5 of Directive 79/409 in Burgenland, Carinthia, Lower Austria, Upper Austria and Styria;*

   — *Article 6(1) of Directive 79/409 in Upper Austria;*

   — *Article 7(1) of Directive 79/409 in Carinthia, Lower Austria and Upper Austria;*

   — *Article 7(4) of Directive 79/409 in the following provinces and regarding the following species:*

      — *in Carinthia as regards the capercaillie, black grouse, common coot, woodcock, wood pigeon and collared dove,*

      — *in Lower Austria as regards the wood pigeon, capercaillie, black grouse and woodcock,*

      — *in Upper Austria as regards the capercaillie, black grouse and woodcock,*

      — *in the Province of Salzburg as regards the capercaillie, black grouse and woodcock,*

      — *in Styria as regards the capercaillie, black grouse and woodcock,*

      — *in Tyrol as regards the capercaillie and black grouse,*

      — *in Vorarlberg as regards the black grouse, and*

      — *in the Province of Vienna as regards the woodcock;*

   — *Article 8 of Directive 79/409 in Lower Austria;*

   — *Article 9(1) and (2) of Directive 79/409 in Burgenland, Lower Austria as regards Paragraph 20(4) of the Law of Lower Austria on Nature Protection (Niederösterreichisches Naturschutzgesetz), Upper Austria, the Province of Salzburg, Tyrol and Styria;*

   — *Article 11 of Directive 79/409 in Lower Austria,*

   the Republic of Austria has failed to fulfil its obligations under Article 10 EC, Article 249 EC and Article 18 of Directive 79/409;

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

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

([1]) OJ C 45, 19.2.2005.

Judgment of the Court (Grand Chamber) of 18 July 2007 (reference for a preliminary ruling from the Consiglio di Stato, Italy) — Ministero dell'Industria, del Commercio e dell'Artigianato v Lucchini SpA, formerly Lucchini Siderurgica SpA

(Case C-119/05) ([1])

(State Aid — ECSC — Steel industry — Aid declared incompatible with the common market — Recovery — Whether a judgment of a national court has the authority of res judicata)

(2007/C 211/04)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Appellant: Ministero dell'Industria, del Commercio e dell'Artigianato

Respondent: Lucchini SpA, formerly Lucchini Siderurgica SpA

Re:

Reference for a preliminary ruling — Consiglio di Stato — Recovery of aid declared incompatible with the common market and contrary to Commission Decision No 3484/85/ECSC of 27 November 1985 establishing Community rules for aid to the steel industry (OJ 1985 L 340, p. 1) — Obligation on the State to recover the aid notwithstanding a final civil judgment to the contrary

Operative part of the judgment

Community law precludes the application of a provision of national law, such as Article 2909 of the Italian Codice Civile (Civil Code), which seeks to lay down the principle of res judicata in so far as the application of that provision prevents the recovery of State aid granted in breach of Community law which has been found to be incompatible with the common market in a decision of the Commission of the European Communities which has become final.

([1]) OJ C 132, 28.5.2005.

Judgment of the Court (Grand Chamber) of 18 July 2007 (reference for a preliminary ruling from the Bundessozialgericht, Germany) — Gertraud Hartmann v Freistaat Bayern

(Case C-212/05) [1]

(Frontier worker — Regulation (EEC) No 1612/68 — Transfer of residence to another Member State — Non-working spouse — Child-raising allowance — Not granted to spouse — Social advantage — Residence condition)

(2007/C 211/05)

Language of the case: German

Referring court

Bundessozialgericht

Parties to the main proceedings

Applicant: Gertraud Hartmann

Defendant: Freistaat Bayern

Re:

Reference for a preliminary ruling — Bundessozialgericht — Interpretation of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition 1968(II), p. 475) — Concept of worker — German official having transferred his permanent residence to Austria while continuing to work in Germany — Refusal to grant child-raising allowance (Erziehungsgeld) to his spouse of Austrian nationality resident in Austria and not working in Germany — Social advantage

Operative part of the judgment

1) *A national of a Member State who, while maintaining his employment in that State, has transferred his residence to another Member State and has since then carried on his occupation as a frontier worker can claim the status of migrant worker for the purposes of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community.*

2) *In circumstances such as those at issue in the main proceedings, Article 7(2) of Regulation No 1612/68 precludes the spouse of a migrant worker carrying on an occupation in one Member State, who does not work and is resident in another Member State, from being refused a social advantage with the characteristics of German child-raising allowance on the ground that he did not have his permanent or ordinary residence in the former State.*

[1] OJ C 193, 6.8.2005.

Judgment of the Court (Grand Chamber) of 18 July 2007 (reference for a preliminary ruling from the Bundessozialgericht, Germany) — Wendy Geven v Land Nordrhein-Westfalen

(Case C-213/05) [1]

(Frontier worker — Regulation (EEC) No 1612/68 — Child-raising allowance — Not granted — Social advantage — Residence condition)

(2007/C 211/06)

Language of the case: German

Referring court

Bundessozialgericht

Parties to the main proceedings

Applicant: Wendy Geven

Defendant: Land Nordrhein-Westfalen

Re:

Reference for a preliminary ruling — Bundessozialgericht — Interpretation of Article 7(2) of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition 1968(II), p. 475) — Social advantage — National legislation under which the grant of child-raising allowance (Erziehungsgeld) to persons who do not have their residence or habitual place of stay in national territory is conditional on exceeding the minor employment threshold (Geringfügigkeitsgrenze) of 15 hours a week

Operative part of the judgment

Article 7(2) of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community does not preclude the exclusion, by the national legislation of a Member State, of a national of another Member State who resides in that State and is in minor employment (between 3 and 14 hours a week) in the former State from receiving a social advantage with the characteristics of German child-raising allowance on the ground that he does not have his permanent or ordinary residence in the former State.

[1] OJ C 193, 6.8.2005.

Judgment of the Court (First Chamber) of 18 July 2007 (reference for a preliminary ruling from the Conseil d'État, France) — Société thermale d'Eugénie-les-Bains v Ministère de l'Économie, des Finances et de l'Industrie

(Case C-277/05) ([1])

(VAT — Scope — Deposits, paid in the context of contracts relating to supplies of services subject to VAT, which are retained by the provider in the event of cancellation — Classification)

(2007/C 211/07)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicant: Société thermale d'Eugénie-les-Bains

Defendant: Ministère de l'Économie, des Finances et de l'Industrie

Re:

Reference for a preliminary ruling — Conseil d'Etat (France) — Interpretation of Article 2(1) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) — Scope — Deposits paid in the context of contracts for supplies of services subject to value added tax, which are retained by the service provider on cancellation — Classification as remuneration for a reservation service or as a cancellation payment.

Operative part of the judgment

Articles 2(1) and 6(1) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment are to be interpreted as meaning that a sum paid as a deposit, in the context of a contract relating to the supply of hotel services which is subject to value added tax, is to be regarded, where the client exercises the cancellation option available to him and that sum is retained by the hotelier, as a fixed cancellation charge paid as compensation for the loss suffered as a result of client default and which has no direct connection with the supply of any service for consideration and, as such, is not subject to that tax.

([1]) OJ C 229, 17.9.2005.

Judgment of the Court (Third Chamber) of 18 July 2007 — Commission of the European Communities v Hellenic Republic

(Case C-399/05) ([1])

(Failure of a Member State to fulfil obligations — Directive 93/38/EC — Procurement in the water, energy, transport and telecommunications sectors — Construction and bringing into operation of a thermal power station — Conditions of admission to the tendering procedure)

(2007/C 211/08)

Language of the case: Greek

Parties

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

Defendant: Hellenic Republic (represented by: D. Tsagkaraki and V. Christianos, Agents)

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 4(2) of Council Directive 93/38/EEC of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ 1993 L 199, p. 84) — Admission of the tenders of two companies not meeting the conditions of the notice to tender or of the specification — Construction and bringing into operation of a thermal power station at Lavrio

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

([1]) OJ C 22, 28.1.2006.

Judgment of the Court (Sixth Chamber) of 18 July 2007 — Republic of Poland v European Parliament and Council of the European Union

(Case C-460/05) ([1])

(Directive 2005/36/EC — Recognition of professional qualifications — Nurses responsible for general care — Midwives — Specific provisions applicable to Polish qualifications — Validity — Duty to give reasons — Introduced by Act of Accession)

(2007/C 211/09)

Language of the case: Polish

Parties

Applicant: Republic of Poland (represented by: J. Pietras, M. Szpunar and M. Brzezińska, Agents)

Defendants: European Parliament (represented by: U. Rösslein and A. Padowska, acting as Agents) and Council of the European Union (represented by: M.C. Giorgi Fort, R. Szostak and F. Florindo Gijón, acting as Agents)

Intervener in support of the form of order sought by the defendant: Commission of the European Communities (represented by: H. Stølvbæk and A. Stobiecka-Kuik, acting as Agents)

Re:

Annulment of Articles 33(2) and 43(3) of Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ 2005 L 255, p. 22) — Special rules for the recognition of the acquired rights of nurses responsible for general care and midwives who have Polish qualifications

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the Republic of Poland to pay the costs;*

3. *Orders the Commission of the European Communities to bear its own costs.*

([1]) OJ C 60, 11.3.2006.

Judgment of the Court (Third Chamber) of 18 July 2007 (reference for a preliminary ruling from the Østre Landsret, Denmark) — Olicom A/S v Skatteministeriet

(Case C-142/06) ([1])

(Common Customs Tariff — Tariff headings — Classification in the combined nomenclature — Automatic data processing machines — Combined network/modem cards — Definition of 'specific function')

(2007/C 211/10)

Language of the case: Danish

Referring court

Østre Landsret

Parties to the main proceedings

Applicant: Olicom A/S

Defendant: Skatteministeriet

Re:

Reference for a preliminary ruling — Østre Landsret — Interpretation of Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1987 L 256, p. 1), as amended by Commission Regulation No 3009/95 of 22 December 1995 (OJ L 1995 L 319, p. 1) — Headings 8471 (automatic data-processing machines) and 8517 (telecommunication apparatus) — Network cards with double function, access to local area network and the Internet — Specific function

Operative part of the judgment

Combined cards designed to be inserted into portable computers must, after 1 January 1996, be classified as data-processing machines under heading 8471 of the Combined Nomenclature of the Common Customs Tariff, contained in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended by Commission Regulation (EC) No 3009/95 of 22 December 1995.

([1]) OJ C 143, 17.6.2006.

Judgment of the Court (Eighth Chamber) of 18 July 2007 — Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland

(Case C-155/06) ([1])

(Failure of a Member State to fulfil obligations — Directive 96/29/Euratom — Protection of the health of workers and the general public against the dangers from ionising radiation — Failure to transpose fully within the prescribed period)

(2007/C 211/11)

Language of the case: English

Parties

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

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

Re:

Failure of a Member State to fulfil its obligations — Failure to adopt all the provisions necessary to comply with Article 54 of Council Directive 96/29/Euratom of 13 May 1996 laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation (OJ 1996 L 159, p. 1) — Absence of provisions enabling the implementation of all appropriate intervention in all situations leading to lasting exposure resulting from the after-effects of a radiological emergency or a past or old practice or work activity

Operative part of the judgment

1. *By not adopting, within the prescribed period, all the laws, regulations and administrative provisions necessary to allow for appropriate intervention in all situations leading to lasting exposure to ionising radiation resulting from the after-effects of a radiological emergency or a past practice, the United Kingdom of Great Britain and Northern Ireland failed to fulfil its obligations under Article 53 of Council Directive 96/29/Euratom of 13 May 1996 laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation;*

2. *The United Kingdom of Great Britain and Northern Ireland is ordered to pay the costs.*

([1]) OJ C 121, 20.5.2006.

Judgment of the Court (First Chamber) of 18 July 2007 (reference for a preliminary ruling from the Cour administrative, Luxembourg) — État du Grand-Duché de Luxembourg v Hans Ulrich Lakebrink, Katrin Peters-Lakebrink

(Case C-182/06) ([1])

(Article 39 EC — Income tax payable by non residents — Calculation of tax rate — Properties in another Member State — Negative rental income not taken into account)

(2007/C 211/12)

Language of the case: French

Referring court

Cour administrative, Luxembourg

Parties to the main proceedings

Applicant: État du Grand-Duché de Luxembourg

Defendants: Hans Ulrich Lakebrink, Katrin Peters-Lakebrink

Re:

Reference for a preliminary ruling — Cour administrative (Luxembourg) — Interpretation of Article 39 of the EC Treaty — National income tax arrangements in respect of non-resident Community nationals — Refusal to take account of negative rental income relating to property situated in another Member State for calculation of the tax rate

Operative part of the judgment

Article 39 EC is to be interpreted as precluding national legislation which does not entitle a Community national who is not resident in the Member State in which he receives income that constitutes the major part of his taxable income to request, for the purposes of determination of the tax rate applicable to the income so received, that negative rental income relating to property situated in another Member State which he does not himself occupy be taken into account, whilst a resident of the first State can request that such negative rental income be taken into account.

([1]) OJ C 143, 17.6.2006.

Judgment of the Court (First Chamber) of 18 July 2007 — European Agency for Reconstruction (EAR) v Georgios Karatzoglou

(Case C-213/06 P) ([1])

(Appeals — Temporary staff — Termination of contract)

(2007/C 211/13)

Language of the case: English

Parties

Appellant: European Agency for Reconstruction (EAR) (represented by: S. Orlandi and J.-N. Louis, avocats)

Other party to the proceedings: Georgios Karatzoglou (represented by: S. Pappas, dikigoros)

Re:

Appeal against the judgment of the Court of First Instance (Fourth Chamber) of 23 February 2006 in Case T-471/04 Karatzoglou v EAR annulling the decision of the EAR terminating the contract of the applicant as a member of the temporary staff

Operative part of the judgment

The Court:

1) *Sets aside the judgment of the Court of First Instance of the European Communities of 23 February 2006 in Case T-471/04 Karatzoglou v EAR;*

2) *Refers the case back to the Court of First Instance of the European Communities for that Court to rule on Mr Karatzoglou's submissions to the effect that the decision of the European Agency for Reconstruction (EAR) of 26 February 2004 terminating his employment contract should be annulled;*

3) *Reserves the costs.*

([1]) OJ C 178, 29.7.2006.

Judgment of the Court (Third Chamber) of 18 July 2007 (reference for a preliminary ruling from the Gerechtshof te Amsterdam, Netherlands) — F.T.S. International BV v Inspecteur van de Belastingdienst/Douane West

(Case C-310/06) ([1])

(Common Customs Tariff — Combined Nomenclature — Classification — Boneless chicken cuts, frozen and impregnated with salt — Validity of Regulation (EC) No 1223/2002)

(2007/C 211/14)

Language of the case: Dutch

Referring court

Gerechtshof te Amsterdam

Parties to the main proceedings

Applicant: F.T.S. International BV

Defendant: Inspecteur van de Belastingdienst/Douane West

Re:

Reference for a preliminary ruling — Gerechtshof te Amsterdam — Validity of Commission Regulation (EC) No 1223/2002 of 8 July 2002 concerning the classification of certain goods in the Combined Nomenclature (OJ 2002 L 179, p. 8) — Boneless chicken cuts, frozen and impregnated with salt

Operative part of the judgment

Commission Regulation (EC) No 1223/2002 of 8 July 2002 concerning the classification of certain goods in the Combined Nomenclature is invalid.

([1]) OJ C 224, 16.9.2006.

Judgment of the Court (Seventh Chamber) of 18 July 2007 (reference for a preliminary ruling from the Hoge Raad der Nederlanden, Netherlands) — Op- en Overslagbedrijf Van der Vaart B.V. v Staatssecretaris van Financiën

(Case C-402/06) ([1])

(Common Customs Tariff — Tariff classification — Combined Nomenclature — Product obtained from curdled milk and the extraction of a significant quantity of serum)

(2007/C 211/15)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Appellant: Op — en Overslagbedrijf Van der Vaart

Respondent: Staatssecretaris van Financiën

Re:

Reference for a preliminary ruling — Hoge Raad der Nederlanden — Interpretation of Annex I to Commission Regulation (EC) No 1734/96 of 9 September 1996 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1996 L 238, p. 1) — Product obtained from curdled milk and extraction of most of the serum containing not more than 2 % of whey-albumin that has been broken down by the activity of an enzyme added during a drying process lasting 24 to 36 hours

Operative part of the judgment

1. *Heading 0406 of the Combined Nomenclature, set out in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended by Commission Regulation (EC) No 1734/96 of 9 September 1996, must be construed in such a way that it can accommodate the classification of a product, such as that in issue in the main proceedings, obtained from curdled milk from which a great deal of the serum has been extracted and the albumin content of which has been reduced, by the effect of an enzyme, to 2 % of the total quantity of the albumins during a drying process lasting 24 to 36 hours and consisting of casein and more than 50 % humidity.*

2. *Subheading 0406 20 90 of the Combined Nomenclature must be construed in such a way that it can accommodate a product, such as that in issue in the main proceedings, which contains more than 50 % humidity and less than 1 % fat and is ground into regular granules of 2 to 4 mm in size and is intended for use in the manufacture of pizza toppings and in the preparation of cheese sauces.*

([1]) OJ C 310, 16.12.2006.

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

(Case C-517/06) ([1])

(Failure of a Member State to fulfil obligations — Directive 2003/98/EC — Re-use of public sector information — Failure to transpose within the period prescribed)

(2007/C 211/16)

Language of the case: German

Parties

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

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

Re:

Failure of a Member State to fulfil obligations — Failure to adopt, within the period prescribed, all the measures necessary to comply with Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information (OJ 2003 L 345, p. 90)

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt in the legislation of the Länder of Styria and Salzburg, within the period prescribed, all the laws, regulations and administrative measures necessary to comply with Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information, the Republic of Austria has failed to fulfil its obligations under that directive;*

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

([1]) OJ C 42, 24.2.2007.

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

(Case C-26/07) ([1])

(Failure of a Member State to fulfil obligations — Directive 2004/80/EC — Compensation to crime victims — Failure to transpose within the period prescribed)

(2007/C 211/17)

Language of the case: Greek

Parties

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

Defendant: Hellenic Republic (represented by: N. Dafniou, Agent)

Re:

Failure of a Member State to fulfil obligations — Failure to adopt, within the period prescribed, all the measures necessary to comply with Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims (OJ 2004 L 261, p. 15)

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt, within the period prescribed, the laws, regulations and administrative provisions necessary to comply with Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims, the Hellenic Republic has failed to fulfil its obligations under that directive;*

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

([1]) OJ C 56, 10.3.2007.

