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IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS AND BODIES

COURT OF JUSTICE

Code of Conduct

(2007/C 223/01)

THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

Having regard to the deliberations of the Court of Justice at its meetings of 28 March, 24 April and 3 July 2007;

Having regard to Articles 2, 4, 6, 18 and 47 of the Statute of the Court of Justice and to Article 5 of the Annex to that Statute, to Articles 3 and 4 of the Rules of Procedure of the Court of Justice and to Articles 4 and 5 of the Rules of Procedure of the Court of First Instance;

Whereas, without prejudice to the applicable provisions of the Statute and of the Rules of Procedure, it is appropriate to establish a Code of Conduct which clarifies certain obligations arising under those provisions as regards the Members of the Court of Justice, the Court of First Instance and the Civil Service Tribunal;

After consulting the Court of First Instance and the Civil Service Tribunal;

Has decided to adopt the present Code of Conduct:

*Article 1***General principles**

1. This Code of Conduct shall apply to Members and former Members of the Court of Justice, the Court of First Instance and the Civil Service Tribunal.

2. Members shall devote themselves fully to the performance of their duties.

3. Members shall refrain from making any statement outside the Court which may harm the reputation of the Court or which may be interpreted as the adoption of a position by the Court on issues falling outside its institutional role.

*Article 2***Integrity**

Members shall not accept gifts of any kind which might call into question their independence.

*Article 3***Impartiality**

Members shall avoid any situation which may give rise to a conflict of interest.

*Article 4***Declaration as to financial interests**

1. On taking up their duties, Members shall submit a declaration as to their financial interests to the President of the Court of Justice.

2. The declaration referred to in paragraph 1 shall be worded as follows: 'I declare that I have no interest in any property or asset which might compromise my impartiality and my independence in the performance of my duties'.

*Article 5***Other activities**

1. Members who wish to take part in an external activity shall request prior authorisation from the Court or Tribunal of which they are a Member. They shall undertake, however, to comply with their obligation to be available so as to devote themselves fully to the performance of their duties.

2. Members may be authorised to participate in teaching activities, conferences, seminars or symposia, but may not receive any uncustomary financial remuneration for doing so.

3. Members may also be authorised to engage in activities of an academic nature and to assume unremunerated honorary duties in foundations or similar bodies in the cultural, artistic, social, sporting or charitable fields and in teaching or research establishments. In that connection, they shall undertake not to engage in any managerial or administrative activities which might compromise their independence or their availability or which might give rise to a conflict of interest. The expression 'foundations or similar bodies' means non-profit-making establishments or associations which carry out activities in the general interest in the fields referred to.

Article 6

Undertakings of Members after ceasing to hold office

1. After ceasing to hold office, Members shall continue to be bound by the duty of discretion.
2. Members shall undertake that after ceasing to hold office, they will not become involved:
 - in any manner whatsoever in cases which were pending before the Court or Tribunal of which they were a Member when they ceased to hold office;
 - in any manner whatsoever in cases directly and clearly connected with cases, including concluded cases, which they have dealt with as Judge or Advocate General;

and that, for a period of three years from the date of their ceasing to hold office, they will not act

— as representatives of parties, in either written or oral pleadings, in cases before the Community judicature.

3. Former Members may be involved as counsel, adviser or expert in other cases or provide a legal opinion, provided that they comply with the obligations arising under paragraph 1.

Article 7

Application of the Code

1. The President of the Court of Justice, assisted by a Consultative Committee composed of the three Members of the Court of Justice who have been longest in office, shall be responsible for ensuring the proper application of this Code of Conduct.
2. The Court of Justice shall ensure compliance with the Code and shall take decisions in cases of doubt. Where appropriate, it shall consult with the Court of First Instance or the Civil Service Tribunal.

Article 8

Entry into force

1. This Code of Conduct shall enter into force on 1 October 2007.
2. The declaration of the Members in office on that date shall be submitted to the President of the Court of Justice no later than 30 November 2007.

(2007/C 223/02)

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

OJ C 211, 8.9.2007

Past publications

OJ C 183, 4.8.2007

OJ C 170, 21.7.2007

OJ C 155, 7.7.2007

OJ C 140, 23.6.2007

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

Reference for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 22 June 2007 — Bundesverband der Verbraucherzentralen und Verbraucherverbände — Verbraucherzentrale Bundesverband e.V. v deutsche internet versicherung AG

(Case C-298/07)

(2007/C 223/03)

*Language of the case: German***Referring court**

Bundesgerichtshof

Parties to the main proceedings

Applicant: Bundesverband der Verbraucherzentralen und Verbraucherverbände — Verbraucherzentrale Bundesverband e.V.

Defendant: deutsche internet versicherung AG

Questions referred

1. Is a service provider required under Article 5(1)(c) of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ⁽¹⁾ to provide a telephone number before entering into a contract with a user of the service, so that he can be contacted rapidly and communicated with in a direct and effective manner?