Judgment of the Court (Sixth Chamber) of 18 July 2007 — Commission of the European Communities v Kingdom of Spain

(Case C-50/07) ([1])

(Failure of a Member State to fulfil obligations — Directive 2004/24/EC — Pharmaceutical specialities — Traditional herbal medicinal products — Community code — Medicinal products for human use — Failure to transpose within the period prescribed)

(2007/C 211/18)

Language of the case: Spanish

Parties

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

Defendant: Kingdom of Spain (represented by: F. Díez Moreno, Agent)

Re:

Failure of a Member State to fulfil its obligations — Failure to adopt within the period prescribed the provisions necessary to comply with Directive 2004/24/EC of the European Parliament and of the Council of 31 March 2004 amending, as regards traditional herbal medicinal products, Directive 2001/83/EC on the Community code relating to medicinal products for human use (OJ 2004 L 136, p. 85)

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt, within the period prescribed, the laws, regulations and administrative provisions necessary to comply with Directive 2004/24/EC of the European Parliament and of the Council of 31 March 2004 amending, as regards traditional herbal medicinal products, Directive 2001/83/EC on the Community code relating to medicinal products for human use, the Kingdom of Spain has failed to fulfil its obligations under that directive;*

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

([1]) OJ C 69, 24.3.2007.

Judgment of the Court (Fifth Chamber) of 18 July 2007 — Commission of the European Communities v Grand Duchy of Luxembourg

(Case C-61/07) ([1])

(Failure of a Member State to fulfil obligations — Mechanism for monitoring greenhouse gas emissions — Implementation of the Kyoto Protocol)

(2007/C 211/19)

Language of the case: French

Parties

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

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

Re:

Failure of a Member State to fulfil obligations — Failure to communicate within the prescribed period the report containing the information required under Article 3(2) of Decision No 280/2004/EC of the European Parliament and of the Council of 11 February 2004 concerning a mechanism for monitoring Community greenhouse gas emissions and for implementing the Kyoto Protocol (OJ 2004 L 49, p. 1) — Information on national projections of greenhouse gas emissions and measures taken to limit and/or reduce such emissions

Operative part of the judgment

The Court:

1. *Declares that, by failing to communicate the information required under Article 3(2) of Decision No 280/2004/EC of the European Parliament and of the Council of 11 February 2004 concerning a mechanism for monitoring Community greenhouse gas emissions and for implementing the Kyoto Protocol, the Grand Duchy of Luxembourg has failed to fulfil its obligations under that provision;*

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

([1]) OJ C 95, 28.4.2007.

Judgment of the Court (Seventh Chamber) of 12 July 2007 — Commission of the European Communities v Kingdom of Belgium

(Case C-90/07) ([1])

(Failure of a Member State to fulfil obligations — Directive 2004/12/EC — Packaging and packaging waste — Failure to transpose within the prescribed period)

(2007/C 211/20)

Language of the case: French

Parties

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

Defendant: Kingdom of Belgium (represented by: S. Raskin, Agent)

Re:

Failure of a Member State to fulfil obligations — Failure to adopt, within the prescribed period, the measures necessary to comply with Directive 2004/12/EC of the European Parliament and of the Council of 11 February 2004 amending Directive 94/62/EC on packaging and packaging waste (OJ 2004 L 47, p. 26)

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2004/12/EC of the European Parliament and of the Council of 11 February 2004 amending Directive 94/62/EC on packaging and packaging waste, the Kingdom of Belgium has failed to fulfil its obligations under that directive;*

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

([1]) OJ C 95, 28.4.2007.

Action brought on 27 April 2007 — Commission of the European Communities v French Republic

(Case C-220/07)

(2007/C 211/21)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: J.-P. Keppenne and M. Schotter, acting as Agents)

Defendant: French Republic

Form of order sought

— Declare that, by reason of the transposition into domestic law of the provisions relating to the designation of undertakings able to guarantee the provision of universal service, the French Republic has failed to fulfil its obligations under Articles 8(2), 12 and 13 and Annex IV of the Universal Service Directive 2002/22/EC ([1]);

— order the French Republic to pay the costs.

Pleas in law and main arguments

By its action, the Commission in essence complains that the defendant incorrectly transposed Directive 2002/22, to the extent that French legislation provides that any operator able to ensure the provision of one of the components of the universal service over the whole of the national territory may be given the task of so doing. Such a provision disregards both the principle of non-discrimination set out in Article 8(2) of the abovementioned directive and the principles of profitability and efficiency which follow from Articles 8, 12 and 13 thereof and Annex IV thereto, since it excludes *a priori* economic operators which are not able to ensure provision of the universal service over the whole of the national territory. It is true that the Directive does not of itself exclude the possibility of the designation, *in fine*, of a single operator to cover the whole of the national territory, but, in any event, it requires that the Member States first follow an open procedure in accordance with the criteria set out in Article 8(2) of the Directive in order to ensure that any designation of a single operator is indeed the most efficient and cost-effective solution.

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

Action brought on 1 June 2007 — Commission of the European Communities v Grand Duchy of Luxembourg

(Case C-263/07)

(2007/C 211/22)

Language of the case: French

Parties

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

Defendant: Grand Duchy of Luxembourg

Form of order sought

— Declare that, by failing correctly to transpose Articles 9(4) and 13(1) of Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control ([1]) and Annex I thereto, the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive;

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

Pleas in law and main arguments

The Commission raises three complaints in support of its action.

In its first complaint, it alleges, firstly, that the defendant incorrectly transposed Article 9(4) of Directive 96/61 in that it supplemented the — correct — definition of 'best available techniques' with a comment relating to the 'excessive costs' of those techniques which does not appear in the Directive. Although the Directive does indeed stipulate that the best available techniques imply techniques perfected on a scale which permits their application, in the context of the industrial sector concerned, in economically and technically viable conditions, it does not permit the systematic exclusion of techniques whose applicability and availability would entail costs excessive by reference to establishments of average size and economically healthy in the same sector or a similar sector. Such precise requirements would go beyond what is laid down by the Directive in that regard.

By its second complaint, the Commission then alleges that the defendant reduced the scope of the obligation to reconsider or update the permit conditions, laid down in Article 13(1) of the Directive, since, according to the terms of the national transposing provisions, those conditions are to be reconsidered only in three particular situations or where it is necessary, for which 'appropriate reasons' are to be given. Those terms are, once again, more restrictive than those of the Directive, which merely refers to periodic reconsideration and to updating 'where necessary' of the permit conditions.

By its third complaint, the Commission alleges, finally, that the defendant incorrectly transposed Annex I to the Directive since the national transposing measures refer to 'boilers with a rated thermal input exceeding 50 MW' and not, as in category 1.1 in that Annex, to 'combustion installations with a rated thermal input exceeding 50 MW'. That category is wider than that of simple boilers.

([1]) OJ 1996 L 257, p. 26.

Action brought on 6 June 2007 — Commission of the European Communities v Grand Duchy of Luxembourg

(Case C-268/07)

(2007/C 211/23)

Language of the case: French

Parties

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

Defendant: Grand Duchy of Luxembourg

Form of order sought

1. Declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors ([1]), the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 71 of that directive;

   In the alternative:

   declare that, by failing to notify the Commission of the laws, regulations and administrative provisions necessary to comply with Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 71 of that directive;

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

Pleas in law and main arguments

The period prescribed for transposition of Directive 2004/17/EC expired on 31 January 2006.

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

Action brought on 7 June 2007 — Commission of the European Communities v Kingdom of Belgium

(Case C-271/07)

(2007/C 211/24)

Language of the case: French

Parties

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

Defendant: Kingdom of Belgium

Form of order sought

— Declare that, by partially or incorrectly transposing Article 2(2), (3), (4), (5), (6), (7), (9), (10) and (11), Article 3, Article 5, Article 6(1), Article 8, Article 9(3), (4), (5) and (6), Article 10, Article 12(2), Article 13(1) and (2), Article 14, Article 17(2) of Council Directive 96/61/EC of 24 September 1996 ([1]) concerning integrated pollution prevention and control, and Annex I and Annex IV thereto, the Kingdom of Belgium has failed to fulfil its obligations under that directive;

— order the Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

By its action, the Commission complains that the defendant has transposed partially or incorrectly, or failed to transpose, a number of essential provisions of Directive 96/61. The action, which concerns the measures adopted (or not adopted) by the Region of Wallonia and the Region of Bruxelles-Capitale, relates, in particular, to the lack of correspondence between the material scope of application of those measures and that of the Directive and to the over-wide power of assessment given to the regional authorities with regard to the operating permits and the situations in which the conditions of the permit must be re-assessed and/or updated.

([1]) OJ L 257, p. 26.

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

(Case C-272/07)

(2007/C 211/25)

Language of the case: French

Parties

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

Defendant: Grand Duchy of Luxembourg

Form of order sought

1. Declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts ([1]), the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 80 of that directive;

   In the alternative:

   declare that, by failing to notify the Commission of the laws, regulations and administrative provisions necessary to comply with Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 80 of that directive;

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

Pleas in law and main arguments

The period prescribed for transposition of Directive 2004/18/EC expired on 31 January 2006.

([1]) OJ L 134, p. 114.

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

(Case C-273/07)

(2007/C 211/26)

Language of the case: French

Parties

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

Defendant: Grand Duchy of Luxembourg

Form of order sought

1. Declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Commission Directive 2005/51/EC of 7 September 2005 amending Annex XX to Directive 2004/17/EC and Annex VIII to Directive 2004/18/EC of the European Parliament and the Council on public procurement ([1]), the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 3 of that directive;

   In the alternative:

   declare that, by failing to notify the Commission of the laws, regulations and administrative provisions necessary to comply with Commission Directive 2005/51/EC of 7 September 2005 amending Annex XX to Directive 2004/17/EC and Annex VIII to Directive 2004/18/EC of the European Parliament and the Council on public procurement, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 3 of that directive;

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

Pleas in law and main arguments

The period prescribed for transposition of Directive 2005/51/EC expired on 31 January 2006.

([1]) OJ 2005 L 257, p. 127.

Reference for a preliminary ruling from the Corte di appello di Firenze(Italy) lodged on 11 June 2007 — Nancy Delay v Università degli Studi di Firenze, Istituto nazionale della previdenza sociale (INPS), Italian Republic

(Case C-276/07)

(2007/C 211/27)

Language of the case: Italian

Referring court

Corte di appello di Firenze, Sezione delle controversie del lavoro

Parties to the main proceedings

Applicant: Nancy Delay

Defendants: Università degli Studi di Firenze, Istituto nazionale della previdenza sociale (INPS), Italian Republic

Question referred

On a proper construction of Article 39 of the founding Treaty and secondary acts (in particular, the interpretations given in Cases C-212/99 and C-119/04), are the rules valid which are applied to so-called 'exchange assistants', who were previously bound by fixed-term contracts (under Law No 62/1967), and who, when such contracts are replaced by contracts of indefinite duration, are not guaranteed the protection of all their rights from the date of their original recruitment, in respect not only of salary increases but also of seniority and the payment by the employer of social security contributions?

Reference for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 13 June 2007 — Josef Vosding Schlacht-, Kühl- und Zerlegebetrieb GmbH & Co v Hauptzollamt Hamburg-Jonas

(Case C-278/07)

(2007/C 211/28)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Josef Vosding Schlacht-, Kühl- und Zerlegebetrieb GmbH & Co

Defendant: Hauptzollamt Hamburg-Jonas

Questions referred

1. Must the limitation period prescribed in the first sentence of the first subparagraph of Article 3(1) of Council Regulation (EC, EURATOM) No 2988/95 [1] of 18 December 1995 on the protection of the European Communities' financial interests be applied even if an irregularity was committed or ceased before Regulation (EC, EURATOM) No 2988/95 entered into force?

2. Is the limitation period prescribed in that provision applicable in general to administrative measures such as the recovery of export refunds granted as a result of irregularities?

If the answers to those questions are in the affirmative:

3. May a longer period pursuant to Article 3(3) of Regulation (EC, EURATOM) No 2988/95 be applied by a Member State even if such a longer period was already provided for in the law of the Member State before the abovementioned regulation was adopted? May such a longer period be applied even if it was not prescribed in a specific provision for the recovery of export refunds or for administrative measures in general, but resulted from a general rule of the Member State concerned covering all limitation cases not specifically regulated ('catch-all' provision)?

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

Reference for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 13 June 2007 — Vion Trading GmbH v Hauptzollamt Hamburg-Jonas

(Case C-279/07)

(2007/C 211/29)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Vion Trading GmbH

Defendant: Hauptzollamt Hamburg-Jonas

Question(s) referred

1. Must the limitation period prescribed in the first sentence of the first subparagraph of Article 3(1) of Council Regulation (EC, EURATOM) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests ([1]) be applied even if an irregularity was committed or ceased before Regulation (EC, EURATOM) No 2988/95 entered into force?

2. Is the limitation period prescribed in that provision applicable in general to administrative measures such as the recovery of export refunds granted as a result of irregularities?

If the answers to those questions are in the affirmative:

3. May a longer period pursuant to Article 3(3) of Regulation (EC, EURATOM) No 2988/95 be applied by a Member State even if such a longer period was already provided for in the law of the Member State before the abovementioned regulation was adopted? May such a longer period be applied even if it was not prescribed in a specific provision for the recovery of export refunds or for administrative measures in general, but resulted from a general rule of the Member State concerned covering all limitation cases not specifically regulated ('catch-all' provision)?

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

Reference for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 13 June 2007 — Ze Fu Fleischhandel GmbH v Hauptzollamt Hamburg-Jonas

(Case C-280/07)

(2007/C 211/30)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Ze Fu Fleischhandel GmbH

Defendant: Hauptzollamt Hamburg-Jonas

Questions referred

1. Must the limitation period prescribed in the first sentence of the first subparagraph of Article 3(1) of Council Regulation (EC, EURATOM) No 2988/95 ([1]) of 18 December 1995 on the protection of the European Communities' financial interests be applied even if an irregularity was committed or ceased before Regulation (EC, EURATOM) No 2988/95 entered into force?

2. Is the limitation period prescribed in that provision applicable in general to administrative measures such as the recovery of export refunds granted as a result of irregularities?

If the answers to those questions are in the affirmative:

3. May a longer period pursuant to Article 3(3) of Regulation (EC, EURATOM) No 2988/95 be applied by a Member State even if such a longer period was already provided for in the law of the Member State before the abovementioned regulation was adopted? May such a longer period be applied even if it was not prescribed in a specific provision for the recovery of export refunds or for administrative measures in general, but resulted from a general rule of the Member State concerned covering all limitation cases not specifically regulated ('catch-all' provision)?

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

Reference for a preliminary ruling from the Bundesfinanzhof (Germany), lodged on 13 June 2007 — Bayerische Hypotheken- und Vereinsbank AG v Hauptzollamt Hamburg-Jonas

(Case C-281/07)

(2007/C 211/31)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Bayerische Hypotheken- und Vereinsbank AG

Defendant: Hauptzollamt Hamburg-Jonas

Questions referred

1. Must the first sentence of the first subparagraph of Article 3(1) of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests ([1]) be applied to a claim for recovery of an export refund wrongly granted to an exporter, even if the latter did not commit an irregularity?

If this question is to be answered in the affirmative:

2. Must this provision be applied *mutatis mutandis* to a claim for recovery of such benefits from the party to which the exporter has assigned its claim to the export refund?

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

Action brought on 13 June 2007 — Commission v Grand Duchy of Luxembourg

(Case C-286/07)

(2007/C 211/32)

Language of the case: French

Parties

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

Defendant: Grand Duchy of Luxembourg

Form of order sought

— declare that, by requiring the submission of an excerpt from the seller's entry on the commercial register for the purpose of registering vehicles which have previously been registered in another Member State, where no such excerpt is required for vehicles which have previously been registered in Luxembourg, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 28 EC;

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

Pleas in law and main arguments

By its action, the Commission criticises the conditions imposed by the defendant for the registration of second-hand vehicles which have previously been registered in another Member State.

By making the registration of these vehicles in Luxembourg subject to additional document checks and, in particular, the submission of an official excerpt from the entry on the commercial register of the vehicle's seller, the defendant has effectively made it less attractive to import vehicles which had previously been registered in another Member State and is therefore hindering the free movement of these goods.

This barrier to trade, prohibited by Article 28 EC, is all the more serious as it predominantly affects imported vehicles, with second-hand vehicles that had previously been registered in Luxembourg not apparently subject to the same document checks.

Besides, the reasons that the defendant has given for this barrier to trade are not very convincing, particular in so far as the defendant already has important means of control at its disposal to ensure that the vehicles at issue have not been stolen and, in any event, less radical measures than an outright refusal to register the vehicle can be envisaged if the requisite excerpt from the commercial register is unavailable, such as, for example, suspension of the registration procedure for the time required by the administrative authorities to run checks.

Action brought on 14 June 2007 — Commission of the European Communities v Kingdom of Belgium

(Case C-287/07)

(2007/C 211/33)

Language of the case: French

Parties

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

Defendant: Kingdom of Belgium

Form of order sought

1. Declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors ([1]), the Kingdom of Belgium has failed to fulfil its obligations under Article 71 of that directive;

In the alternative:

declare that, by failing to notify the Commission of the laws, regulations and administrative provisions necessary to comply with Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors, the Kingdom of Belgium has failed to fulfil its obligations under Article 71 of that directive;

2. order the Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

The period prescribed for transposition of Directive 2004/17/EC expired on 31 January 2006.

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

Action brought on 15 June 2007 — Commission of the European Communities v Kingdom of Belgium

(Case C-292/07)

(2007/C 211/34)

Language of the case: French

Parties

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

Defendant: Kingdom of Belgium

Form of order sought

1. Declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts ([1]), the Kingdom of Belgium has failed to fulfil its obligations under Article 80 of that directive;

   In the alternative:

   declare that, by failing to notify the Commission of the laws, regulations and administrative provisions necessary to comply with Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, the Kingdom of Belgium has failed to fulfil its obligations under Article 80 of that directive;

2. order the Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

The period prescribed for transposition of Directive 2004/18/EC expired on 31 January 2006.

([1]) OJ L 134, p. 114.

Action brought on 19 June 2007 — Commission of the European Communities v Grand Duchy of Luxembourg

(Case C-294/07)

(2007/C 211/35)

Language of the case: French

Parties

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

Defendant: Grand Duchy of Luxembourg

Form of order sought

— Declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC ([1]), the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 40 of that directive;

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

Pleas in law and main arguments

The period for the transposition of Directive 2004/38/EC into domestic law expired on 29 April 2006.

([1]) OJ 2004 L 158, p. 77 and corrigenda — OJ 2004 L 229, p. 35 and OJ 2005 L 197, p. 34.