2. If the answer to Question 1 is negative:

- (a) Is a service provider required under Article 5(1)(c) of the directive to offer a second means of communication, in addition to indicating his electronic mail address, prior to entering into a contract with a user of the service?
- (b) If the answer is positive: Does it suffice, for the purposes of a second means of communication, that the service provider installs an enquiry mask enabling the user to consult the service provider via the Internet, the user's enquiry then being answered by the service provider by means of electronic mail?

⁽¹⁾ OJ L 178, p. 1.

Reference for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 26 June 2007 — PAGO International GmbH v Tirolmilch registrierte Genossenschaft mbH

(Case C-301/07)

(2007/C 223/04)

*Language of the case: German***Referring court**

Oberster Gerichtshof

Parties to the main proceedings

Applicant: PAGO International GmbH

Defendant: Tirolmilch registrierte Genossenschaft mbH

Questions referred

1. Is a Community trade mark protected in the whole of the Community as a 'trade mark with a reputation' for the purposes of Article 9(1)(c) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark ⁽¹⁾ (Regulation 40/94) if it has a 'reputation' only in one Member State?
2. If the answer to the first question is in the negative: is a mark which has a 'reputation' only in one Member State protected in that Member State under Article 9(1)(c) of Regulation 40/94, so that a prohibition limited to that Member State may be issued?

⁽¹⁾ OJ 1994 L 11, p. 1.

Appeal brought on 12 July 2007 by Papierfabrik August Koehler AG against the judgment of the Court of First Instance (Fifth Chamber) of 26 April 2007 in Joined Cases T-109/02 *Bollore v Commission*, T-118/02 *Arjo Wiggins Appleton v Commission*, T-122/02 *Mitsubishi HiTec Paper Bielefeld v Commission*, T-125/02 *Papierfabrik August Koehler v Commission*, T-126/02 *M-real Zanders v Commission*, T-128/02 *Papeteries Mougeot v Commission*, T-129/02 *Torraspapel v Commission*, T-132/02 *Distribuidora Vizcaina de Papeles v Commission*, and T-136/02 *Papelera Guipuzcoana de Zicuñaga v Commission*

(Case C-322/07 P)

(2007/C 223/05)

Language of the case: German

Parties

Appellant: Papierfabrik August Koehler AG (represented by: I. Brinker, S. Hirsbrunner, lawyers, J. Schwarze, University Professor)

Other party to the proceedings: Commission of the European Communities

Form of order sought

- Annulment of the judgment of the Court of First Instance (Fifth Chamber) of 26 April 2007 (Case T-125/02) in so far as it affects the appellant;

- Annulment of Commission Decision 2004/337/EC of 20 December 2001 relating to a proceeding pursuant to Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case COMP/E-1/36.212 — Carbonless paper) ⁽¹⁾ in so far as it affects the appellant;

In the alternative: a reduction of the fine imposed on the appellant in Article 3 of that decision;

- In the alternative to the second indent above: referral of the matter back to the Court of First Instance for determination in accordance with the judgment of the Court of Justice;

- In any event, an order for the Commission to pay the costs incurred by the appellant both before the Court of First Instance and the Court of Justice.

Pleas in law and main arguments

The appellant raises the following pleas: the Court of First Instance's reasoning in relation to the setting of the amount of the fine infringes both the principles of equal treatment and proportionality. The appellant thus claims that substantive Community law has been infringed. The Court erroneously assumed it to be insignificant that the appellant is a family business and, in comparison with the other undertakings, does not have direct access to capital markets. Instead the Court wrongly pointed out that an undertaking cannot rely to its advantage on an infringement of law which was committed to the benefit of other undertakings. However, the appellant did not rely on that argument in any way. The Court did not appropriately assess the structural differences between the appellant and the other undertakings which are accused of committing an infringement. The Court thereby infringed the principles of equal treatment and proportionality.

Moreover, the Court wrongly assumed that the appellant was a party to the infringement in the period prior to October 1993. In that regard, the Court gave insufficient proof, assessed that proof contradictorily and, moreover, falsified it. It also infringed the presumption of innocence and the appellant's rights of defence. The appellant thus claims that there was a procedural error. The Court's reasoning for its finding that the official meetings of the AEMCP association between January 1992 and September 1993 served as a setting for fixing prices on the European market is insufficient and contradictory. Furthermore, the appellant alleges that the Court committed legal errors in assuming that the appellant participated in unofficial meetings, in which prices at national level were discussed.

⁽¹⁾ OJ 2004 L 115, p. 1.