Appeal lodged on 20 June 2007 by the Commission of the European Communities against the judgment of the Court of First Instance (First Chamber) delivered on 29 March 2007 in Case T-369/00 *Département du Loiret, supported by Scott SA* v *Commission of the European Communities*

(Case C-295/07 P)

(2007/C 211/36)

Language of the case: French

Parties

Appellant: Commission of the European Communities (represented by: J. Flett, Agent)

Other parties to the proceedings: Département du Loiret, Scott SA

Form of order sought

The appellant claims that the Court should:

— uphold the appeal and, accordingly, set aside the judgment under appeal in its entirety;

— give final judgment in the matter and find that Decision [2002/14/EC] ([1]) is sufficiently reasoned as regards the use of a compound interest rate or, if that is not the case, should the Court consider that the state of the proceedings is not fit for judgment, refer the case back to the Court of First Instance for judgment;

— order the applicant to bear its own costs as well as those incurred by the Commission before the Court of Justice and the Court of First Instance;

— order Scott SA to bear its own costs at first instance and on appeal.

Pleas in law and main arguments

Maintaining, first of all, that the judgment under appeal is based on an erroneous view of the Community rules in respect of State aid, which the Court of First Instance assimilates, wrongly, to the rules on competition between undertakings, at the date of the order for recovery of the illegal aid, and not to rules on competition between Member States at the date of the effective granting of that aid, the appellant relies on eight grounds in support of its appeal.

By its first ground of appeal, the Commission claims that, contrary to the Court of First Instance's finding in the judgment under appeal, a decision ordering the recovery of aid illegally granted is sufficiently reasoned if a simple mathematical calculation enables it to be established which method of calculation was used. That is precisely the case in these proceedings since all the significant data relating to the amount of the aid granted, to the rate of interest, to the period and to the amount to be recovered were set out in its decision.

By its second ground of appeal, the appellant submits that the use of a compound interest rate was, in any event, at least implicit in the reasoning of its decision in view of the stated objectives of eliminating the advantages flowing from the aid and of re-establishing the pre-existing situation. In that perspective, the interest rate applicable to the sum to be recovered must necessarily be a compound rate of interest in order to take account of inflation and of the advantage gained by the recipient of the aid with the passage of time.

By its third ground of appeal, the Commission asserts that by reversing, to its detriment, the burden of proof, the Court of First Instance made an error of law. It is, in fact, for the applicant at first instance to prove the alleged change in the Commission's practice concerning the interest rate applicable to orders for the recovery of illegal aid, and not for the Commission to prove the absence of such a change.

By its fourth ground of appeal, the appellant submits that the Court of First Instance made an error of law in holding that the Commission had not stated in what respect the company receiving the aid still had an advantage at the date of the order for recovery of that aid. It is at the date the aid was granted that the Commission must establish the existence of such an advantage, not at the date of its recovery.

By its fifth and sixth grounds of appeal, the Commission complains that the Court of First Instance based its judgment on speculation and not on the evidence, as regards the price of the sale of the company which received the aid to another company and of having found that such sale price, 11 years after the grant of the aid, was a factor which the Commission should have taken into account in fixing the amount to be recovered. In the field of State aid, the objective is to re-establish the earlier situation and the amount of the aid to be recovered therefore corresponds, necessarily, to the amount initially granted subject, until its actual recovery, to annual compound interest, irrespective of what the recipient of the aid did with it in the meantime.

By its seventh ground of appeal, the appellant submits that the Court of First Instance made an error of law in holding that the fact that the recovery of the aid should take place in compliance with the national rules necessarily implies that the interest is to be calculated at a simple rate. While it is correct that the principal and interest must be recovered in accordance with the procedures of national law, the imposition of an interest rate, just like the question whether that rate should be simple or compound, is a matter of Community law, and not of national law.

By its eighth ground of appeal, the Commission argues, finally, that the judgment under appeal is totally disproportionate since it annuls its decision in its entirety whereas it was possible to distinguish the amount of the principal from the amount of interest payable, just as it was possible to distinguish the use of a simple interest rate from that of a compound interest rate.

(1) Commission Decision 2002/14/EC of 12 July 2000 on the State aid granted by France to Scott Paper SA/Kimberly-Clark (OJ 2002 L 12, p. 1).

Reference for a preliminary ruling from the Landgericht Regensburg (Germany) lodged on 21 June 2007 — Staatsanwaltschaft Regensburg v Klaus Bourquain

(Case C-297/07)

(2007/C 211/37)

Language of the case: German

Referring court

Landgericht Regensburg

Parties to the main proceedings

Applicant: Staatsanwaltschaft Regensburg

Defendant: Klaus Bourquain

Question referred

With regard to the interpretation of Article 54 of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (1), does the rule prohibiting a person whose trial has been finally disposed of in one contracting party from being prosecuted in another contracting party for the same act apply, where the penalty imposed on him could never be enforced under the laws of the sentencing contracting party?

(1) OJ 2000 L 239, p. 19.

Reference for a preliminary ruling from VAT and Duties Tribunal, London (United Kingdom) made on 29 June 2007 — J D Wetherspoon PLC v The Commissioners of Her Majesty's Revenue and Customs

(Case C-302/07)

(2007/C 211/38)

Language of the case: English

Referring court

VAT and Duties Tribunal, London

Parties to the main proceedings

Applicant: J D Wetherspoon PLC

Defendant: The Commissioners of Her Majesty's Revenue and Customs

Questions referred

1. Is the rounding off of VAT amounts governed solely by national law, or instead governed by Community law? In particular do the first and second paragraphs of Article 2 of the First Directive (1) and Articles 11A(l)(a) and/or 12(3)(a) and/or Article 22(3)(b), (version as at 1st January 2004) of the Sixth Directive (2) confirm that rounding off is a matter of Community law?

2. In particular:

   (i) Does Community law prevent the application of a national rule or practice of the national taxing authority which requires rounding up of any given VAT amount whenever the fraction of the smallest unit of currency is concerned is at or above 0.50 (for example, 0.5 pence is required to be rounded up to the nearest whole pence)?

   (ii) Does Community law require that the taxpayers be allowed to round down any VAT amount which includes a fraction of the smallest unit of currency available?

3. In a VAT inclusive sale at which level does Community law require rounding off to be applied for the purpose of calculating the VAT due: at the level of each individual item, each line of goods, each supply (if more than one supply is included in the same basket), each transaction/basket total, or each VAT accounting period or some other level?

4. Is the answer to any of the questions affected by the Community law principles of equal treatment and fiscal neutrality, particularly by reference to the existence, in the United Kingdom, of a concession by the relevant taxing authorities allowing only certain traders to round down the VAT amounts to be accounted for?

(1) First Council Directive 67/227/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes (OJ 71, p. 1301), English special edition: Series 1, Chapter 1967, p. 14.
(2) 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 L 145, p. 1).

Reference for a preliminary ruling from the Korkein hallinto-oikeus, Finland lodged on 29 June 2007 — Aberdeen Property Fininvest Alpha Oy

(Case C-303/07)

(2007/C 211/39)

Language of the case: Finnish

Referring court

Korkein hallinto-oikeus, Finland

Parties to the main proceedings

Applicant: Aberdeen Property Fininvest Alpha Oy

Other parties: Uudenmaan verovirasto and Helsingin kaupunki

Question referred

Are Articles 43 EC and 48 EC and Articles 56 EC and 58 EC to be interpreted as meaning that, in order to safeguard the fundamental freedoms set out therein, an osakeyhtiö (company limited by shares) or sijoitusrahasto (investment fund) constituted under Finnish law and a SICAV constituted under Luxembourg law are to be regarded as comparable despite the fact that a form of company corresponding exactly to a SICAV is not recognised in Finnish legislation, having regard, first, to the fact that a SICAV, which is a company under Luxembourg law, is not mentioned in the list of companies referred to in Article 2(a) of Directive 90/435/EEC (1), with which the Finnish withholding tax legislation applicable in the present case is consistent, and, second, to the fact that a SICAV is exempt from income tax under domestic Luxembourg tax legislation? Is it therefore contrary to the above articles of the EC Treaty for a SICAV resident in Luxembourg which is the recipient of a dividend not to be exempt from withholding tax charged in Finland on dividends?

(1) Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member Sates, OJ L 225, 20.8.1990. p. 6.

Reference for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 2 July 2007 — Directmedia Publishing GmbH v 1. Albert-Ludwigs-Universität Freiburg, 2. Professor Ulrich Knoop

(Case C-304/07)

(2007/C 211/40)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Appellant: Directmedia Publishing GmbH

Respondents: 1. Albert-Ludwigs-Universität Freiburg, 2. Professor Ulrich Knoop

Question referred

Can the adoption of data from a database protected in accordance with Article 7(1) of Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases (database directive) (1) and their incorporation in a different database constitute an extraction within the meaning of Article 7(2)(a) of that directive even in the case where that adoption follows individual assessments resulting from consultation of the database, or does extraction within the meaning of that provision presuppose the (physical) copying of data?

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

Reference for a preliminary ruling from the Tribunale civile di Genova (Italy) lodged on 2 July 2007 — Radiotelevisione italiana SpA (RAI) v PTV Programmazioni Televisive SpA

(Case C-305/07)

(2007/C 211/41)

Language of the case: Italian

Referring court

Tribunale civile di Genova (Italy)

Parties to the main proceedings

Applicant: Radiotelevisione italiana SpA (RAI)

Defendant: PTV Programmazioni Televisive SpA

Questions referred

1. Assessed at both national and local level, does the fiscal obligation imposed, for the purpose of funding the public television service, on all owners of appliances capable of receiving radio and television signals constitute State aid within the meaning of Article 87 EC?

2. If Question (1) is answered in the affirmative: is the Commission decision notified to the Italian Foreign Minister on 20 April 2005 incompatible with Community law by reason of factual errors or misappraisal of the facts, inasmuch as it considers the derogation under Article 86(2) EC to be applicable to the RAI licence fee but fails to take into consideration that: — the broadcaster holding the concession is providing a public radio and television service at regional level in the absence of any definition, contained in regional legislation and specific service contracts, of the tasks which the broadcaster is required to perform in relation to broadcasting time and network planning for the broadcast of programmes at regional level; — given the failure to define the public-service obligations, it is not possible to ascertain whether the State resources intended for public service at local level are being used exclusively for such public-service activities; — the broadcaster holding the concession has not been entrusted, by means of an official act, with the performance of specific public-service obligations but has merely been generally authorised to provide a regional public service?

3. In general, does Article 86 EC preclude a national rule which, on the local markets, accords the individual Regions the legislative power to establish further regional public-service tasks, to be subsidised by way of State resources, by providing for the exclusive award of those further tasks to RAI SpA, without any public tendering procedure?

Reference for a preliminary ruling from the Højesteret (Supreme Court), Denmark lodged on 3 July 2007 — Ruben Andersen v Kommunernes Landsforening, acting on behalf of Slagelse Kommune (formerly Skælskør Kommune)

(Case C-306/07)

(2007/C 211/42)

Language of the case: Danish

Referring court

Højesteret

Parties to the main proceedings

Applicant: Ruben Andersen

Defendant: Kommunernes Landsforening, acting on behalf of Slagelse Kommune (formerly Skælskør Kommune)

Questions referred

1. Is Article 8(1) of Council Directive 91/533/EEC [1] of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship to be interpreted as meaning that a collective agreement which is intended to implement the provisions of the Directive cannot be applied to an employee who is not a member of an organisation party to that agreement?

2. If Question 1 is answered in the negative: are the words in Article 8(2) of the Directive: 'employees not covered by a collective agreement or by collective agreements relating to the employment relationship' to be interpreted as meaning that provisions in a collective agreement or the obligation of prior notification of the employer cannot be applied to an employee who is not a member of an organisation party to that agreement?

3. Do the words 'temporary contract' and 'temporary … employment relationship' in Article 8(2) of the Directive refer to short-term employment relationships or to something else, such as all fixed-term employment relationships? If the former, which criteria should be used to determine whether an employment relationship is temporary (short-term)?

[1] OJ 1991 L 288, p. 32.

Appeal brought on 5 July 2007 by Koldo Gorostiaga Atxalandabaso against the order of the Court of First Instance (Second Chamber) delivered on 24 April 2007 in Case T-132/06, Gorostiaga Atxalandabaso v European Parliament

(Case C-308/07 P)

(2007/C 211/43)

Language of the case: French

Parties

Appellant: Koldo Gorostiaga Atxalandabaso (represented by: D. Rouget, lawyer)

Other party to the proceedings: European Parliament

Form of order sought

— declare this appeal to be well-founded and, consequently, annul the order of the Court of First Instance of 24 April 2007;

— give a definitive ruling on the proceedings and annul the decision of the Secretary General of the European Parliament of 22 March 2006, ordering the reimbursement by the appellant of a sum of EUR 118 360,18 and proceeding to make a deduction from various parliamentary allowances owed to the appellant by the Parliament;

— order the defendant to pay its own costs and those incurred by the appellant.

Pleas in law and main arguments

The appellant makes six pleas in support of his appeal.

In his first plea, the appellant challenges the use of Article 111 of the Rules of Procedure of the Court of First Instance, which he claims denies him the right to a fair trial since he has neither been given prior opportunity to express his views before the Court of First Instance nor been able to reply to the Parliament's arguments.

In his second plea, the appellant submits that the principle of impartiality has been infringed since the same judges ruled on the substance of the two successive actions which he brought in Cases T-146/04 and T-132/06 — which gave rise, respectively, to the judgment of 22 December 2005 and to the order of 24 April 2007. That principle demands that a judge cannot hear and determine, even at the same level of jurisdiction, a case based on facts which are identical, or sufficiently connected, to those of a case on which he has ruled previously.

In his third plea, the appellant claims that the Court incorrectly interpreted the scope of the judgment of 22 December 2005. Since the decision taken by the Secretary General of the Parliament on 24 February 2004 had been annulled as *ultra vires*, the appellant in fact had no reason to lodge an appeal against that judgment before the Court of Justice, since the effect of the finding of *ultra vires* by the Court of First Instance was that the flawed decision did not exist.

In his fourth plea, the appellant challenges the Court's automatic refusal to take into account the arguments which he had put forward to obtain the annulment of the decision of the Secretary General of the Parliament of 22 March 2006. He submits that that last decision is in fact a new decision, separate from the decision of 24 February 2004, and the Court therefore had a duty to examine all the pleas, of substance and procedure, which he had put forward to challenge it.

In his fifth plea, the appellant criticises the Court for having refused to consider the plea alleging *force majeure*, even though no such plea had been raised in the action brought against the decision of 24 February 2004.

Lastly, in his sixth plea the appellant criticises the Court for having misinterpreted the principle of sound administration by refusing, inter alia, any reference to the Code of Good Administrative Behaviour adopted by the Parliament on 6 September 2001.

Reference for a preliminary ruling from the Lunds Tingsrätt (Sweden) lodged on 28 June 2007 — Svenska staten genom Tillsynsmyndigheten i konkurser v Anders Holmqvist

(Case C-310/07)

(2007/C 211/44)

Language of the case: Swedish

Referring court

Lunds Tingsrätt

Parties to the main proceedings

Applicant: Svenska staten genom Tillsynsmyndigheten i konkurser

Defendant: Anders Holmqvist

Questions referred

1. Is Article 8a of Council Directive 80/987/EEC ([1]) of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer, most recently amended by Directive 2002/74/EC ([2]) of the European Parliament and of the Council, to be interpreted as meaning that, for an undertaking to be regarded as having activities in the territory of a particular Member State, it is necessary for that undertaking to have a subsidiary or a permanent place of business in that Member State?

2. If the answer to Question 1 is negative, what conditions must be met for an undertaking to be regarded as having activities in several Member States?

3. If the company is to be regarded as having activities in the territory of several Member States and an employee performs work for the company in several of those Member States, what criteria determine where the work is usually performed?

4. Does Article 8a of Council Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer, most recently amended by Directive 2002/74/EC of the European Parliament and of the Council, have direct effect?

([1]) OJ 1980 L 283, p. 23.
([2]) OJ 2002 L 270, p. 10.

Action brought on 5 July 2007 — Commission of the European Communities v Republic of Austria

(Case C-311/07)

(2007/C 211/45)

Language of the case: German

Parties

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

Defendant: Republic of Austria

Form of order sought

— Declare that the Republic of Austria has failed to fulfil its obligations under Article 6(1) of Council Directive 89/105/EEC of 21 December 1988 relating to the transparency of measures regulating the pricing of medicinal products for human use and their inclusion in the scope of national health insurance systems ([1]), by failing to lay down a time-limit in accordance with that provision for the inclusion of medicinal products in the yellow or green sections of the 'Erstattungskodex' (Reimbursement Code);

— order the Republic of Austria to pay the costs.

Pleas in law and main arguments

Directive 89/105/EEC aims, *inter alia*, to remove disparities in national measures of an economic nature which are adopted by the Member States in order to control public health expenditure on medicinal products. That includes measures to limit the range of products covered by national health insurance systems. In order to prevent such disparities from hindering intra-Community trade in medicinal products, the Directive lays down certain requirements in respect of the procedure for including products within the list of medicinal products covered by national health insurance systems. Accordingly, Article 6(1) of the Directive sets a time-limit for decisions on the inclusion of medicinal products in that 'positive list'.

In Austria, there are three different categories of reimbursement within the list of products covered by the health insurance system. The 'green section' covers medicinal products, the prescription and reimbursement of which without prior approval by the social security authority is appropriate and justified on medical and economic grounds. The costs of medicinal products listed in the 'yellow section' are reimbursed only in specific well-founded cases after prior approval by the social security authority. Finally, the 'red section' covers medicinal products in respect of which there is an application pending for inclusion in the yellow or green sections. The costs of medicinal products listed in the red section are reimbursed in specific well-founded cases after prior approval by the social security authority, provided that there is no alternative in the yellow or green sections. A valid application for inclusion of a medicinal product in the yellow or green sections of the Reimbursement Code thus necessarily means that that product is included in the red list for a certain period of time. Under the Austrian rules, medicinal products in the red section can remain in that section for no more than 24 months. If the average EU price cannot be established, the time-limit is extended to 36 months.

That rule is incompatible with Article 6(1) of Directive 89/10/EEC, because there is no guarantee that a decision on the inclusion of a medicinal product in the yellow or green sections, as required under that provision of the Directive, will be taken within 90 or 180 days.

As the Court of Justice held in its judgment of 12 June 2003 in Case C-229/00 *Commission* v *Finland*, the objectives of the Directive would be compromised if a Member State were able to introduce a dual procedure for the establishment of a list of medicinal products qualifying for higher-rate reimbursement, one pursuant to the obligations laid down by Article 6(1) of the Directive, the other being exempt in part from those obligations and, in part, not complying with the objectives laid down by that Directive. Contrary to the Austrian Government's view, it is not only applications for inclusion in a positive list, but also applications for inclusion in a particular category of such a list, that must be dealt with in accordance with the requirements of Article 6(1) of the Directive if, as in Austria, inclusion in that category entails more favourable conditions of reimbursement than inclusion in another category or remaining in the current category. Accordingly, it is necessary to ensure that decisions on such applications are taken within the period laid down under Article 6(1) of the Directive.

Since Austrian law does not make such provision, it is incompatible with the Community legislation referred to, having regard to the interpretation of that legislation by the Court of Justice.

([1]) OJ 1989 L 40, p. 8.

Reference for a preliminary ruling from the Tribunal d'instance, Paris, lodged on 6 July 2007 — JVC France SAS v Administration des douanes (Direction Nationale du Renseignement et des Enquêtes douanières)

(Case C-312/07)

(2007/C 211/46)

Language of the case: French

Referring court

Tribunal d'instance de Paris

Parties to the main proceedings

Applicant: JVC France SAS

Defendant: Administration des douanes (Direction Nationale du Renseignement et des Enquêtes douanières)

Questions referred

1. Must a camcorder, which when imported is unable to record external video signals, be classified under subheading 8525 40 99, if its video interface can subsequently be reconfigured as a video input by using software or an enabler (widget) equipped with electronic circuitry which enables it to record an external video sound signal, even though the manufacturer and the seller have not mentioned this possibility and do not endorse it?

2. If so, to the extent that the subsequent amendments of the explanatory notes entail a change in Community practice with regard to the classification of camcorders and an exception to the principle that goods must be classified according to their actual characteristics at the time of customs clearance, was the European Commission entitled to make this change by amending the explanatory notes, and hence with retrospective effect, rather than by adopting a classification regulation that was applicable only in the future?

Reference for a preliminary ruling from the Juzgado de lo Mercantil (Commercial Court) No 3 Barcelona lodged on 5 July 2007 — Kirtruna S. L. v Cristina Delgado Fernández de Heredia, Sergio Sabini Celio, Miguel Oliván Bascones, Red Elite de Electrodomésticos S.A. and Electro Calvet (or Calbet) S.A.

(Case C-313/07)

(2007/C 211/47)

Language of the case: Spanish

Referring court

Juzgado de lo Mercantil (Commercial Court) No 3 Barcelona

Parties to the main proceedings

Applicant: Kirtruna S. L.

Defendants: Cristina Delgado Fernández de Heredia, Sergio Sabini Celio, Miguel Oliván Bascones, Red Elite de Electrodomésticos S.A. and Electro Calbet (formerly Calvet) S.A.

Question(s) referred

1. Should the guarantee, that the transferee who acquires a business in insolvency or a production unit of that business does not take on liability for debts arising out of employment contracts or other employment relationships provided that the insolvency proceedings give rise to protection at least equivalent to that provided for in Community directives, be considered to relate uniquely and exclusively to debts which are directly linked to employment contracts or other employment relationships, or, in the framework of an overall protection of the rights of employees and the safeguarding of employment, should that guarantee be extended to other contracts which are not strictly related to employment, but nonetheless affect the premises in which the business of the undertaking is carried out, or affect specific methods or instruments of production which are essential to the continuation of the business activity?

2. In the same context of guaranteeing the rights of the employees, can the purchaser of the productive unit obtain from the court which has charge of the insolvency and which authorises the award a guarantee not only in relation to rights which arise from the employment contracts but also in relation to other contracts and obligations of the insolvent party which are essential to guarantee the continuation of the business?

3. If a party acquires an insolvent business or a productive unit and gives an undertaking to safeguard all or some of the employment contracts, and accepts liability for them by subrogation, does that party obtain the guarantee that there will not be asserted against him or transferred to him either other debts of the transferor connected to the contracts or relationships where he accepts liability by subrogation, particularly tax contingencies or social security debts, or rights which may be exercised by the holders of rights and obligations arising from contracts entered into by the insolvent party and which are transferred to the acquirer as a package or as part of a productive unit?

4. In brief, can Directive 23/2001 ([1]) be interpreted to mean that, as regards the transfer of productive units or businesses which have been judicially or administratively declared insolvent and in liquidation, not only are contracts of employment given protection, but so also are other contracts which have a direct and immediate effect on the safeguarding of those contracts?

5. The final question is whether the wording of Article 149(2) of the Ley Concursal (Spanish Law on Insolvency), when it refers to the transfer of an undertaking, is inconsistent with Article 5(2)(a) of Directive 23/2001 as cited above, to the extent that subrogation transfers to the transferee the obligations of the bankrupt or insolvent party relating to or associated with employment, notably the social security debts which might be unpaid by the insolvent company?

([1]) Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (OJ L 82, p. 16).

Reference for a preliminary ruling from the Korkein hallinto-oikeus (Finland) lodged on 10 July 2007 — Lahti Energia Oy

(Case C-317/07)

(2007/C 211/48)

Language of the case: Finnish

Referring court

Korkein hallinto-oikeus

Parties to the main proceedings

Applicant: Lahti Energia Oy

Other parties: Lahden ympäristölautakunta, Hämeen ympäristökeskus, Salpausselän luonnonystävät ry

Questions referred

1. Is Article 3(1) of Directive 2000/76/EC ([1]) to be interpreted as meaning that the directive does not apply to the incineration of gaseous waste?

2. Is a gas plant where gas is generated from waste by means of pyrolysis to be regarded as an incineration plant within the meaning of Article 3(4) of Directive 2000/76/EC even if it has no incineration line?

3. Is combustion in the boiler of the power plant of producer gas which is generated in the gas plant and purified after the gasification process to be regarded as an operation within the meaning of Article 3 of Directive 2000/76/EC? Does it have any bearing that the purified producer gas replaces the use of fossil fuels and that the emissions per unit of energy generated by the power plant would be lower when using purified producer gas generated from waste than when using other fuels? Is it of any relevance to the interpretation of the scope of Directive 2000/76/EC, first, whether the gas plant and the power plant form one plant having regard to the technical production aspects and the distance between them or, second, whether the purified producer gas generated at the gas plant is portable and may be used elsewhere, for example for energy production, as a fuel or for another purpose?

4. Under what conditions may the purified producer gas generated at the gas plant be regarded as a product, so that the regulations on waste no longer apply to it?

([1]) Directive 2000/76/EC of the European Parliament and of the Council of 4 December 2000 on the incineration of waste, OJ L 332, 28.12.2000, p. 91.

Appeal brought on 11 July 2007 by 3F, formerly Specialarbejderforbundet i Danmark (SID) against the order of the Court of First Instance (Second Chamber, Extended Composition) delivered on 23.4.2007 in Case T-30/03: Specialarbejderforbundet i Danmark (SID) v Commission of the European Communities

(Case C-319/07 P)

(2007/C 211/49)

Language of the case: English

Parties

Appellant: 3F, formerly Specialarbejderforbundet i Danmark (SID) (represented by: A. Bentley, Barrister and A. Worsøe, advokat)

Other parties to the proceedings: Commission of the European Communities, Kingdom of Denmark, Kingdom of Norway

Form of order sought

The applicant claims that the Court should:

— set aside the order of the Court of First Instance of 23 April 2007 in Case T-30/03, *Specialarbejderforbundet i Dan mark v Commission of the European Communities*; and

— declare the appellant's application in Case T-30/03 admissible; and

— order that the Applicant's costs of bringing the present appeal be borne by the Commission in any event.

Pleas in law and main arguments

The appellant submits that the contested order should be annulled on the following grounds:

1. The Court of First Instance erred in law by relying on Case C-67/96, *Albany* to hold that the appellant could not rely on its own competitive position in the negotiation of collective agreements in order to establish that it was individually concerned.

2. The Court of First Instance erred in law by finding that the appellant could not rely on social aspects to establish that it was individually concerned.

3. The Court of First Instance misapplied the *Plaumann* and *ARE* case-law by finding that the appellant cannot be regarded as individually concerned merely because the aid in question is passed to the recipients by means of a reduction in the wage claims of seafarers benefiting from the income tax exemption.

4. The Court of First Instance misapplied the *Van der Kooy* and *CIRFS* case-law by finding that the appellant's own interest as a negotiator were not affected by fiscal measures.

Appeal brought on 11 July 2007 by Antartica Srl against the judgment of the Court of First Instance (Fourth Chamber) delivered on 10 May 2007 in Case T-47/06: Antartica Srl v Office for Harmonisation in the Internal Market (Trade marks and Designs)

(Case C-320/07 P)

(2007/C 211/50)

Language of the case: English

Parties

Appellant: Antartica Srl (represented by: E. Racca, avvocati and A. Fusillo, avvocato)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), The Nasdaq Stock Market, Inc.

Form of order sought

The appellant claim that the Court should:

— annul the decision by the Second Board of Appeal

— order the defendant to pay costs

Pleas in law and main arguments

The appellant submits that the Court of First Instance's interpretation of Article 8 (5) of Regulation 40/94 [1] is inconsistent with the current definition of trademark notoriety subsequent to case C-372/97 General Motors.

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[1] OJ L 11, p. 1.

Reference for a preliminary ruling from the Conseil d'Etat, Belgium, lodged on 12 July 2007 — Coditel Brabant v 1. Commune d'Uccle, 2. Société Intercommunale pour la Diffusion de la Télévision (BRUTELE), 3. Région de Bruxelles-Capitale

(Case C-324/07)

(2007/C 211/51)

Language of the case: French

Referring court

Conseil d'Etat

Parties to the main proceedings

Applicant: Coditel Brabant

Defendants: 1. Commune d'Uccle, 2. Société Intercommunale pour la Diffusion de la Télévision (BRUTELE), 3. Région de Bruxelles-Capitale

Questions referred

1) May a municipality, without calling for competition, join a cooperative society grouping together exclusively other municipalities and associations of municipalities (a so-called pure inter-municipal cooperative) in order to transfer to that cooperative society the operation of its cable television network, in the knowledge that the cooperative society carries out the essential part of its activities for and with its own members and that decisions regarding those activities are taken by the board of directors and the sector boards within the limits of the delegated powers granted to them by the board of directors, those corporate bodies being composed of representatives of the public authorities and the decisions of those corporate bodies being taken in accordance with the vote expressed by the majority of those representatives?

2) Can the control thus exercised over the decisions of the cooperative society, via the corporate bodies, by all the members of the cooperative society — or, in the case of operational sectors or sub-sectors, by some of those members — be regarded as enabling them to exercise over the cooperative society control similar to that exercised over their own departments?

3) For that control to be regarded as similar, must it be exercised individually by each member, or is it sufficient that it be exercised by the majority of the members?

Action brought on 11 July 2007 — Commission of the European Communities v Grand Duchy of Luxembourg

(Case C-325/07)

(2007/C 211/52)

Language of the case: French

Parties

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

Defendant: Grand Duchy of Luxembourg

Form of order sought

The applicant claims that the Court should:

— declare that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Directive 2003/18/EC of the European Parliament and of the Council of 27 March 2003 amending Council Directive 83/477/EEC on the protection of workers from the risks related to exposure to asbestos at work [1] or, in any event, by not communicating them to the Commission, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 2(1) of that directive;

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

Pleas in law and main arguments

The period for transposing Directive 2003/18/EC expired on 14 April 2006.

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[1] OJ 2003 L 97, p. 48.

Action brought on 13 July 2007 — Commission of the European Communities v Grand Duchy of Luxembourg

(Case C-328/07)

(2007/C 211/53)

Language of the case: French

Parties

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

Defendant: Grand Duchy of Luxembourg

Form of order sought

— Declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights [1], or in any event by not communicating them to the Commission, the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive;

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

Pleas in law and main arguments

The period for the transposition of Directive 2004/48/EC into domestic law expired on 29 April 2006.

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[1] OJ 2004 L 157, p. 45, and corrigendum OJ 2004 L 195, p. 16.

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

(Case C-329/07)

(2007/C 211/54)

Language of the case: French

Parties

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

Defendant: French Republic

Form of order sought

— Declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights ([1]), or in any event by not communicating them to the Commission, the French Republic has failed to fulfil its obligations under that directive;

— order the French Republic to pay the costs.

Pleas in law and main arguments

The period for the transposition of Directive 2004/48/EC into domestic law expired on 29 April 2006.

([1]) OJ 2004 L 157, p. 45, and corrigendum OJ 2004 L 195, p. 16.

Reference for a preliminary ruling from the Cour Administrative d'appel de Lyon (France) lodged on 17 July 2007 — Régie Networks v Direction de Contrôle fiscal Rhône-Alpes Bourgogne

(Case C-333/07)

(2007/C 211/55)

Language of the case: French

Referring court

Cour Administrative d'appel de Lyon (Administrative Appeal Court, Lyon)

Parties to the main proceedings

Applicant: Régie Networks

Defendant: Direction de Contrôle fiscal Rhône-Alpes Bourgogne

Question referred

Is Commission Decision No 679/97 of 10 November 1997 by which the Commission decided not to raise any objections to the alterations made to the system of aid to radio broadcasting introduced by Decree No 92-1053 ([1]) valid in respect of (1) the statement of reasons, (2) the assessment made as to the compatibility with the EC Treaty of the funding scheme for aid to radio broadcasting which was established for the period 1998-2002 and (3) the ground relating to the lack of any increase in the budgetary resources of the system of aid at issue?

([1]) Decree No 92-1053 of 30 September 1992 renewing a special tax for the benefit of funds to support radio broadcasting, JORF No 228, of 1 October 1992, and Decree No 97-1263 of 29 December 1997 creating a special tax for the benefit of funds to support radio broadcasting, JORF No 302, of 30 September 1997, p. 191914.

Action brought on 19 July 2007 — Commission of the European Communities v Grand Duchy of Luxembourg

(Case C-340/07)

(2007/C 211/56)

Language of the case: French

Parties

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

Defendant: Grand Duchy of Luxembourg

Form of order sought

The applicant claims that the Court should:

— declare that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions ([1]) or, in any event, by not communicating them to the Commission, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 2 of that directive;

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

Pleas in law and main arguments

The period for transposing Directive 2002/73/EC expired on 5 October 2005.

(1) OJ 2002 L 269, p. 15.

Action brought on 20 July 2007 — Commission of the European Communities v Kingdom of Sweden

(Case C-341/07)

(2007/C 211/57)

Language of the case: Swedish

Parties

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

Defendant: Kingdom of Sweden

Form of order sought

— Declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 (1) on the enforcement of intellectual property rights or, in any event, by failing to notify the Commission thereof, the Kingdom of Sweden has failed to fulfil its obligations under that directive;

— order the Kingdom of Sweden to pay the costs.

Pleas in law and main arguments

The period prescribed for implementation of the Directive expired on 28 April 2006.

(1) OJ 2004 L 157, p. 45.

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

(Case C-342/07)

(2007/C 211/58)

Language of the case: Greek

Parties

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

Defendant: Hellenic Republic

Form of order sought

— a declaration that, by not adopting the laws, regulations and administrative provisions necessary to comply with Directive 2002/91/EC (1) of the European Parliament and of the Council of 16 December 2002 on the energy performance of buildings, or in any event by not informing the Commission of such measures, the Hellenic Republic has failed to fulfil its obligations under that directive;

— an order that the Hellenic Republic pay the costs.

Pleas in law and main arguments

The period prescribed for transposing Directive 2002/91/EC into national law expired on 4 January 2006.

(1) OJ L 1 of 4.1.2003, p. 65.

Action brought on 25 July 2007 — Commission of the European Communities v Hellenic Republic

(Case C-345/07)

(2007/C 211/59)

Language of the case: Greek

Parties

Applicant: Commission of the European Communities (represented by: G. Zavvos and P. Dejmek)

Defendant: Hellenic Republic

Form of order sought

— a declaration that, by not adopting the laws, regulations and administrative provisions necessary to comply with Directive 2004/49/EC [1] of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways and amending Council Directive 95/18/EC on the licensing of railway undertakings and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (Railway Safety Directive), or in event by not informing the Commission of such measures, the Hellenic Republic has failed to fulfil its obligations under that directive;

— an order that the Hellenic Republic pay the costs.

Pleas in law and main arguments

The period prescribed for transposing Directive 2004/49/EC into national law expired on 30 April 2006.

[1] OJ L 164 of 30.4.2004, p. 44.

Action brought on 25 July 2007 — Commission of the European Communities v Hellenic Republic

(Case C-346/07)

(2007/C 211/60)

Language of the case: Greek

Parties

Applicant: Commission of the European Communities (represented by: G. Zavvos and P. Dejmek)

Defendant: Hellenic Republic

Form of order sought

— declaration that, by not adopting the laws, regulations and administrative 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, or in any event by not informing the Commission of such measures, the Hellenic Republic has failed to fulfil its obligations under that directive;

— an order that the Hellenic Republic pay the costs.

Pleas in law and main arguments

The period prescribed for transposing Directive 2004/50/EC into national law expired on 30 April 2006.

[1] OJ L 164 of 30.4.2004, p. 114.

COURT OF FIRST INSTANCE

Judgment of the Court of First Instance (Second Chamber) of 18 July 2007 — Ente per le ville vesuviane v Commission of the European Communities

(Case T-189/02) ([1])

(European Regional Development Fund (ERDF) — Ending of Community financial assistance — Action for annulment — Admissibility — Status to act of ultimate beneficiary of assistance — Direct link — Rights of the defence — Infringement of Article 12 of Regulation (EEC) No 4254/88 as amended — No inquiry)

(2007/C 211/61)

Language of the case: Italian

Parties

Applicant: Ente per le ville vesuviane (Naples, Italy) (represented by: E. Soprano and A. De Angelis, lawyers)

Defendant: Commission of the European Communities (represented by: L. Flynn and H. Speyart, agents)

Re:

Annulment of Commission Decision D(2002) 810111 of 13 March 2002, purporting to end financial assistance from the European Regional Development Fund (ERDF) in the form of investment in infrastructure in Campania (Italy) relating to an integrated scheme of development of three Vesuvian towns for the purposes of tourism (ERDF No 86/05/04/054).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Ente per le ville vesuviane to pay all of the costs.*

([1]) OJ C 191, 10.8.2002.

Judgment of the Court of First Instance (Third Chamber) of 19 July 2007 — Bouychou v Commission

(Case T-344/04) ([1])

(Non-contractual liability — Decision ordering repayment of State aid granted by France to the company Stardust Marine — Annulment of the decision by judgment of the Court)

(2007/C 211/62)

Language of the case: French

Parties

Applicant: Denis Bouychou, insolvency administrator of disposal of the company Stardust Marine (Paris, France) (represented by: B. Vatier and M. Verger, lawyers)

Defendant: Commission of the European Communities (represented by: G.Rozet and C. Giolito, Agents)

Re:

Claim for compensation for loss allegedly caused by Commission Decision 2000/513/EC of 8 September 1999 on aid granted by France to the company Stardust Marine, represented by Denis Bouychou, as insolvency administrator.