Appeal brought on 13 July 2007 by Bollore SA against the judgment delivered by the Court of First Instance (Fifth Chamber) on 26 April 2007 in Joined Cases T-109/02 Bollore v Commission, T-118/02 Arjo Wiggins Appleton v Commission, T-122/02 Mitsubishi HiTec Paper Bielefeld v Commission, T-125/02 Papierfabrik August Koehler v Commission, T-126/02 M-real Zanders v Commission, T-128/02 Papeteries Mougeot v Commission, T-129/02 Torraspapel v Commission, T-132/02 Distribuidora Vizcaina de Papeles v Commission and T-136/02 Papelera Guipuzcoana de Zicuñaga v Commission

(Case C-327/07 P)

(2007/C 223/06)

Language of the case: French

Parties

Appellant: Bollore SA (represented by: C. Momège and P. Gassenbach, lawyers)

Other party to the proceedings: Commission of the European Communities

Form of order sought

- set aside the judgment under appeal in so far as, first, it infringed the rights of defence of Bollore SA and the principle of the presumption of innocence and, second, distorted the evidence in order to establish the duration of the infringement;
- give final judgment in Case T-109/02, in accordance with Article 61 of the Rules of Procedure of the Court, and annul Commission Decision 2004/337/EC of 20 December 2001 relating to a proceeding pursuant to Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case COMP/E-1/36.212 — Carbonless paper) ⁽¹⁾ in so far as it relates to Bollore SA or, in any event, reduce the fine imposed on Bollore SA by the Commission and confirmed by the Court of First Instance;
- in the event that the Court does not itself decide on the case, reserve the costs and refer the case back to the Court of First Instance for reconsideration in accordance with the Court's judgment;
- finally, in accordance with Article 69 of the Rules of Procedure of the Court, order the Commission to pay the costs both before the Court of First Instance and before the Court of Justice.

Pleas in law and main arguments

The appellant puts forward two pleas in support of its appeal.

By its first plea, which is in two parts, it claims, first, that the Court of First Instance infringed the fundamental principle of

respect for the rights of the defence by not annulling the above mentioned Commission decision even though it finds, in the judgment under appeal, that the statement of objections did not enable the appellant to acquaint itself with the objection based on its direct involvement in the infringement, or even with the facts established by the Commission in support of that objection, so that the appellant was unable properly to defend itself during the administrative procedure.

Second, the rights of the defence were also infringed in so far as the Court of First Instance held that the fact that the Commission erred in law cannot justify annulment of the contested decision since it could not have had a decisive effect on the operative part of that decision. In the appellant's submission, the statement of objections plays such a fundamental role in Community competition law that failure to comply with the rules governing the statement of objections relating to the identification and determination of responsibility should have led irretrievably to the annulment of the contested decision.

By its second plea, the appellant submits further that, in order to establish the duration of the infringement and set the amount of the fine payable by Bollore accordingly, the Court of First Instance, first, infringed the principle of the presumption of innocence by relying on mere indications which are substantiated and, second, distorted the evidence relating to the value placed on the statements of another company (Arjo Wiggins Appleton) and to the alleged anti-competitive object of an official meeting of the Association of European Manufacturers of Carbonless Paper held in Zürich on 23 January 1992.

⁽¹⁾ OJ 2004 L 115, p. 1.

Appeal brought on 18 July 2007 by the Commission of the European Communities against the judgment of the Court of First Instance (Fifth Chamber, Extended Composition) of 3 May 2007 in Case T-357/02 Freistaat Sachsen v Commission of the European Communities

(Case C-334/07 P)

(2007/C 223/07)

Language of the case: German

Parties

Appellant: Commission of the European Communities (represented by: Kilian Gross, acting as Agent)

Other party to the proceedings: Freistaat Sachsen

Form of order sought

- Annul the contested judgment of the Court of First Instance of 3 May 2007 in Case T-357/02 *Freistaat Sachsen v Commission of the European Communities* in its entirety;
- give final judgment on the matter and dismiss the action as unfounded;
- order the applicant at first instance to bear the costs of the appeal proceedings and the costs incurred at first instance in Case T-357/02.

Appeal brought on 20 July 2007 by Distribuidora Vizcaína de Papeles, S.L. against the judgment of the Court of First Instance (Fifth Chamber) of 26 April 2007 in Joined Cases T-109/02 *Bolloré v Commission*, T-118/02 *Arjo Wiggins Appleton v Commission*, T-122/02 *Mitsubishi HiTec Paper Bielefeld v Commission*, T-125/02 *Papierfabrik August Koehler v Commission*, T-126/02 *M-real Zanders v Commission*, T-128/02 *Papeteries Mougéot v Commission*, T-129/02 *Torraspapel v Commission*, T-132/02 *Distribuidora Vizcaína de Papeles v Commission*, and T-136/02 *Papelera Guipuzcoana de Zicuñaga v Commission*

(Case C-338/07 P)

(2007/C 223/08)

Language of the case: Spanish

Pleas in law and main arguments

According to the Commission, the contested judgment infringes Articles 88(2) and (3) EC, the second paragraph of Article 249, Article 254(2) EC, Article 3 et seq. of Regulation (EC) No 659/1999 ⁽¹⁾ and Article 10(1) of the Regulation exempting SMEs, since the Court of First Instance failed to recognise that the examination of the legality of the contested decision (2003/226/EC) ⁽²⁾ was to be carried out solely in accordance with the provisions of the Regulation exempting SMEs (Regulation (EC) No 70/2001) ⁽³⁾.