Operative part of the judgment

The Court:

1. *Dismisses the action as unfounded;*

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

([1]) OJ C 262, 23.10.2004.

Judgment of the Court of First Instance (Third Chamber) of 19 July 2007 — FG Marine SA v Commission

(Case T-360/04) ([1])

(Non-contractual liability — Decision ordering repayment of State aid granted by France to the company Stardust Marine — Annulment of the decision by judgment of the Court)

(2007/C 211/63)

Language of the case: French

Parties

Applicant: FG Marine SA (Roissy Charles de Gaulle, France) (represented by: M.-A. Michel, lawyer)

Defendant: Commission of the European Communities (represented by: G.Rozet and C. Giolito, Agents)

Re:

Claim for compensation for loss allegedly caused by Commission Decision 2000/513/EC of 8 September 1999 on aid granted by France to the company Stardust Marine.

Operative part of the judgment

The Court:

1. *Dismisses the action as unfounded;*

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

([1]) OJ C 262, 23.10.2004.

Order of the President of the Court of First Instance of 27 June 2007 — V v Parliament

(Case T-345/05 R II)

(Application for interim measures — Waiver of the immunity of a Member of the European Parliament — Application for suspension of operation — Urgency)

(2007/C 211/64)

Language of the case: English

Parties

Applicant: V (represented by: J. Lofthouse and E. Hayes, Barristers, and M. Monan, Solicitor)

Defendant: European Parliament (represented by: H. Krück, D. Moore and M. Windisch, acting as Agents)

Re:

Application for re-examination of the applicant's first application for interim measures, dismissed by order of the President of the Court of First Instance of 16 March 2007 in Case T-345/05 R V v *Parliament*, not published in the ECR.

Operative part of the order

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

2. *The costs are reserved.*

Order of the Court of First Instance of 25 June 2007 — Drax Power and Others v Commission

(Case T-130/06) ([1])

(Application for annulment — Environment — Directive 2003/87/EC — Scheme for greenhouse gas emission allowance trading — Proposed amendment to national allocation plan — Refusal by the Commission — Inadmissibility)

(2007/C 211/65)

Language of the case: English

Parties

Applicants: Drax Power Ltd (Selby, United Kingdom); Great Yarmouth Power Ltd (Swindon, United Kingdom); International Power plc (London, United Kingdom); Npower Cogen Ltd (Swindon); RWE Npower plc (Swindon); ScottishPower Generation Ltd (Glasgow, United Kingdom); and Scottish and Southern Energy plc (Perth, United Kingdom) (represented by: I. Glick, QC, and M. Cook, Barrister)

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

Re:

Application for annulment of Commission Decision C(2006) 426 final of 22 February 2006 concerning the proposed amendment to the national allocation plan for the allocation of greenhouse gas emission allowances notified by the United Kingdom in accordance with Directive 2003/87/EC of the European Parliament and of the Council

Operative part of the order

1. *The application is dismissed as inadmissible.*

2. *The applicants are to bear their own costs and pay those incurred by the Commission.*

([1]) OJ C 165, 15.7.2006.

Action brought on 31 May 2007 — KEK DIAVLOS v Commission of the European Communities

(Case T-190/07)

(2007/C 211/66)

Language of the case: Greek

Parties

Applicant: KEK DIAVLOS (Peristeri, Attiki (Greece)) (represented by: D. Khatsimikhalis, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— annulment of Decision 23/II/2006 of the Commission of the European Communities and any other related act and/or decision of the Commission of the European Communities on the grounds set out;

— an order that the Commission of the European Communities pay the costs and our lawyer's fees.

Pleas in law and main arguments

This action is brought against Decision E(2006) 465 final of the Commission of the European Communities of 23 February 2006 requiring the applicant to pay the basic sum of EUR 71 981 in repayment of the advance received by KEK KSINI ([1])in respect of funding under the PRINCE information programme for Europe's citizens, together with interest, on the ground of unjustified delay and lack of proof of completion of the project. The applicant maintains that the decision in question is unfounded, incorrect, improper and contains insufficient and incorrect reasoning.

In contrast to the Commission's findings which, in the applicant's view are incorrect and unjustifiable, the applicant maintains that it complied fully with its obligations under the funding contract which it signed in order to participate in the programme in question and that, in the cases in which delays were recorded because of objective difficulties, the applicant informed the competent bodies of the European Union in good time.

The applicant also claims that KEK KSINI never received the remainder of the amount of the funding after receipt of the original advance of EUR 71 981, although it considers that the work performed and the expenditure incurred in connection with the above programme exceed that sum.

Accordingly the applicant maintains that the contested decision should be annulled; it was issued as a result of erroneous information given by the staff of the company to the bodies of the European Union which carried out on-the-spot checks, since, because of a change in the staff who were in charge of the programme, it was not initially possible for new employees to be fully briefed so as to gather all the required information and give full replies directly.

([1]) Pursuant to the amendment to the company's articles on 12 April 2006, the company KEK KSINI was renamed KEK DIAVLOS.

Action brought on 26 June 2007 — Las Palmeras v Council and Commission

(Case T-217/07)

(2007/C 211/67)

Language of the proceedings: Spanish

Parties

Applicant: Las Palmeras S. Coop. And. (Seville, Spain) (represented by: L. Ortiz Blanco, lawyer)

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

Forms of order sought

— to uphold the present action for damages, in accordance with Article 288 EC, and declare the applicant is entitled to be financially compensated by the Council and the Commission jointly and severally in the sum total of two hundred and eighty-eight thousand two hundred and thirty-eight euros (EUR 288 238);

— to order the defendant institutions to pay the costs.

Pleas in law and main arguments

The applicant in the present proceedings, a Spanish firm which gins raw cotton, seeks compensation for losses allegedly suffered as a result of the application, during the 2006/2007 marketing year, of Chapter 10a of Title IV of Regulation (EC) No 1782/2003 ([1]), inserted by Article 1(20) of Regulation (EC) No 864/2004 ([2]). Chapter 10a of Title IV of Regulation (EC) No 1782/2003 establishes common rules for direct support schemes under the common agricultural policy and establishes certain support schemes for farmers.

In that regard it is noted that Chapter 10a of Title IV of Regulation (EC) No 1782/2003 was annulled by judgment of the Court of Justice on 7 September 2006 in Case C-310/04 *Spain* v *Commission* for breach of the principle of proportionality. That judgment, however, suspended the effects of the annulment until the adoption of a new regulation, so that the provisions in question continued to apply for the 2006/2007 marketing year.

On the basis of two reports carried out by an economic consultancy the application reviews the loss suffered by the sector, since, as a consequence of applying the annulled provisions during the relevant marketing year a large drop occurred in the volume of raw cotton produced and, consequently in the production of industrially ginned cotton. Operation of the support scheme outlined in the relevant provisions results in a significant portion of the support (about 65 %) becoming completely unrelated to the production of cotton, so that the farmer continues to receive it, even though he is using his land for the production of other crops. Accordingly, the estimated profitability of using an area of one hectare to grow cotton becomes lower than the profitability of using it to grow other crops. That situation also meant that the operating revenues obtained by the ginning industry were reduced.

The applicant claims that in the present case the requirements demanded by case-law to establish the extra-contractual liability of the Community are met.

([1]) Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) No 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 (OJ L 270, 21.10.2003, p. 1).

([2]) Council Regulation (EC) No 864/2004 of 29 April 2004 amending Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers, and adapting it by reason of the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia to the European Union (OJ L 161, 30.4.2004, p. 48).

Action brought on 26 June 2007 — Agroquivir v Council and Commission

(Case T-218/07)

(2007/C 211/68)

Language of the proceedings: Spanish

Parties

Applicant: Agroquivir, S. Coop. And. de Segundo Grado (Seville, Spain) (represented by: Luis Ortiz Blanco, lawyer)

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

Forms of order sought

— to uphold the present action for damages, in accordance with Article 288 EC, and declare that the applicant is entitled to be financially compensated by the Council and the Commission jointly and severally in the sum total of two hundred and eighty-eight thousand two hundred and thirty-eight euros (EUR 288 238);

— to order the defendant institutions to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are those already put forward in Case T-217/07 *Las Palmeras* v *Council and Commission*.

Action brought on 25 June 2007 — DSV Road v Commission

(Case T-219/07)

(2007/C 211/69)

Language of the case: Dutch

Parties

Applicant: DSV ROAD N.V. (represented by: A. Poelmans, A. Calewaert and R. de Wit, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— set aside Decision C(2007) 1776 of the Commission of the European Communities of 24 April 2007 in relation to the application of the Kingdom of Belgium (file reference REC 05/02) determining that import duties in the amount of EUR 168 004,65 forming the subject-matter of the application of the Kingdom of Belgium of 12 August 2002 must be recovered and that there are no grounds for remission of those import duties;

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

Pleas in law and main arguments

The applicant imported diskettes from Thailand. Those diskettes were covered by a preferential rule under the scheme of general tariff preferences on condition that their importation was covered by a form A certificate of origin issued by the competent Thai authorities in accordance with Article 80 of Regulation (EEC) No 2454/93 ([1]).

On the occasion of each customs declaration the applicant submitted a form A issued by the Thai authorities, following which the Belgian authorities accorded preferential tariff treatment.

However, a number of the certificates issued by the Thai authorities were declared to be invalid, with the result that the goods concerned were not eligible for preferential tariff treatment when imported into the EU.

In the contested decision the Commission ruled that the resulting customs debt had to be the subject of post-clearance recovery.

The applicant first submits that the Commission should have ruled that the outstanding duties did not have to be the subject of post-clearance recovery, in accordance with Article 220(2)(b) of Regulation (EEC) No 2913/92 ([2]). The applicant submits that the issue of the form A certificates was attributable to a mistake on the part of the Thai authorities and that there is no indication whatsoever that the exporters incorrectly set out the facts. Moreover, the applicant contends, there was a mistake inasmuch as the Thai authorities knew, or ought to have known, that the goods in question were not eligible for preferential tariff treatment.

Second, the applicant submits that the Commission ought to have remitted the duties in accordance with Article 239 of Regulation (EEC) No 2913/92 on the ground of special circumstances.

([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).

([2]) Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1).

Action brought on 29 June 2007 — Thomson Sales Europe v Commission

(Case T-225/07)

(2007/C 211/70)

Language of the case: French

Parties

Applicant: Thomson Sales Europe (Boulogne-Billancourt, France) (represented by: F.Goguel and F. Foucault, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Before ruling, order disclosure to the parties all of the materials, documents, reports, letters, preparatory works etc which led to the two Regulations No 2376/94 and No 710/95;

— Principally, annul the decision of the Commission REM No 03/05 of 7 May 2007.

Pleas in law and main arguments

By the present action, the applicant seeks the annulment of Commission Decision No REM 03/05 of 7 May 2007 holding that the remission of import duties is not justified in the particular case of the applicant. That decision was issued following the application made to the Commission by the French national authorities, who had claimed from the applicant payment of anti-dumping duties on importation of colour television receivers manufactured in Thailand by its subsidiary there, and on which the subsidiary had applied for remission on the basis of Article 239 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code. ([1])

The applicant considers that it is entitled to the remission on the basis of Article 239 of Regulation (EEC) No 2913/92, since, in its opinion, it satisfies the two conditions laid down in that provision.

As regards the first condition (the existence of a special situation), the applicant claims that its situation is certainly special and is the result of, first, the conduct of the Commission which changed its approach to interpretation of the legal provisions on the origin of goods without having properly informed traders, and, second, the conduct of the national authorities who followed the approach adopted by the Commission.

As regards the second condition referred to in Article 239 of Regulation (EEC) No 2913/92 (no deception or negligence), the applicant claims that it cannot be considered to have been negligent since it trusted in the validity of the initial position of the Commission's services, who, in the opinion of the applicant, decided not to employ in its case a strict application of the rules of origin but to apply to it the special anti-dumping duties on all the receivers manufactured and exported by its Thailand subsidiary.

([1]) OJ L 302, p. 1.

Action brought on 20 June 2007 — Prana Haus v OHIM (PRANAHAUS)

(Case T-226/07)

(2007/C 211/71)

Language of the case: German

Parties

Applicant: Prana Haus (Freiburg, Germany) (represented by N. Hebeis, lawyer)

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 18 April 2007 in Case R 1611/2006-1;

— order the Office for Harmonisation in the Internal Market to enter trade mark application No 4 839 916 'PRANAHAUS' in the Register of Community trade marks and

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

Pleas in law and main arguments

Community trade mark concerned: The word mark 'PRANAHAUS' for goods and services in classes 9, 16 and 35 (application No 4 839 916)

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 Regulation (EC) No 40/94 ([1]), since there is no absolute ground for refusal of registration of the trade mark applied for.

([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 28 June 2007 — Spain v Commission

(Case T-227/07)

(2007/C 211/72)

Language of the proceedings: Spanish

Parties

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

Defendant: Commission of the European Communities

Forms of order sought

— declare void Commission Decision 2007/243/EC of 18 April 2007 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), in so far as it forms the subject-matter of the present action and,

— order the Commission to pay the costs.

Pleas in law and main arguments

The Kingdom of Spain disputes the contested decision in so far as it provides for a financial correction of the costs incurred in the context of production aid for products processed from tomatoes in the financial years 2003 and 2004, in the amount of EUR 4 090 316,46.

In support of its claims, the applicant alleges:

— infringement of Articles 2 and 3 of Regulation No 729/70 [1] and of Article 2 of Regulation No 1258/1999 [2] given the non-existence of the irregularities relied on by the Commission relating, in particular, to the checks of primary materials at the delivery points, that is to say, the absence of nightly checks by the inspectors of the Extremadura Autonomous Community, failure to retain proof of weighing, and 'en masse' signature of delivery notes;

— in the alternative, breach of the principle of proportionality, given that the Commission decided to impose a financial correction on the entire quantity of tomatoes delivered, even though the actual irregularity on which the correction is based would concern only those quantities delivered at night, which means that the corrections could have been applied only to those quantities.

[1] Regulation (EEC) No 729/70 of the Council of 21 April 1970 on the financing of the common agricultural policy (OJ English Special Edition 1970 (I), p. 218).

[2] Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy (OJ L, 26.6.1999, 160, p. 103).

Action brought on 29 June 2007 — Malheiro v Commission

(Case T-228/07)

(2007/C 211/73)

Language of the case: English

Parties

Applicant: Ana Malheiro (Brussels, Belgium) (represented by: C. Ebrecht, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— Annul the decision adopted by the European Commission, Director-General of Personnel and Administration on 30 April 2007, rejecting complaint No R/6/07, registered on 8 January 2007, seeking annulment of the decision by the European Commission's DG ADMIN not to grant her allowances other than the reduced daily subsistence allowance of EUR 28.78;

— order that the defendant pay the applicant, for the period of 16 November 2006 until 31 October 2008, the full daily subsistence allowance of EUR 115.09 provided for by the Commission Decision laying down rules on the secondment of national experts to the Commission (C(2006) 2003) of 1 June 2006 less the amount of the daily subsistence allowances already received by the applicant, plus an additional monthly allowance of EUR 542.55;

— order that the defendant reimburse the applicant her incurred removal expenses;

— order the defendant to bear the costs.

Pleas in law and main arguments

The applicant, who is working as a seconded national expert for the Commission, wishes to receive i) full daily subsistence allowance instead of the reduced daily subsistence allowance granted by the Commission, and ii) a further monthly allowance instead of removal expenses.

In support of her application, the applicant firstly submits that the Commission committed an error of assessment since it deemed the applicant's residence to be in Brussels because her husband has his residence there. The applicant submits that her stay in Brussels is only of a temporary character and that she is to the same extent as any other seconded national expert exposed to the same inconveniences and disadvantages resulting in the temporary nature of the secondment.

Furthermore, the applicant alleges that the Commission infringed the principle of equal treatment and Article 20 of the Charter of Fundamental Rights of the European Union since Article 20(3)(b) of the Commission's decision laying down the rules on the secondment of national experts to the Commission discriminates against married seconded national experts compared to unmarried seconded national experts living together with someone in a relationship.

Moreover, the applicant contends that this discrimination as well as the, in comparison with the applicant's allowance, higher allowance given to unmarried male seconded national experts (whether living in a relationship or not) leads to an infringement of Article 141 EC and the principle of equal pay for men and women as well as of Directive 2000/78/EC [1] and of the principle of proportionality.

[1] Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16).

Appeal brought on 5 July 2007 by Maddalena Lebedef-Caponi against the judgment of the Civil Service Tribunal delivered on 25 April 2007 in Case F-71/06 Lebedef-Caponi v Commission

(Case T-233/07 P)

(2007/C 211/74)

Language of the case: French

Parties

Appellant: Maddalena Lebedef-Caponi (Senningerberg, Grand Duchy of Luxembourg) (represented by F. Frabetti, lawyer)

Other party to the proceedings: Commission of the European Communities

Form of order sought by the appellant

— Annul the judgment of the Civil Service Tribunal of 25 April 2007 in case F-71/06;

— Grant the form of order sought by the applicant at first instance and, consequently, declare the appeal in Case F-71/06 admissible and well-founded;

— Alternatively, refer the case back to the Civil Service Tribunal;

— Make an order as to the costs, expenses and fees and order the Commission to pay them.

Pleas in law and main arguments

In her appeal, the applicant seeks the annulment of the judgment of the Civil Service Tribunal dismissing the action by which she sought the annulment of her Career Development Report (CDR) for the period 1.1.2004-31.12.2004.

In support of her appeal, the applicant submits that the Civil Service Tribunal has made errors of interpretation and assessment of the facts which led it to hold that the critical assessment of the applicant in the contested CDR was well-founded.

Action brought on 3 July 2007 — Koninklijke Grolsch v Commission

(Case T-234/07)

(2007/C 211/75)

Language of the case: Dutch

Parties

Applicant: Koninklijke Grolsch NV (represented by: M.B.W. Biesheuvel and J.K. de Pree, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— set aside in whole or in part the decision addressed to Grolsch, and in any event set aside that decision to the extent to which it is addressed to Grolsch;

— set aside or, in the alternative, reduce the fine imposed on Grolsch;

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

Pleas in law and main arguments

The applicant challenges the Commission decision of 18 April 2007 relating to a proceeding under Article 81 EC (Case No COMP/B-2/37.766 — Netherlands beer market), by which a fine was imposed on the applicant.

In support of its action the applicant puts forward three procedural heads of complaint. First, it argues that the proceedings were unreasonably lengthy, and that this amounted to an infringement of the principle that proceedings should be conducted within a reasonable period of time. Second, Grolsch submits that its rights of defence were infringed inasmuch as it was refused access to the other parties' replies to the statement of objection. Third, it claims that the principles of sound administration, including the principles of the duty of care and of the presumption of innocence, were infringed inasmuch as the Commission did not act impartially during the investigation, failed to take account of exonerating material, and conducted the investigation in an incomplete or negligent manner.

The applicant goes on to put forward six heads of complaint in relation to the Commission's substantive findings. According to the applicant, the Commission infringed Article 81 EC, the obligation to state reasons and the principles of sound administration in its findings with regard to, first, the avowed objective of the agreements, second, the alleged incidental allocation of clients in the catering and home-use market sectors, third, the alleged coordination of other commercial conditions, fourth, the alleged agreement and/or adjustment concerning prices and price increases in both the catering and home-use market sectors, including private-label beer, fifth, the alleged duration of the infringement and, sixth, the applicant's ostensibly direct participation in the alleged infringement.

The applicant concludes by putting forward two heads of complaint relating to the quantum of the fine imposed. It submits that, by applying a notional turnover figure which includes excise duty in applying the legally permissible maximum of 10 %, the Commission breached Article 23(2) of Regulation No 1/2003 ([1]). The applicant also takes issue with the disproportionate nature of the fine imposed, in which connection it argues that the Commission failed to make allowance for the length of the proceedings and failed to have regard for the contrast with the parallel Belgian beer case ([2]).

([1]) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1).
([2]) Case No IV/37/614.F3 PO/Interbrew and Alken-Maes (OJ 2003 L 200, p. 1).

Action brought on 4 July 2007 — Bavaria v Commission

(Case T-235/07)

(2007/C 211/76)

Language of the case: Dutch

Parties

Applicant: Bavaria NV (represented by: O.W. Brouwer, D. Mes and A.C.E. Stoffer, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— set aside in whole or in part the Commission decision of 18 April 2007 relating to a proceeding under Article 81 EC (Case COMP/B-2/37.766 — Netherlands beer market — C(2007) 1697 final) to the extent to which that decision concerns Bavaria NV;

— in the alternative, reduce the fine imposed on Bavaria NV;

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

Pleas in law and main arguments

The applicant is challenging the Commission decision of 18 April 2007 relating to a proceeding under Article 81 EC (Case COMP/B-2/37.766 — Netherlands beer market), by which a fine was imposed on the applicant.

In support of its application, the applicant first submits that there has been an infringement of the principle of sound administration in so far as the Commission failed to institute a full, careful and impartial investigation.

Second, it is claimed that the Commission breached Article 81 EC through manifest errors of appraisal, misapplication of the law in establishing the existence of the breach, disregard for the presumption of innocence, and infringement of the principle of legality and of the obligation under Article 253 EC to state reasons.

Third, the applicant contends that the Commission erred in its determination of the duration of the breach.

Fourth, it is alleged that, in determining the level of the fine imposed on the applicant, the Commission breached Article 23 of Regulation No 1/2003 ([1]), the guidelines on fines based on that regulation ([2]), the principle of equality and the principle of proportionality.

Fifth, the applicant alleges that there was a manifest failure by the Commission to carry out its investigation within a reasonable time-frame inasmuch as that investigation lasted more than seven years.

Sixth, the applicant claims that there has been an infringement of essential procedural requirements, of the principle of sound administration and the rights of the defence, consisting in the refusal to grant it access to the replies of other breweries to the statement of objections and to sections of the Commission's file of crucial importance for the applicant's defence.

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

Action brought on 4 July 2007 — Federal Republic of Germany v Commission

(Case T-236/07)

(2007/C 211/77)

Language of the case: German

Parties

Applicant: Federal Republic of Germany (represented by: M. Lumma and J. Müller)

Defendant: Commission of the European Communities

Form of order sought

— declare void Commission Decision K(2007) 1901 final of 27 April 2007 on the clearance of the accounts of the paying agencies of Member States concerning expenditure financed by the European Agricultural Guidance and Guarantee Fund (EAGGF), Guarantee Section, for the 2006 financial year, to the extent that it charges to the applicant the amount of EUR 1 750 616,27;

— order the defendant to pay the costs.

Pleas in law and main arguments

The applicant contests Commission Decision K(2007) 1901 final of the Commission of 27 April 2007 on the clearance of the accounts of the paying agencies of Member States concerning expenditure financed by the European Agricultural Guidance and Guarantee Fund (EAGGF), Guarantee Section, for the 2006 financial year, and applies for annulment of that decision, to the extent that it charges to the applicant half of certain non-recoverable export refunds.

In support of its claim, the applicant maintains, first, that the defendant was wrong to apply the fixed 50 % charge laid down in Article 32(5) of Regulation (EC) No 1290/95 ([1]). According to the applicant that provision is not applicable to cases which were notified in accordance with Article 5(2) of Regulation (EC) No 595/91 ([2]).

Secondly, the applicant argues that in some of the cases at issue the defendant has infringed the principles of proper administration since it did not comply with the obligation to which it was bound by the unilateral statement for the minutes of 4 May 1995.

([1]) Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy (OJ 2005 L 209, p. 1).
([2]) Council Regulation (EEC) No of 4 March 1991 concerning irregularities and the recovery of sums wrongly paid in connection with the financing of the common agricultural policy and the organisation of an information system in this field and repealing Regulation (EEC) No 283/72 (OJ 1991 L 67, p. 11).

Action brought on 27 June 2007 — CityLine Hungary Kft. v Commission of the European Communities

(Case T-237/07)

(2007/C 211/78)

Language of the case: Hungarian

Parties

Applicant(s): CityLine Hungary Kft. (Vecsés, Hungary) (represented by: Á. Menyhei, lawyer)

Defendant(s): Commission of the European Communities

Form of order sought

— Declare Article 2c(1) of Commission Regulation (EC) No 375/2007 of 30 March 2007 published in the *Official Journal of the European Union* of 4 April 2007 invalid, and

— Order the defendant to pay the costs, including legal fees.

Pleas in law and main arguments

The applicant contests the validity of Article 2c(1) of Regulation EC No 1702/2003 introduced by Regulation (EC) No 375/2007 ([1]). The Article deals with the continued operation of certain aircrafts registered by Member States.

The applicant, which is engaged in the transport of various goods by air, claims that the contested provisions of Regulation (EC) No 375/2007 are of direct and individual concern to it.

By way of grounds the applicant submits that Article 2c of Regulation (EC) No 375/2007 infringes the general principle of legal certainty. The contested Regulation makes the operation of aircraft subject to a past event, that is to say, it requires registration to have been effected before the accession of the Member State in question to the European Union, a circumstance which in the present case was obviously not foreseeable by the relevant persons.

The applicant submits further that the contested Article of Regulation (EC) No 375/2007 infringes the principle of proportionality enshrined in Article 5 EC. In that connection the applicant argues that the contested provision constitutes a disproportionate restriction for persons whose aircraft were placed on a Member State's register after accession. The Article is irrelevant in terms of flight safety and entails unnecessary rules and conditions thereby going further than is necessary to achieve the objectives contained in the EC Treaty.

(1) Commission Regulation (EC) No 375/2007 of 30 March 2007 amending Regulation (EC) No 1702/2003 laying down implementing rules for the airworthiness and environmental certification of aircraft and related products, parts and appliances, as well as for the certification of design and production organisations (OJ 2007 L 94, p. 3).

Action brought on 11 July 2007 — Ristic and Others v Commission

(Case T-238/07)

(2007/C 211/79)

Language of the case: German

Parties

Applicants: Ristic AG (Burgthann, Germany), Piratic Meeresfrüchte Import GmbH (Burgthann, Germany), Prime Catch Seafood GmbH (Burgthann, Germany) and Rainbow Export Processing SA (San José, Costa Rica) (represented by: H. Schmidt, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— declare Commission Decision of 16 May 2007 (2007/362/EC) void pursuant to the first paragraph of Article 231 EC, to the extent that it amended Decision 2004/432/EC to the effect that, in the annex to that decision Costa Rica is no longer listed with its ISO-2-Code in the first column, its name in the second column and an 'X' in the eighth column to indicate that in accordance with Decision 2004/432/EC animals from aquaculture and products of animal origin from aquaculture may be imported from Costa Rica into the European Union;

— hold accordingly that reason that the European Community is obliged to compensate the applicants for the damage caused to them as a result of the Commission's decision;

— order the Commission to pay the applicant's necessary costs in accordance with Article 87(2) of the Rules of Procedure of the Court of First Instance.

Pleas in law and main arguments

The applicants contest Commission Decision 2007/362/EC (1), because Costa Rica was deleted by that decision from the list of third countries of which the residue monitoring plans were approved in respect of animals from aquaculture and products of animal origin from aquaculture.

The applicants are undertakings which are engaged in particular in the processing and marketing of shrimps from aquaculture in Costa Rica and Equador. They claim that the contested decision is of both direct and individual concern to them within the meaning of the fourth paragraph of Article 230 EC.

In support of their action the applicants claim in particular that the contested decision is unlawful because it infringes the principle of proportionality. They also complain of infringement of the right to a fair hearing and misuse of powers by the defendant.

(1) 2007/362/EC: Commission Decision of 16 May 2007 amending Decision 2004/432/EC on the approval of residue monitoring plans submitted by third countries in accordance with Council Directive 96/23/EC (notified under document number C(2007) 2088) (OJ 2007 L 138, p. 18).

Action brought on 9 July 2007 — Pathé Distribution v EACEA

(Case T-239/07)

(2007/C 211/80)

Language of the case: French

Parties

Applicant: Pathé Distribution (Paris, France) (represented by: P. Deprez, lawyer)

Defendant: Education, Audiovisual & Culture Executive Agency (EACEA)

Form of order sought

— Declare that the contract No 2006-09120304D1021001FD1507 has not been validly terminated by the Education, Audiovisual & Culture Executive Agency and remains in force;

— Order the Education, Audiovisual & Culture Executive Agency to pay to the applicant the sum of EUR 9 737 remaining payable to it under the contract.

Pleas in law and main arguments

By the present action based on an arbitration clause, the applicant requests that the defendant be ordered to make payment of a sum equivalent to the balance remaining payable to it in implementation of contract No 2006-09120304D1021001FD1507 in relation to Community financial support of a project for videographic distribution of a film within the 'MEDIA Plus' programme adopted by Council Decision 2002/821/EC ([1]).

The contract was signed by the parties on 27 June 2006 and an advance was paid by the defendant to the applicant as provided for by the contract. On 8 May 2007, the defendant sent a letter to the applicant purporting to terminate the contract on the ground that the real total costs were lower than the project's provisional budget and that no written explanation had been provided in the submitted financial report on the project, and requesting repayment of the sum paid as an advance. The applicant considers, however, that, as provided for in the contract, the defendant's contribution to the project was to be as high as 50 % of the real costs of videographic distribution, and accordingly requests payment of a sum still due in addition to the sum paid in advance.

In support of its action, the applicant claims that termination of the contract by the defendant is irregular and unfounded, since it has disregarded the terms of the contract as to the procedure for termination, and in particular, it has not allowed the applicant any period in which to respond on the implementation of the contract. According to the applicant, the Court should rule that the contract remains in force.

Further, the applicant disputes the grounds of termination of the contract which are relied on by the defendant, namely failure to perform its contractual obligations.

([1]) 2000/821/EC: Council Decision of 20 December 2000 on the implementation of a programme to encourage the development, distribution and promotion of European audiovisual works (MEDIA Plus — Development, Distribution and Promotion) (2001-2005), OJ L 336, p. 82.

Action brought on 4 July 2007 — Heineken Nederland and Heineken v Commission

(Case T-240/07)

(2007/C 211/81)

Language of the case: Dutch

Parties

Applicants: Heineken Nederland BV and Heineken NV (represented by: T. Ottervanger and M.A. de Jong, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— set aside in whole or in part the decision addressed to, *inter alia*, the applicants;

— set aside or reduce the fine imposed on the applicants;

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

Pleas in law and main arguments

The applicants are challenging the Commission decision of 18 April 2007 relating to a proceeding under Article 81 EC (Case COMP/B-2/37.766 — Netherlands beer market), by which a fine was imposed on the applicants.

In support of their action, the applicants first put forward a number of procedural heads of complaint. First, they allege infringement of the principle of sound administration during the investigation and breach of Article 27 of Regulation No 1/2003 in that the Commission refused access to the defence submissions of the other undertakings. Second, the applicants allege that the Commission failed to carry out a careful and impartial investigation. Third, the applicants submit that the conduct of the Competition Commissioner amounted to an infringement of the principle of the presumption of innocence. Fourth, they claim that the Commission failed to comply with the requirement that proceedings be concluded within a reasonable period of time, as a result of which the applicants argue that their rights of defence were breached.

The applicants further allege a breach of Article 81 EC. In that connection, the applicants first submit that there was a defective adduction of evidence, disregard for the presumption of innocence and infringement of the principle that reasons must be given. Second, the applicants dispute the contention that there were agreements and/or concerted practices in this case. Third, the applicants argue that the Commission erred in its calculation of the duration of the alleged breach.

The applicants also put forward a number of heads of complaint concerning the determination of the amount of the fine. They first allege a breach of Article 23(3) of Regulation No 1/2003, incorrect application of the guidelines on setting fines, infringement of the principles of equality, legal certainty and proportionality and breach of the obligation to state reasons. The applicants argue that the Commission erred in its assessment of the gravity of the breach, in particular through misappraisal of the nature of the breach, by failing to take account of the negligible market impact and through its incorrect determination of the relevant geographical market. They further claim that the Commission erred in determining the basic amount of the fine, the multiplication factor for the deterrent effect and the duration. In addition, it is alleged that the Commission failed to take adequate account of the mitigating circumstances and that the unduly lengthy duration of the administrative proceedings resulted in a disproportionately high fine by reason of the fact that Commission policy in regard to the level of fines had become stricter in the intervening period.

In conclusion, the applicants submit that the reduction applied by the Commission to the amount of the fine by reason of the unreasonable length of the administrative proceedings was disproportionately modest.

Action brought on 10 July 2007 — Buzzi Unichem v Commission

(Case T-241/07)

(2007/C 211/82)

Language of the case: Italian

Parties

Applicant: Buzzi Unichem SpA (represented by: C. Vivani and M. Vellano, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Annul the Commission Decision of 15.5.2007 concerning the national plan for the allocation of greenhouse gas emission allowances notified by Italy in accordance with Directive 2003/87/EC of the European Parliament and of the Council — for infringement of the EC Treaty and the principles and rules of law adopted in its application — to the extent that the national allocation plan must be altered so as to render no longer permissible rationalisation measures which envisage that the operator may maintain part of the allocated allowances in the event of 'closure due to processes of production rationalisation' (Article 1(4) and Article 2(4) of the Decision);

— Order the Commission to pay to the applicant all the costs of these proceedings.

Pleas in law and main arguments

The decision contested by this action has determined that the national allocation plan notified by Italy by letter of 15 December 2006 is incompatible with 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.

The specific point at issue is the possibility for the operator to maintain part of the allocated allowances in the event of closure, due to processes of rationalisation, of all or part of the production installations.

In support of its claims, the applicant submits:

— That the defendant (the Commission) erroneously applied its own critical analysis in terms of 'adjustment of allocations', excluding the possibility of so-called 'ex-post adjustments'. In that regard, the applicant accepts that any type of adjustment may distort the market and create business uncertainty and infringe Criterion 10 of Annex III to the Directive. According to the applicant, what is at issue is rather avoidance of the loss of ownership of the allocation, and therefore loss of the legal capacity to make use of it at other installations. In essence, the issue should be to avoid an obstacle to the free organisation and development of an undertaking's subjective rights, which is moreover contrary to the principles of reasonableness, proportionality, and protection of the environment and competition, pursuant to Article 5, Article 174 and Article 157 EC.

— The contested decision in addition contradicts the logical premises on which it is based. Specifically on this point, in recital 4 to the contested decision the Commission itself admits that the Directive envisages the possibility that Member States may introduce adjustments, provided that the effect of adjustment is not retroactive, and that it does not harm the functioning of the Community system. In the present case, the operator of an installation which is closed will continue to be present on the market and to operate at other authorised installations. In the words of the Commission itself, an 'adjustment of allocations' should therefore be possible.

— The defendant has failed to explain the reasoning which led it to hold that the criticised scheme was incompatible as 'ex-post adjustment'.

— Infringement of the principle of non-discrimination, in the light of the provisions of the Commission's decision approving the national allocation plan of the United Kingdom.

Action brought on 6 July 2007 — Weiler v OHIM — CISQ (Q2WEB)

(Case T-242/07)

(2007/C 211/83)

Language in which the application was lodged: German

Parties

Applicant: Dieter Weiler (Pulheim, Germany) (represented by: V. von Bomhard, T. Dolde and A. Renck, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: CISQ Federazione Certificazione Italiana Sistemi di Qualità Aziendali

Form of order sought

— annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 29 March 2007 in Case R 893/2005-1, and

— order the defendant to pay the costs of the proceedings, but with regard to the intervention of the other party before the Board of Appeal, the defendant and the intervener should be ordered to pay the costs.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: 'Q2WEB' for goods and services in classes 9, 35, 38 and 42 (Community trade mark No 2 418 150)

Proprietor of the Community trade mark: the Applicant

Applicant for the declaration of invalidity: CISQ Federazione Certificazione Italiana Sistemi di Qualità Aziendali

Trade mark right of applicant for the declaration: the word mark 'QWEB' for services in class 42 (Community trade mark No 1 772 078), the figurative mark 'QWEB' for services in classes 35, 38 and 42 (Community trade mark No 1 871 201), and the word mark 'QWEBMARK' for services in classes 35, 38 and 42 (Community trade mark No 1 771 963)

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

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 52(1)(a) in conjunction with Article 8(1)(b) of Regulation (EC) No 40/94 [1], since the opposing trade marks are not visually, phonetically or conceptually similar and the differences between the marks are sufficient to rule out the risk of confusion on the part of relevant consumers.

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[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 11 July 2007 — Republic of Poland v Commission of the European Communities

(Case T-243/07)

(2007/C 211/84)

Language of the case: Polish

Parties

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

Defendant: Commission of the European Communities

Form of order sought

— declare invalid Commission Decision 2007/361/EC of 4 May 2007 on the determination of surplus stocks of agricultural products other than sugar and the financial consequences of their elimination in relation to the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia (notified under document number C(2007)1979) [1] in so far as it relates to the Republic of Poland;

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

Pleas in law and main arguments

The contested decision determined the amounts of agricultural products in free circulation within Polish territory on the date of Polish accession to the European Union which, in the view of

the Commission, exceeded the level of normal stocks of those products and imposed on Poland for that reason 'the amounts to be charged … in consequence of the expense of elimination of those quantities [of surplus stocks]'.