The Regulation exempting SMEs entered into force before the contested decision was issued and was thus directly applicable. Consequently, it was the only applicable legal framework. According to the Commission, the Court wrongly denies the applicability of the Regulation exempting SMEs since it erroneously assumed that the Regulation exempting SMEs would have to be applied retroactively in the case of the contested decision.

The Commission claims, in the alternative, that the contested judgment also infringes Article 2(2) and Article 4(5) of Regulation (EC) No 659/1999 because the Court misconceived the criterion of assessment and the requirements of completeness of a notification.

⁽¹⁾ OJ 1999 L 83, p. 1.

⁽²⁾ OJ 2003 L 91, p. 13.

⁽³⁾ OJ 2001 L 10, p. 33.

Parties

Appellant: Distribuidora Vizcaína de Papeles, S.L. (represented by: E. Pérez Medrano, lawyer)

Other party to the proceedings: Commission of the European Communities

Form of order sought

- Declare the present action admissible and well founded;
- annul the contested judgment in full or in part on the ground of all, or some, of the legal grounds set out below in so far as it affects the appellant, and draw from the annulment of that judgment all legal consequences, whether the Court rules expressly on the substance or refers the case back to the Court of First Instance;
- declare the annulment or reduction of the fine imposed by Commission Decision 2004/337/EC of 20 December 2001 relating to a proceeding pursuant to Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case COMP/E-1/36.212 — Carbonless paper) ⁽¹⁾, which is being appealed against;
- order the Commission to pay the whole of the costs of the proceedings;
- order the Commission to pay the costs of the action for annulment proceedings relating to the contested judgment.

Pleas in law and main arguments

1. Infringement of the right to a fair hearing in relation to the assessment of the alleged participation in certain meetings of the cartel on the Spanish market and participation in a European cartel.
2. Infringement of the presumption of innocence in respect of the assessment of the alleged infringements as a result of circumstantial evidence.
3. Infringement of Community law in connection with the disproportionate and unfair nature of the fine in respect of its severity, its calculation and the application of attenuating circumstances, and a lack of reasoning in the assessment of certain attenuating circumstances.
4. Infringement of the right to a fair hearing within a reasonable period of time.

⁽¹⁾ OJ 2004 L 115, p. 1.

Action brought on 25 July 2007 — Commission of the European Communities v Italian Republic**(Case C-347/07)**

(2007/C 223/09)

*Language of the case: Italian***Parties**

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

Defendant: Italian Republic

Form of order sought

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2004/41/EC ⁽¹⁾ of the European Parliament and of the Council of 21 April 2004 repealing certain directives concerning food hygiene and health conditions for the production and placing on the market of certain products of animal origin intended for human consumption and amending Council Directives 89/662/EEC ⁽²⁾ and 92/118/EEC ⁽³⁾ and Council Decision 95/408/EC ⁽⁴⁾ or, in any event, by failing to communicate those provisions to the Commission, the Italian Republic has failed to fulfil its obligations under Article 8 of that directive;

— order the Italian Republic to pay the costs.

Pleas in law and main arguments

The period for transposition of Directive 2004/41/EC expired on 1 January 2006.

⁽¹⁾ OJ 2004 L 157, p. 33.

⁽²⁾ OJ 1989 L 395, p. 13.

⁽³⁾ OJ 1992 L 62, p. 49.

⁽⁴⁾ OJ 1995 L 243, p. 17.

Action brought on 2 August 2007 — Commission of the European Communities v Italian Republic**(Case C-368/07)**

(2007/C 223/10)

*Language of the case: Italian***Parties**

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

Defendant: Italian Republic

Form of order sought

— declare that, by failing to draw up and adopt, in respect of each Italian port, waste reception and handling plans, the Italian Republic has failed to fulfil its obligations under Articles 5(1) and 16(1) of Directive 2000/59/EC of the European Parliament and of the Council of 27 November 2000 on port reception facilities for ship-generated waste and cargo residues ⁽¹⁾;

— order the Italian Republic to pay the costs.

Pleas in law and main arguments

The period for transposition of the directive expired on 28 December 2002.

⁽¹⁾ OJ 2000 L 332, p. 81.