The applicant requests that the decision be declared invalid and bases its charge on two pleas in law: the plea that the Commission was not competent to adopt the contested decision and that it breached Point 4 of Section 4 of Annex IV to the Act of Accession ([2]); and the plea that the Commission infringed the principle of proportionality.

As the basis for its first plea in law, the applicant submits that, in adopting the contested decision, the Commission exceeded the competence deriving from Point 4 of Section 4 of Annex IV to the Act of Accession inasmuch as that decision alters the agreements entered into in the Act of Accession by reason of the introduction of financial sanctions not provided for in that Act. The applicant further submits that the contested decision is at variance with the principle defined in the Act of Accession which provides that the Member States must effect the actual elimination of surplus stocks of agricultural products in free circulation within their territory at the time of accession.

As the basis for its plea in law concerning infringement of the principle of proportionality, the applicant submits that the objectives of the contested decision are mutually incompatible and for that reason have no legal justification. Moreover, in the applicant's view, the contested decision is not an appropriate means by which to calculate the costs of eliminating surplus supplies. The applicant submits at the same time that the contested decision is critically flawed in its determination of the quantities of surplus stocks in free circulation within Polish territory and that it failed to take account of the quantities of stocks which Poland eliminated at its own expense following the date of accession. The applicant contends that the decision imposed on Poland the costs of eliminating stocks which in actual fact were not borne by the Community, and that this resulted in unjust enrichment of the Community to the detriment of Poland. The applicant also submits that the adoption of the contested decision was not a necessary act in view of the lack of disturbances on the agricultural markets following Polish accession to the European Union and in view of the lengthy period of time which has elapsed since the date of accession. According to the applicant's assertions, the contested decision, notwithstanding the fact that it was adopted on the basis of the Act of Accession, does not realise any of the objectives defined in that Act within the agricultural sector.

([1]) OJ 2007 L 138, p. 14.

([2]) Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded (OJ 2003 L 236, p. 33).

Action brought on 13 July 2007 — Campo de Cartagena v Council and Commission

(Case T-244/07)

(2007/C 211/85)

Language of the proceedings: Spanish

Parties

Applicant: S.A.T., 'Campo de Cartagena' (Murcia, Spain) (represented by: L. Ortiz Blanco, lawyer)

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

Forms of order sought

— to uphold the present action for damages, in accordance with Article 228 EC, and declare the applicant is entitled to be financially compensated by the Council and the Commission jointly and severally in the sum total of two hundred and eighty-eight thousand two hundred and thirty-eight euros (EUR 288 238);

— to order the defendant institutions to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are those already put forward in the Case T-217/07 *Las Palmeras* v *Council and Commission*.

Action brought on 13 July 2007 — Virsa v Council and Commission

(Case T-245/07)

(2007/C 211/86)

Language of the proceedings: Spanish

Parties

Applicant: Virsa, S. Coop. L. (Murcia, Spain) (represented by: L. Ortiz Blanco, lawyer)

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

Forms of order sought

— to uphold the present action for damages, in accordance with Article 288 EC, and declare the applicant is entitled to be financially compensated by the Council and the Commission jointly and severally in the sum total of one million six hundred and fifty-five thousand four hundred and ten euros (EUR 1 655 410);

— to order the defendant institutions to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are those already put forward in the Case T-217/07 *Las Palmeras* v *Council and Commission*.

Action brought on 13 July 2007 — Coesagro v Council and Commission

(Case T-246/07)

(2007/C 211/87)

Language of the proceedings: Spanish

Parties

Applicant: S. Coop. And. Ecijana de Servicios Agropecuarios (Coesagro), (Seville, Spain) (represented by: L. Ortiz Blanco, lawyer)

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

Forms of order sought

— to uphold the present action for damages, in accordance with Article 228 EC, and declare the applicant is entitled to be financially compensated by the Council and the Commission jointly and severally in the sum total one million and thirty five thousand four hundred and sixty six euros (EUR 1 035 466);

— to order the defendant institutions to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are those already put forward in Case T-217/07 *Las Palmeras* v *Council and Commission*.

Action brought on 11 July 2007 — Slovakia v Commission

(Case T-247/07)

(2007/C 211/88)

Language of the case: Slovak

Parties

Applicant: Slovak Republic (represented by: J. Čorba, Agent)

Defendant: Commission of the European Communities

Form of order sought

— declare the contested decision void inasmuch as it relates to the applicant, alternatively, if the Court of First Instance considers it necessary or desirable, annul the contested decision in its entirety;

— order the defendant to pay the costs.

Pleas in law and main arguments

The applicant seeks annulment of Commission Decision C(2007) 1979 final of 4 May 2007 on the determination of surplus stocks of agricultural products other than sugar and the financial consequences of their elimination in relation to the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia ([1]) in the amended version of 25 May 2007. The contested Commission decision fixed the quantities of certain types of fruit and rice in free circulation in the Slovak Republic at the date of accession exceeding the quantities which could be regarded as constituting a normal carryover of stock at 1 May 2004. At the same time, it charged the applicant EUR 3 634 000 in consequence of the expense of eliminating those quantities.

The applicant submits that the defendant lacked the power to adopt the contested decision.

In addition, the applicant states that even if the defendant were to have the power to determine excess stocks in the Slovak Republic and to impose a financial penalty on the applicant in respect of those allegedly excess stocks, it infringed the Treaty of Accession ([2]) in that it did not act on the correct legal basis, namely Article 41 of the Act concerning the conditions of accession ([3]).

Moreover, the applicant submits that, in not establishing that the Community incurred expenses or suffered other damage as a result of the applicant's failure to eliminate the excess quantities and in failing to adopt in time an appropriate legal measure authorising (i) the elimination of excess stock from the applicant's market, (ii) the means of determining what is excess stock and (iii) the means of calculating the applicant's financial burden, the defendant, by the contested decision, infringed the Treaty of Accession and the general legal principles of proportionality and legal certainty.

Finally, the applicant submits that a serious infringement of the procedural requirement to state reasons occurred.

(1) OJ 2007 L 138, p. 14.
(2) Treaty concerning the accession of the Czech Republic, the Republic of Estonia, the Republic, of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic to the European Union (OJ 2003 L 236, p. 17).
(3) Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded (OJ 2003 L 236, p. 33).

Action brought on 12 July 2007 — Czech Republic v Commission

(Case T-248/07)

(2007/C 211/89)

Language of the case: Czech

Parties

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

Defendant: Commission of the European Communities

Form of order sought

— annul the contested decision in its entirety;

— alternatively, annul the contested decision inasmuch as it relates to the Czech Republic;

— order the Commission to repay the sums already paid;

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicant seeks annulment of Commission Decision C(2007) 1979 final version of 4 May 2007 on the determination of surplus stocks of agricultural products other than sugar and the financial consequences of their elimination in relation to the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia (1). By that decision, the Commission fixed the quantities of meat, fruits and rice in free circulation in the Czech Republic at the date of accession exceeding the quantities which could be regarded as constituting a normal carryover of stock at 1 May 2004. At the same time, it charged the applicant EUR 12 287 000 in consequence of the expense of elimination of those quantities.

The applicant submits that the Commission exceeded its power and thus infringed paragraph 4 of Chapter 4 of Annex IV to the Act concerning the conditions of Accession (2) by, in the contested decision based on that provision, fixing the financial amounts which the new Member States are to pay to the Community budget in respect of the total quantity of stocks of agricultural products.

In addition, the applicant states that even if the Commission were to have the power to adopt the contested measure on the basis of paragraph 4 of Chapter 4 of Annex IV to the Act concerning the conditions of Accession, by its adoption, the Commission infringed the principle of proportionality, in that that measure was not necessary, or more precisely was not appropriate, having regard to the objective which the obligation to eliminate excess stocks pursues.

Moreover, the applicant submits that the defendant infringed paragraph 2 of Chapter 4 of Annex IV to the Act concerning the conditions of Accession in conjunction with Article 10 EC, as well as the principle of legal certainly and legitimate expectation, by failing to define the concept of normal carryover of stock and by adopting the contested decision in an manner which lacked transparency.

The applicant states that the Commission infringed paragraph 2, Chapter 4 of Annex IV to the Act concerning the conditions of Accession in that the contested decision fails to have regard to all the relevant circumstances.

Finally, the applicant submits that the defendant infringed paragraph 4 of Chapter 4 of Annex IV to Act concerning the conditions of Accession by failing to sufficiently state reasons for its decision.

(1) OJ 2007 L 138, p. 14.
(2) Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded (OJ 2003 L 236, p. 33).

Action brought on 17 July 2007 — Sungro v Council and Commission

(Case T-252/07)

(2007/C 211/90)

Language of the proceedings: Spanish

Parties

Applicant: Sungro, S.A. (Córdoba, Spain) (represented by: L. Ortiz Blanco, lawyer)

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

Forms of order sought

— to uphold the present action for damages, in accordance with Article 288 EC, and declare the applicant is entitled to be financially compensated by the Council and the Commission jointly and severally in the sum total of thirty seven thousand one hundred and eighty-eight euros (EUR 37 188);

— to order the defendant institutions to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are those already put forward in Case T-217/07 *Las Palmeras* v *Council and Commission*.

Action brought on 17 July 2007 — Desarrollo y Aplicaciones Fitotécnicas v Council and Commission

(Case T-253/07)

(2007/C 211/91)

Language of the proceedings: Spanish

Parties

Applicant: Desarrollo y Aplicaciones Fitotécnicas, S.A. (Córdoba, Spain) (represented by: L. Ortiz Blanco, lawyer)

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

Forms of order sought

— to uphold the present proceedings for damages, in accordance with Article 288 EC, and declare the applicant is entitled to be financially compensated by the Council and the Commission jointly and severally in the sum total of one million one hundred and sixteen thousand six hundred and sixty-seven euros (EUR 1 116 667);

— to order the defendant institutions to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are those already put forward in Case T-217/07 *Las Palmeras* v *Council and Commission*.

Action brought on 17 July 2007 — Pinzón v Council and Commission

(Case T-254/07)

(2007/C 211/92)

Language of the case: Spanish

Parties

Applicant: S. Coop. And. Agrícola y Ganadera de Pinzón (represented by: L. Ortiz Blanco, lawyer)

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

Form of order sought

— declare under Article 288 EC that the applicant is entitled to have damage totalling one million two hundred and ninety eight thousand eight hundred and sixty one euros (EUR 1 298 861) made good by the Council and the Commission jointly and severally;

— order the defendants to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are those relied on in Case T-217/07 *Las Palmeras* v *Council and Commission*.

Action brought on 17 July 2007 — Algodonera de Palma v Council and Commission

(Case T-255/07)

(2007/C 211/93)

Language of the case: Spanish

Parties

Applicant: Algodonera de Palma SA (Córdoba, Spain) (represented by: L. Ortiz Blanco, lawyer)

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

Form of order sought

— declare under Article 288 EC that the applicant is entitled to have damage totalling two million two thousand three hundred and forty four euros (EUR 2 002 344) made good by the Council and the Commission jointly and severally;

— order the defendants to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are those relied on in Case T-217/07 *Las Palmeras* v *Council and Commission*.

Action brought on 16 July 2007 — People's Mojahedin Organization of Iran v Council

(Case T-256/07)

(2007/C 211/94)

Language of the case: English

Parties

Applicant: People's Mojahedin Organization of Iran (Auvers sur Oise, France) (represented by: J.P. Spitzer, lawyer, and D. Vaughan, QC)

Defendant: Council of the European Union

Form of order sought

— Annul Decision 2007/445/EC of the Council insofar as it applies to the applicant;

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

Pleas in law and main arguments

The applicant seeks the partial annulment of Council Decision 2007/445/EC of 28 June 2007 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Decisions 2006/379/EC and 2006/1008/EC ([1]) maintaining the applicant on the list of the persons, groups and entities to whom a freeze of funds and other financial resources applies.

In support of its application, the applicant submits that the contested Council decision should be annulled because the Council continued to rely on the listing of the applicant in Decision 2006/379/EC which should have been annulled or amended by the Council with regard to the applicant following the judgment of the Court of First Instance in Case T-228/02 *Organisation des Modjahedines du peuple d'Iran* v *Council* [2006] ECR II-0000. According to the applicant the Council was under an obligation to remove the applicant's name from the said list.

Furthermore, the applicant contends that the contested decision was adopted in violation of the applicant's right to be heard and without proper reasoning.

Moreover, the applicant claims that the contested decision was adopted on the basis of material all of which related to the period prior to the year 2001 and without taking into consideration material relating to the years after 2001 adduced by the applicant.

Finally, the applicant alleges that these circumstances amount to an abuse or misuse of powers.

([1]) OJ 2007 L 169, p. 58.

Action brought on 17 July 2007 — France v Commission

(Case T-257/07)

(2007/C 211/95)

Language of the case: French

Parties

Applicant: French Republic (represented by: E. Belliard, G. de Bergues, R. Loosli and A.-L. During, Agents)

Defendant: Commission of the European Communities

Form of order sought

— Annul paragraph (3) of the Annex to Commission Regulation (EC) No 727/2007 of 26 June 2007 ([1]) amending Annexes I, III, VII and X to Regulation (EC) No 999/2001 of the European Parliament and of the Council laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies ([2]), to the extent that it introduces, into Chapter A of Annex VII, paragraphs 2.3(b)(iii), 2.3(d), and 4;

— Alternatively, if the Court were to rule that this application for partial annulment is inadmissible, annul Regulation No 727/2007in its entirety;

— Order the Commission to pay the costs.

Pleas in law and main arguments

In this action, the applicant applies for the partial annulment, or alternatively the entire annulment, of Commission Regulation (EC) No 727/2007 of 26 June 2007, authorising less restrictive measures of surveillance and eradication in relation to certain spongiform encephalopathies, as compared with those laid down by Regulation (EC) No 999/2001.

In support of its action, the applicant claims that the contested provisions must be annulled because they infringe the precautionary principle in relation to both the assessment and management of the risk.

The applicant claims that the Commission has failed to have regard to the precautionary principle at the stage of assessment of the risk by ignoring the scientific uncertainties which, in its opinion, continue to surround both the risk of transmission to human beings of transmissible spongiform encephalopathies other than bovine spongiform encephalopathy, and the reliability of the tests on which the Commission based its decision to adopt the contested Regulation.

In the opinion of the applicant, the Commission has also failed to have regard to the precautionary principle at the stage of management of the risk in that the contested provisions are not capable of containing the risk and may even increase it. The applicant considers, in addition, that the increase in the risk caused by the contested provisions cannot be justified by the advantages expected from them.

([1]) OJ L 165, p. 8.
([2]) OJ L 147, p. 1.

Action brought on 17 July 2007 — Campo de Alcalá del Río v Council and Commission

(Case T-258/07)

(2007/C 211/96)

Language of the case: Spanish

Parties

Applicant: S. Coop. And. de Productores Campo de Alcalá del Río (Sevilla, Spain) (represented by: L. Ortiz Blanco, lawyer)

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

Form of order sought

— declare under Article 288 EC that the applicant is entitled to have damage totalling one million thirty five thousand four hundred and sixty six euros (EUR 1 035 466) made good by the Council and the Commission jointly and severally;

— order the defendants to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are those relied on in Case T-217/07 *Las Palmeras* v *Council and Commission*.

Action brought on 17 July 2007 — Algusa Algodinera Utrerana v Council and Commission

(Case T-259/07)

(2007/C 211/97)

Language of the case: Spanish

Parties

Applicant: Algusa Algodinera Utrerana SA (Sevilla, Spain) (represented by: L. Ortiz Blanco, lawyer)

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

Form of order sought

— declare under Article 288 EC that the applicant is entitled to have damage totalling seven hundred and twenty one thousand three hundred and fifty five euros (EUR 721 355) made good by the Council and the Commission jointly and severally;

— order the defendants to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are those relied on in Case T-217/07 *Las Palmeras* v *Council and Commission*.

Action brought on 17 July 2007 — Las Marismas de Lebrija v Council and Commission

(Case T-260/07)

(2007/C 211/98)

Language of the case: Spanish

Parties

Applicant: Las Marismas de Lebrija, S Coop. And. (Sevilla, Spain) (represented by: L. Ortiz Blanco, lawyer)

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

Form of order sought

— declare under Article 288 EC that the applicant is entitled to have damage totalling one million five hundred and seventy five thousand one hundred and twenty two euros (EUR 1 575 122) made good by the Council and the Commission jointly and severally;

— order the defendants to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are those relied on in Case T-217/07 *Las Palmeras* v *Council and Commission*.

Action brought on 13 July 2007 — Commission v Banca di Roma

(Case T-261/07)

(2007/C 211/99)

Language of the case: Italian

Parties

Applicant: Commission of the European Communities (represented by: A.Colabianchi, lawyer, and F. Amato and M. Wilderspin, Agents)

Defendant: Banca di Roma SpA

Form of order sought

— Order the Banca di Roma SpA, established in Italy at Viale Umberto Tupini 180, Rome (00144), in the person of its present legal representative, to execute the Bank guarantee of 28.10.1989 in favour of the Commission of the European Communities;

— Order the Banca di Roma SpA, established in Italy at Viale Umberto Tupini 180, Rome (00144), in the person of its present legal representative, to pay to the Commission of the European Communities, established in Belgium at Rue de la Loi 200, Brussels (1039), the sum of EUR 412 607,41, together with interest of EUR 94,37 per day running from 30 December 2006 until payment in full, or such other sum as the Court may decide;

— Order the Banca di Roma SpA, established in Italy at Viale Umberto Tupini 180, Rome (00144), in the person of its present legal representative, to pay all of the costs of the present proceedings including those of the Commission.

Pleas in law and main arguments

This action is brought under Article 238 EC on the basis of the arbitration clause contained in the guarantee of 28 October 1989 issued by the Banco di Roma (now named Banca di Roma) in favour of the Commission.

By Decision C(89) 1241 of 2 August 1989 ([1]) the Commission imposed a fine on fourteen producers of welded steel mesh, one of whom was Ferriere Nord SpA, for having taken part in agreements and concerted practices which infringed Article 85(1) EC (now Article 81(1) EC); the fine imposed on Ferriere Nord SpA was ECU 320 000.

Under Article 4 of that decision Ferriere Nord SpA had to pay the fine within three months of the date of notification of the decision, save that Ferriere Nord SpA was permitted to provide a bank guarantee covering the entire sum due, that is to say, principal and interest.

By registered post of 30 October 1989, received on 7 November 1989, Ferriere Nord sent to the Commission a letter dated 26 October 1989 whereby the Udine (Italy) branch of the Banco di Roma (now Banca di Roma) declared to the Commission that it stood as guarantor of payment by Ferriere Nord both of the fine of ECU 320 000 and of interest, calculated to run from 15 November 1989 until the date of effective payment.

In Case T-153/04 ([2]), the Court of First Instance held, by judgment of 27 September 2006, that the power of the Commission to enforce the Welded steel mesh decision was time-barred, in accordance with Article 4(1) of Regulation No 2988/74 (paragraphs 53 and 58 of the judgment).

Nonetheless, in the opinion of the applicant, that judgment has no effect on the guarantee issued by the Banca di Roma, since, by virtue of the autonomy of that guarantee, within the meaning of Italian law (which is the law applicable to the facts of the case), the Banca di Roma is obliged to execute the guarantee upon mere request by the Commission, and no objection which may be raised by Ferrier Nord can justify refusal to execute.

(1) OJ 1989 L 260, p. 1.
(2) Not yet published in ECR.

Action brought on 13 July 2007 — Lithuania v Commission

(Case T-262/07)

(2007/C 211/100)

Language of the case: Lithuanian

Parties

Applicant: Republic of Lithuania (represented by: D. Kriaučiūnas and E. Matulionytė)

Defendant: Commission of the European Communities

Form of order sought

— annul Commission Decision C(2007) 1979 final (1) of 4 May 2007 or, in the alternative, annul that decision in so far as it is addressed to the Republic of Lithuania;

— order the Commission to pay the costs.

Pleas in law and main arguments

The contested decision sets out the quantities of agricultural products in free circulation in the new Member States at the date of accession exceeding the quantities which were to be regarded as constituting a normal carryover of stock at 1 May 2004, and the amounts to be charged to the new Member States in consequence of the expense of elimination of those excess quantities.

The applicant considers the contested decision to be unlawful. It relies on four pleas in law in support of its action.

1. Lack of power

The applicant states that paragraph 4 of Chapter IV of Annex IV to the Act of Accession does not confer upon the Commission power to impose on the Member States payments to the Community budget that are in the nature of penalties, in particular where it has not proved expenditure incurred by the Community in eliminating surplus stocks; also, the Commission exceeded the prescribed three-year period for adoption of the decision under Article 41 of the Act of Accession, which alone could be an appropriate legal basis for the decision.

2. Infringement of European Community law

Infringement of the principle of legal certainty: the contested decision infringes the principle of legal certainty because the methodology and criteria for calculating surplus stocks were not known when determining built up stocks at the time of accession, which would have allowed Member States to prevent surplus stocks from arising or to eliminate them at the expense of the economic operators who had built up the stocks. Moreover, the contested decision laid down different criteria — and extended the list of products assessed — compared with Article 4 of Regulation No 1972/2003, under which the States scrutinise the building up of surplus stocks.

Infringement of the principle of non-discrimination: unlike Commission Regulation (EC) No 144/97 on surplus stocks of agricultural products in Austria, Sweden and Finland, the contested decision assessed not only products which were granted export refunds or to which intervention measures were applied, but also stocks of other products. This principle has also been infringed by treating the different situations of new Member States in the same way and by failing, without justification, to have regard to the specific circumstances in which their stocks arose.

Infringement of the principle of good administration and the principle of transparency: the contested decision does not disclose comprehensively the criteria for calculating the payments and, moreover, the criteria continually change. Also, although the Member States themselves assessed stocks in accordance with measures of Community law, the Commission, without giving reasons as to why that assessment is inappropriate and without disputing it, conducted another assessment of the same stocks on the basis of its own criteria.

Infringement of provisions of the Act of Accession: first, the decision is not an appropriate means of achieving the objectives of the elimination of surplus stocks which is required by paragraph 2 of Chapter IV of Annex IV to the Act of Accession, in particular because it was not even attempted in the decision to link the penalties imposed with expenditure on the elimination of stocks actually incurred by the Community. Second, the decision was adopted after expiry of the period, laid down in Article 41 of the Act of Accession, of three years from the date of accession during which the Commission could adopt transitional measures.

3. Inadequate statement of reasons

In the applicant's submission, the contested decision has an inadequate statement of reasons or entirely lacks reasons; in particular, it is not shown in the decision that (and in what amount) the European Community actually incurred, by reason of elimination of the alleged surplus stocks, expenditure which Member States should meet.

4. Manifest errors of assessment

The applicant asserts that the Commission made manifest errors of assessment in that, first, it selected a method at macroeconomic level and did not assess the stocks that had actually arisen in the Member States and, second, when assessing specific arguments of the parties it did not have regard to the specific and objective circumstances obtaining in the Republic of Lithuania in which national stocks arose in the milk sector.

(1) Commission Decision 2007/361/EC of 4 May 2007 on the determination of surplus stocks of agricultural products other than sugar and the financial consequences of their elimination in relation to the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia (OJ 2007 L 138, p. 14).

Action brought on 9 July 2007 — Air One SpA v Commission

(Case T-266/07)

(2007/C 211/101)

Language of the case: Italian

Parties

Applicant: Air One SpA (represented by: M. Merola and P. Ziotti, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Annul Commission Decision C (2007 1712) of 23 April 2007 on public service obligations on certain routes to and from Sardinia, to the extent that it requires the Italian Government to allow all air carriers who accept the relevant public service obligations (PSO) to operate routes between Sardinia and the mainland, irrespective of whether their acceptance is made before or after expiry of the period of 30 days laid down in the national legislation (Article 1(a) of that Decision);

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

Pleas in law and main arguments

The applicant requests, under the fourth paragraph of Article 230 EC, the annulment of Article 1(a) of Commission Decision C (2007 1712) of 23 April 2007 on public service obligations on certain routes to and from Sardinia, under Article 4 of Council Regulation No 2408/92 on access for Community air carriers to intra-Community air routes.

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

— Manifest error of appreciation and illogical and contradictory statement of reasons. The applicant submits first of all that the Commission — by requiring the Italian Government to allow all air carriers who intend to respect the PSO to operate the routes in question, regardless of the period in which they notified their intention to commence service provision and whether or not notification was sent during or after the 30-day period set in the Decrees — has erred in its assessment of the scheme introduced by the Italian Government in the light of the reasoning and objectives of the relevant Community rules. In particular the applicant claims that Article 4 of Regulation No 2408/92 obliges Member States to achieve the objective of territorial continuity by means of the imposition of public service obligations which, although they represent an exception to the principle of free access for Community carriers to intra-community routes, nonetheless respect the principle of proportionality and therefore restrict as far as possible the concession of exclusive rights and/or financial compensation. In the applicant's opinion, the Italian Government has fully complied with the spirit of the Community legislation, given that setting a mandatory period for the 'first phase' of the procedure of imposing public service obligations:

  — encourages the submission of offers from carriers and the allocation by the State of the relevant public service obligations in the course of that 'first phase', and

  — restricts the possibility of passing to the 'second phase' in which the Government would be obliged to grant, by means of invitation to tender, exclusive rights, with the possibility of taking responsibility for the relevant financial compensation.

— It is moreover obvious — notwithstanding what is implicitly claimed by the Commission — that competition between air carriers on routes burdened by public service obligations cannot be carried on in the same way as that found on routes free of such obligations. In as much as PSO schemes presuppose that problems of profitability are a feature of the routes in question, to the extent that no carrier would choose to operate such routes, in a manner which met the public interest, in normal market conditions: it is therefore necessary to introduce safeguard mechanisms for law-abiding and diligent carriers.

— The applicant claims further that the regulatory framework prescribed by the Commission is discriminatory, since the elimination of the mandatory period for acceptance of public service obligations in the 'first phase' is to the advantage principally of carriers which have significant market power, allowing them to offer for the PSO routes after expiry of the period, when competitors have submitted offers, with the primary objective of taking market share from those competitors.

— Lastly, in the applicant's opinion, the Commission's reasoning is vitiated by an error of law relating to the characteristics of the procedure of imposing public service obligations. In that respect, the applicant submits that application of a non-mandatory term would have the effect of prolonging indefinitely the 'first phase' of the procedure, which is illogical, and inconsistent with the declaration of the Commission itself to the effect that the procedure for imposition of public service obligations, while unitary, consists of two phases.

Action brought on 23 July 2007 — Martin v Parliament

(Case T-276/07)

(2007/C 211/102)

Language of the case: French

Parties

Applicant: Hans-Petter Martin (Vienna, Austria) (represented by: É. Boigelot, lawyer)

Defendant: European Parliament

Form of order sought

— Annul the decision of 10 May 2007 taken by the Secretary-General of the European Parliament, notified on 14 May 2007, according to which it was decided that a certain sum had been paid unduly to the applicant and that, pursuant to Article 27(3) of the Rules governing the Payment of Expenses and Allowances to Members of the European Parliament, that sum was to be recovered from the applicant;

— If necessary, annul the decision of 13 June 2007 originating from the Director-General of the Directorate-General for Finance of the European Parliament, taken pursuant to the decision of 10 May 2007, putting the applicant on formal notice to pay the aforementioned amounts or to propose a written clearance plan accepted by the Parliament within 30 days of that decision;

— Annul, if necessary and where applicable, all decisions implementing the aforementioned decisions which might arise in the course of the proceedings;

— In any event, order the defendant to pay the costs.

Pleas in law and main arguments

Following an investigation concerning the secretarial allowances granted to the applicant in his capacity as Member of the European Parliament, the OLAF (European Anti-Fraud Office) drew up a report finding certain irregularities. On the basis of that report, the Secretary-General of the European Parliament adopted the contested decision of 10 May 2007, by which it decided that the sums which had been paid unduly to the applicant were to be reimbursed by him pursuant to Article 27(3) of the Rules governing the Payment of Expenses and Allowances to Members of the European Parliament.

The applicant relies on four pleas in law in support of his action.

The first plea alleges incorrect and inaccurate application of the Rules governing the Payment of Expenses and Allowances to Members of the European Parliament, in particular Articles 14 and 27(3) thereof.

The second plea alleges an error of assessment as to the relevance of the supporting documents provided by the applicant.

Moreover, the applicant relies on a plea alleging infringement of Council Regulation No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities [1] and infringement of the principles of proportionality and non-discrimination.

Lastly, the applicant puts forward a plea alleging breach of the principle audi alteram partem and of the rights of the defence.

[1] OJ 2002 L 248, p. 1.

Appeal brought on 18 July 2007 by Luigi Marcuccio against the order of the Civil Service Tribunal of 11 May 2007 in Case F-2/06, Luigi Marcuccio v Commission

(Case T-278/07 P)

(2007/C 211/103)

Language of the case: Italian

Parties

Appellant: Luigi Marcuccio (Tricase, Italy) (represented by G. Cipressa, avvocato)

Other party to the proceedings: Commission of the European Communities

Forms of order sought by the appellant

The appellant claims that the Court should:

— in any event, set aside the order under appeal in its entirety;

— uphold the forms of order sought by the applicant at first instance;

— order the Commission to reimburse all costs, fees and charges incurred by the appellant for the purposes of these proceedings;

— in the alternative, refer the case back to the Civil Service Tribunal for judgment.

Pleas in law and main arguments

By the present appeal, it is sought to have set aside the order of the Civil Service Tribunal of 11 May 2007 in Case F-2/06 *Marcuccio* v *Commission*, dismissing as inadmissible the action brought by the applicant.

The appellant relies on the following grounds of appeal:

— the Civil Service Tribunal distorted the clear sense of the facts and of the statements made by the applicant in his written pleadings at first instance. On that point, it is emphasised in particular that the physical existence of the decision at issue in the proceedings at first instance is clear without a shadow of a doubt from the text of the Commission's note of 29 July 2005, which provides for the possibility of reopening at any given moment a file that had been shelved. The reference to that possibility leaves no doubt, not only that the decision at issue had actually been taken, but also that it had actually been carried out;

— it is an error in law for a court to make an order ruling that an action is manifestly inadmissible — *a fortiori* on grounds of public policy such as the absence of any act adversely affecting the interests of the applicant in the case of an action for annulment — following an attempt to reach an amicable settlement, and all the more so when no specific grounds, directly related to the facts of the case, are stated for so doing;

— the appellant's rights of defence were irreparably damaged in that, not having been informed of the progress of the case, he was unable to do anything to strengthen his defence of his own reasons. On that point, it is maintained that the note by which the Civil Service Tribunal informed the appellant of the implementation of the attempt at settlement was not followed by any other communication, whether in writing or in any other form, concerning the progress of the case, far less concerning the outcome of the attempt to reach an amicable settlement. Furthermore, the Civil Service Tribunal made the order under appeal more than six months after that attempt. As if that were not enough, there is no mention in the order under appeal of the attempt to reach an amicable settlement;

— lastly, the appellant maintains that the order under appeal is vitiated by a complete failure to state reasons, as well as by the incorrect and misconceived application of the notion of a decision adversely affecting the applicant's interests.

Action brought on 23 July 2007 — France v Commission

(Case T-279/07)

(2007/C 211/104)

Language of the case: French

Parties

Applicant: French Republic (represented by: E. Belliard, G. de Bergues, L. Butel and S. Ramet, acting as Agents)

Defendant: Commission of the European Communities

Form of order sought

— Annul the contested decision;

— Order the Commission to pay the costs.

Pleas in law and main arguments

By the present action, the applicant seeks annulment of Commission Decision C(2007) 2110 Final of 10 May 2007 declaring incompatible with Article 86(1) EC, read together with Articles 43 and 49 EC, the provisions of the French Code Monétaire et Financier, which provides for special rights for three credit institutions, namely the Banque Postale, les Caisses d'Épargne et de Prévoyance and the Crédit Mutuel, for the distribution of the Livret A and Livret Bleu.

It relies on five pleas in law in support of its action.

The first plea alleges breach of the rights of the defence and disregard of the principle audi alteram partem.

Second, the applicant claims that the Commission made a manifest error of assessment in finding that the special rights in question constituted an obstacle to freedom of establishment and, consequently, were incompatible with Article 43 EC, without having demonstrated that those rights were not necessary and proportionate having regard to the overriding reasons of public interest, namely the objectives of access to housing and accessibility of banking services.

By its third plea, the applicant claims that the Commission made a manifest error of assessment in the application of the third condition of Article 86(2) EC in finding that the service of general economic interest of accessibility of banks is intended only for persons having particular difficulties with access to basic banking services. It alleges that the Commission exceeded its powers of control of the definition of a service of general economic interest and, in any event, applied an overly restrictive definition of the mission of accessibility to banking. According to the applicant, the Commission also made a manifest error of assessment in the application of the second condition of Article 86(2) EC relating to the obligation to award the contract for a service by an act of State, and also in the application of the third and fourth conditions of that article. It alleges that the Commission made an error in the calculation of the impact of the abolishment of the special rights for the public finances and that it made a manifest error of assessment in the application of the principle of proportionality in finding that there are other, less restrictive means for the freedom of establishment than the granting of special rights in order to ensure balanced financing of services of general economic interest such as accessibility of banking and financing of social housing.

By its fourth plea, the applicant claims that the Commission made a manifest error of assessment in finding that the special rights in question were incompatible with Article 49 EC.

The fifth plea relied on by the applicant alleges a failure to state reasons in the contested decision.

Appeal brought on 24 July 2007 by the Office for Harmonisation in the Internal Market (Trade Marks and Designs) against the judgment of the Civil Service Tribunal delivered on 22 May 2007 in Case F-97/06, López Teruel v OHIM

(Case T-284/07 P)

(2007/C 211/105)

Language of the case: French

Parties

Appellant: Office for Harmonisation in the Internal Market (OHIM) (represented by I. de Medrano Caballero and E. Maurage, Agents)

Other party to the proceedings: Adelaida López Teruel (Guadalajara, Spain)

Form of order sought by the appellant

— annul the judgment of the Civil Service Tribunal of 22 May 2007 delivered in Case F-97/06;

— make an appropriate order as to costs.

Pleas in law and main arguments

By the judgment of 22 May 2007, the annulment of which is sought in this appeal, the Civil Service Tribunal (CST) annulled the decision of OHIM of 6 October 2005 refusing the application brought by Ms López Teruel for an Invalidity Committee to be convened.

In support of the appeal for annulment of that judgment, OHIM raises three pleas.

The first plea alleges infringement of statutory provisions relating to the convening of an Invalidity Committee, in that the CST equated the conditions for entitlement to an invalidity pension with the conditions for the convening of an Invalidity Committee. The appellant also disputes that there is a mandatory duty on the part of the Appointing Authority as regards convening such a committee and submits that the judgment of the CST is therefore vitiated by an error of interpretation.

The second plea alleges infringement of Article 90 of the Staff Regulations and an error of law as regards the assessment of the contested decision, in that the CST considered the decision of 6 October 2005 to be the only act adversely affecting an official and treated as a confirmatory act the decision of OHIM responding to the complaint made against that decision.

Thirdly, OHIM submits that the CST clearly distorted the facts and the evidence in holding that the Office based its decision on the results of the examination of the applicant by an independent doctor on 18 October 2005.

Order of the Court of First Instance of 9 July 2007 — Total v OHIM — Peterson (Beverly Hills Formula TOTAL PROTECTION)

(Case T-326/06) [1]

(2007/C 211/106)

Language of the case: English

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

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[1] OJ C 326, 30.12.2006.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Judgment of the Civil Service Tribunal (First Chamber) of 11 July 2007 — B v Commission

(Case F-7/06) [1]

(Staff case — Officials — Remuneration — Expatriation allowance — Conditions in Article 4(1) of Annex VII of the Staff Regulations)

(2007/C 211/107)

Language of the case: French

Parties

Applicant: B (Brussels, Belgium) (initially represented by S. Rodrigues and A. Jaume, lawyers, then by S. Rodrigues and C. Bernard-Glanz, lawyers)

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

Re:

Staff case — Annulment of the appointing authority's decision of 10 October 2005 rejecting the complaint of the applicant together with the appointing authority's decision of 26 April 2005 to refuse to pay the applicant an expatriation allowance

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

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

[1] OJ C 96, 22.4.2006, p. 35.

Order of the Civil Service Tribunal (First Chamber) of 12 July 2007 — Continolo v Commission

(Case F-143/06) [1]

(Staff case — Officials — Pensions — Transfer of pension rights — Manifest inadmissibility)

(2007/C 211/108)

Language of the case: French

Parties

Applicant: Donato Continolo (Duino-Aurisina, Italy) (represented by: S. Rodrigues, C. Bernard-Glanz, and R. Albelice, lawyers)

Defendant: Commission of the European Communities (represented by: D. Martin and M. Velardo, Agents)

Re:

Staff case — Annulment of the decision of the Commission on the award and calculation of the applicant's pension rights, to the extent that it does not completely credit the period from 11 June 1981 to 1 March 1983 which he spent on leave on personal grounds

Operative part of the order

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

2. *The parties are to bear their own costs.*

[1] OJ C 20, 27.1.2007, p. 41.