Action brought on 3 August 2007 — Commission of the European Communities v Council of the European Union**(Case C-370/07)**

(2007/C 223/11)

*Language of the case: English***Parties**

Applicant: Commission of the European Communities (represented by: G. Valero Jordana and C. Zadra, Agents)

Defendant: Council of the European Union

The applicant claims that the Court should:

- annul Council Decision of 24 May 2007 establishing the position to be adopted on behalf of the European Community with regard to certain proposals submitted to the 14th meeting of the Conference of the Parties (COP 14) to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the Hague, Netherlands 3-15 June 2007, and to order the Council to pay costs.
- Order the Council of the European Union to pay the costs.

Pleas in law and main arguments

The Commission submits that the failure by the challenged Council decision to refer to the precise provisions of the EC Treaty on which it is based constitutes an infringement of essential procedural requirements, notably the obligation to state reasons contained in Article 253.

Action brought on 8 August 2007 — Commission of the European Communities v Portuguese Republic**(Case C-382/07)**

(2007/C 223/12)

*Language of the case: Portuguese***Parties**

Applicant: Commission of the European Communities (represented by: N. Yerrell and M. Telles Romão, Agents)

Defendant: Portuguese Republic

Form of order sought

- declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2004/51/EC ⁽¹⁾ of the European Parliament and of the Council of 29 April 2004 amending Council Directive 91/440/EEC on the development of the Community's railways or, in any event, by failing to communicate them to the Commission, the Portuguese Republic has failed to fulfil its obligations under that directive;
- order the Portuguese Republic to pay the costs.

Pleas in law and main arguments

The period prescribed for transposition of the directive into national law expired on 31 December 2005.

⁽¹⁾ OJ 2004 L 164, p. 164.

COURT OF FIRST INSTANCE

**Order of the Court of First Instance of 9 July 2007 —
wheyco v Commission**

(Case T-6/06) ⁽¹⁾

*(State aid — Incentive element — Action for annulment —
Act producing legal effects — Legal interest in bringing
proceedings — Inadmissibility)*

(2007/C 223/13)

Language of the case: German

Parties

Applicant: wheyco GmbH, formerly Mopro-Nord GmbH
(Altentreptow, Germany) (represented by: L. Harings and C.
Schmidt, lawyers)

Defendant: Commission of the European Communities (repre-
sented by: K. Gross, T. Scharf and A. Stobiecka-Kuik, Agents)

Re:

Application for annulment in part of the Commission's decision
of 6 September 2005 relating to State aid No N 363/2005 for
the construction of a whey refining plant in Mecklenburg-
Western Pomerania (Germany) (OJ 2005 C 262, p. 5)

Operative part of the order

The Court:

1. Dismisses the action as inadmissible;
2. Orders wheyco GmbH to pay the costs.

⁽¹⁾ OJ C 74, 25.3.2006.

**Order of the Court of First Instance of 12 July 2007 —
Beau v Commission**

(Case T-252/06 P) ⁽¹⁾

*(Appeals — Staff cases — Officials — Occupational illness
— Appeal manifestly inadmissible — Appeal manifestly
unfounded)*

(2007/C 223/14)

Language of the case: French

Parties

Appellant: Marie-Yolande Beau (Paris, France) (represented by: S.
Rodrigues and C. Bernard-Glanz, lawyers)

Other party to the proceedings: Commission of the European
Communities (represented by: J. Currall and K. Herrmann,
Agents)

Re:

Appeal against the judgment of the Civil Service Tribunal of the
European Union (Third Chamber) of 28 June 2006 in Case
F-39/05 *Beau v Commission*, not yet published in the ECR-SC,
seeking to have that judgment set aside.

Operative part of the order

The Court:

1. Dismisses the appeal;
2. Orders Ms Beau to bear her own costs and to pay those of the
Commission.

⁽¹⁾ OJ C 281, 18.11.2006.

Order of the Court of First Instance of 9 July 2007 — De Smedt v Commission

(Case T-415/06 P) ⁽¹⁾

(Appeals — Staff Cases — Contractual agents — Former auxiliary agent — Application for revision of the classification fixed at the time of recruitment — Appeal manifestly unfounded)

(2007/C 223/15)

Language of the case: French

Parties

Appellant: Elisabeth De Smedt (Wezembeek-Oppem, Belgium) (represented by: L. Vogel and R. Kechiche, lawyers)

Other parties to the proceedings: Commission of the European Communities (represented by: J. Currall and G. Berscheid, Agents); and Council of the European Union (represented by: M. Arpio Santacruz and I. Sulce, Agents)

Re:

Appeal against the judgment of the Civil Service Tribunal of the European Union (Second Chamber) of 19 October 2006 in Case F-59/05 *De Smedt v Commission*, not yet published in the ECR-SC, seeking to have that judgment set aside.

Operative part of the order

The Court:

1. Dismisses the appeal;
2. Orders Ms Elisabeth De Smedt to bear her own costs and to pay those of the Commission;
3. Orders the Council to bear its own costs.

⁽¹⁾ OJ C 42, 24.2.2007.

Order of the President of the Court of First Instance of 19 July 2007 — Du Pont de Nemours (France) and Others v Commission

(Case T-31/07 R)

(Applications for interim measures — Application for suspension of operation of a measure — Directive 91/414/EEC — Admissibility — Prima facie case — Urgency — Balance of interests)

(2007/C 223/16)

Language of the case: English

Parties

Applicants: Du Pont de Nemours (France) SAS (Puteaux, France); Du Pont Portugal — Serviços, Sociedade Unipessoal Lda (Lisbon, Portugal); Du Pont Ibérica SL (Barcelona, Spain); Du Pont de Nemours (Belgium) BVBA (Mechelen, Belgium); Du Pont de Nemours Italiana Srl (Milan, Italy); Du Pont De Nemours (Nederland) BV (Dordrecht, Netherlands); Du Pont de Nemours (Deutschland) GmbH (Bad Homburg vor der Höhe, Germany); DuPont CZ s.r.o. (Prague, Czech Republic); DuPont Magyarország Kereskedelmi kft (Budaors, Hungary); DuPont Poland sp. z o.o (Warsaw, Poland); DuPont Romania Srl (Bucharest, Romania); DuPont (UK) Ltd (Stevenage, United Kingdom); DuPont Agkro Ellas AE (Halandri, Greece); DuPont International Operations SARL (Grand Saconnex, Switzerland); DuPont Solutions (France) SAS (Puteaux) (represented by: D. Waelbroeck and N. Rampal, lawyers)

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

Re:

Application for the suspension of certain provisions of Commission Directive 2006/133/EC of 11 December 2006 amending Council Directive 91/414/EEC to include flusilazole as active substance (OJ 2006 L 349, p. 27).

Operative part of the order

1. The expiry of the period for which flusilazole is included in Annex I to Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market, fixed at 30 June 2008 in the Annex to Commission Directive 2006/133/EC of 11 December 2006 amending Council Directive 91/414/EEC to include flusilazole as active substance, is suspended until judgment is delivered in the main proceedings;
2. The date by which the Member States have to amend or withdraw, if necessary, after review, the authorisation of products containing flusilazole, also fixed at 30 June 2008 under the second subparagraph of Article 3(2) of Directive 2006/133, is suspended until judgment is delivered in the main proceedings;

3. *The restriction contained in part A of the Specific Provisions of the Annex to Directive 2006/133 on the types of crops on which the use of flusilazole may be authorised by the Member States, namely cereals other than rice, oilseed rape, maize and sugar beet, is suspended until judgment is delivered in the main proceedings;*

4. *Costs are reserved.*

— Infringement of Article 175(2)(c) EC, since under the EC Treaty the Commission does not have competence to adopt measures which significantly affect a Member State's choice between different energy sources and the general structure of its energy supply;

— Breach of the principle of good administration, since the Commission did not take account when taking its decision of all the essential circumstances present in the individual case and did not verify whether all the assumptions made when taking its decision were correct;

— Breach of the obligation to state reasons.

Action brought on 17 July 2007 — Estonia v Commission

(Case T-263/07)

(2007/C 223/17)

Language of the case: Estonian

Parties

Applicant: Republic of Estonia (represented by Lembit Uiho, Agent)

Defendant: Commission of the European Communities

Form of order sought

Annul the decision of the Commission of the European Communities of 4 May 2007 concerning the national greenhouse gas allocation plan submitted by Estonia in accordance with Directive 2003/87/EC of the European Parliament and of the Council ⁽¹⁾

Pleas in law and main arguments

The Commission's decision of 4 May 2007 concerning the national greenhouse gas allocation plan submitted by Estonia in accordance with Directive 2003/87/EC of the European Parliament and of the Council should be annulled on the following grounds:

- Infringement of Article 9(1) and (3) and Article 11(2) of Directive 2003/87/EC and the consequent exceeding of competence;
- Manifest errors of assessment, since the Commission did not take into account correct information available to it, but relied on false assumptions which directly and essentially affected the outcome of the contested decision and the determination of the overall amount of emission allowances;

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

Action brought on 9 July 2007 — Italian Republic v Commission

(Case T-267/07)

(2007/C 223/18)

Language of the case: Italian

Parties

Applicant: Italian Republic (represented by: G. Aiello and S. Fiorentino, Avvocati dello Stato)

Defendant: Commission of the European Communities

Form of order sought

- annul Commission Decision C(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, in so far as it charges to the Italian Republic, as provided for in Article 32(5) of Regulation (EC) No 1290/2005, 50 % of the financial consequences of the non-recovery of amounts in the cases of irregularity or negligence under consideration in the present application.

Pleas in law and main arguments

The Italian Government has challenged before the Court of First Instance of the European Communities Commission Decision C(2007) 1901 final of 27 April 2007, notified on even date, 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, in so far as it charges to the Italian Republic, as provided for in Article 32(5) of Regulation (EC) No 1290/2005, 50 % of the financial consequences of the non-recovery of amounts in particular cases of irregularity or negligence.

In support of its action the Italian Government complained of the inclusion in the decision of cases which the Commission ought to have decided expressly, with diligence and within a reasonable period, at a earlier time, by charging in full to the EAGGF. That is also having regard to the fact that, in respect of several of those positions, the Commission had taken a favourable decision.

The Italian Government therefore pleaded the following grounds of appeal:

- (a) infringement and/or misapplication of Article 5(2) of Regulation (EEC) No 595/91 and Article 8 of Regulation (EC) No 1663/95. Infringement of Article 253 EC in respect of failure to state the grounds;
- (b) infringement and/or misapplication of Article 8(2) of Regulation (EEC) No 729/70 and Article 8(2) of Regulation (EC) No 1258/99. Infringement of Article 253 EC in respect of failure to state the grounds;
- (c) infringement and/or misapplication of Article 5(2) of Regulation (EEC) No 595/91, Article 8 of Regulation (EC) No 1663/95, Article 8(2) of Regulation (EEC) No 729/70 and Article 8(2) of Regulation (EC) No 1258/99 (in relation to the amounts less than EUR 500 000,00). Infringement of Article 253 EC in respect of failure to state the grounds (in relation to amounts less than EUR 500 000,00).

Action brought on 19 July 2007 — Agrícola del Sureste v Council and Commission

(Case T-268/07)

(2007/C 223/19)

Language of the case: Spanish

Parties

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

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

Form 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 hundred and forty-two thousand five hundred and eighty five euros (EUR 142 585);
- order the defendants to pay the costs.

Pleas in law and main arguments

The pleas in law and the main arguments are the same as those raised in Case T-217/07 *Las Palmeras v Council and Commission*.

Action brought on 19 July 2007 — Mediterráneo Algodón v Council and Commission

(Case T-269/07)

(2007/C 223/20)

Language of the case: Spanish

Parties

Applicant: Mediterráneo Algodón, 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

- 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 three million two hundred and seventy-three thousand one hundred and forty-seven euros (EUR 3 273 147);
- order the defendants to pay the costs.

Pleas in law and main arguments

The pleas in law and the main arguments are the same as those raised in Case T-217/07 *Las Palmeras v Council and Commission*.

Action brought on 19 July 2007 — Devisa v Council and Commission**(Case T-270/07)**

(2007/C 223/21)

*Language of the case: Spanish***Parties**

Applicant: Nueva Desmotadora Sevillana, 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

- 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 million three hundred and eighty-five thousand five hundred and seventy-one euros (EUR 2 385 571);
- order the defendants to pay the costs.

Pleas in law and main arguments

The pleas in law and the main arguments are the same as those raised in Case T-217/07 *Las Palmeras v Council and Commission*.

Form 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 million six hundred and sixty-one thousand four hundred and twenty-seven euros (EUR 2 661 427);
- order the defendants to pay the costs.

Pleas in law and main arguments

The pleas in law and the main arguments are the same as those raised in Case T-217/07 *Las Palmeras v Council and Commission*.

Action brought on 19 July 2007 — Surcotton v Council and Commission**(Case T-272/07)**

(2007/C 223/23)

*Language of the case: Spanish***Parties**

Applicant: Surcotton, SA (Cordoba, Spain) (represented by: L. Ortiz Blanco, lawyer)

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

Form 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 seven hundred and thirty-four thousand and twenty-seven euros (EUR 1 734 027);
- order the defendants to pay the costs.

Pleas in law and main arguments

The pleas in law and the main arguments are the same as those raised in Case T-217/07 *Las Palmeras v Council and Commission*.

Action brought on 19 July 2007 — Eurosemillas v Council and Commission**(Case T-271/07)**

(2007/C 223/22)

*Language of the case: Spanish***Parties**

Applicant: Eurosemillas, SA (Cordoba, Spain) (represented by: L. Ortiz Blanco, lawyer)

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

Action brought on 19 July 2007 — Zhejiang Harmonic Hardware Products v Council

(Case T-274/07)

(2007/C 223/24)

Language of the case: English

Parties

Applicant: Zhejiang Harmonic Hardware Products Co. Ltd (Zhejiang, China) (represented by: R. MacLean, Solicitor)

Defendant: Council of the European Union

Form of order sought

— Annul Articles 1 and 2 of Council Regulation (EC) 452/2007 of 23 April 2007, insofar as it applies to the applicant; and

— order the Council to pay the legal costs and expenses of the procedure.

Pleas in law and main arguments

The applicant, who manufactures ironing boards and the essential parts thereof in the People's Republic of China, seeks the annulment of Council Regulation (EC) No 452/2007 of 23 April 2007 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of ironing boards originating in the People's Republic of China and Ukraine ⁽¹⁾ to the extent that these measures apply to the applicant.

In support of its application, the applicant, first of all, submits that the Community institutions infringed Article 2(7)(b) and (c) of the Basic Regulation ⁽²⁾ as the Commission presented a proposal for anti-dumping measures to the Council based on a flawed determination that the applicant did not satisfy the Market Economy Status criteria set out in Article 2(7)(c).

Secondly, the applicant alleges that the Community institutions infringed Article 20(4) and (5) of the Basic Regulation and its right to be heard as the applicant was only given six days to respond to the Commissions revised final disclosure letter.

Thirdly, the applicant contends that the Community institutions infringed Article 8 of the Basic Regulation by failing to give proper consideration to the price undertakings offered by the applicant.

Finally, the applicant claims that the Community institutions infringed Article 5(2)(a) of the Basic Regulation by not disclosing the identity of the complainant initiating the investigation leading to the contested regulation.

⁽¹⁾ OJ 2007 L 109, p. 12.

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

Action brought on 18 July 2007 — Italy v Parliament and Commission

(Case T-285/07)

(2007/C 223/25)

Language of the case: Italian

Parties

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

Defendants: European Parliament and Commission of the European Communities

Form of order sought

— annul the Notice of open competition EPSO/AD/95/07 to constitute a reserve pool for 20 posts of Administrator (AD5) in the field of 'Information Science (Library/Documentation)', published only in the English, French and German versions of the *Official Journal of the European Union* C 103A of 8 May 2007.

Pleas in law and main arguments

The pleas in law and principal arguments are similar to those put forward in Case T-156/07 *Spain v Commission*.

Action brought on 25 July 2007 — cApStAn v Commission

(Case T-287/07)

(2007/C 223/26)

Language of the case: French

Parties

Applicant: cApStAn Sprl (Brussels, Belgium) (represented by: J. Bublot, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— Annulment of the Commission's rejection decision.

Pleas in law and main arguments

By this action, the applicant seeks the annulment of the Commission's decision of 22 May 2007 rejecting its tender submitted in connection with the tendering procedure 'Post-editing services PER 2007' ⁽¹⁾ on account of an absence of evidence of relevant experience.

In support of its application for annulment of the contested decision, the applicant claims that the Commission erred manifestly in its reading of its application because the call for tenders related precisely to its area of activity, which the applicant claims to have stated in its tender. The applicant also states that it had already secured a public contract in that area from the Commission and that the services provided on that occasion were never called in question.

In addition, the applicant claims that the contested decision is based on manifestly incorrect reasons and that that error amounts to a lack of reasoning.

⁽¹⁾ OJ 2007/S 21-023949.

Appeal brought on 3 August 2007 by Alessandro Lofaro against the order of the Civil Service Tribunal delivered on 24 May 2007 in Joined Cases F-27/06 and F-75/06, Lofaro v Commission

(Case T-293/07 P)

(2007/C 223/27)

Language of the case: French

Parties

Appellant: Alessandro Lofaro (Lisbon, Portugal) (represented by: J.-L. Laffineur, lawyer)

Other party to the proceedings: Commission of the European Communities

Form of order sought by the appellant

- declare the appeal admissible and well founded and, accordingly,
- set aside the order of the Civil Service Tribunal in Cases F-27/06 and 75/06 delivered on 24 May 2007;
- rule on the merits and uphold the appellant's original application.

Pleas in law and main arguments

In his appeal, the appellant claims that the Civil Service Tribunal erred in law in its interpretation of Article 90(2) of the Staff Regulations and, in particular, as regards the period laid down for lodging the complaint and the date to be taken into account for the expiry of that period. The appellant claims that the Tribunal's interpretation prejudices general principles of Community law, such as the principle of legal certainty, of non-discrimination and of proportionality, as well as the rights of the appellant. He further submits that the Tribunal did not respond to all the pleas put forward by him in his actions and that, accordingly, the order is vitiated by a defective statement of reasons which is inadequate and incorrect.

**Order of the Court of First Instance of 29 June 2007 —
Keppenne v Commission****(Case T-272/04) ⁽¹⁾**

(2007/C 223/28)

Language of the case: French

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

⁽¹⁾ OJ C 273, 6.11.2004.

**Order of the Court of First Instance of 9 July 2007 — Rath
v OHIM — AstraZeneca (VIXACOR)****(Case T-326/05) ⁽¹⁾**

(2007/C 223/30)

Language of the case: German

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

⁽¹⁾ OJ C 281, 12.11.2005.

**Order of the Court of First Instance of 29 June 2007 —
Keppenne v Commission****(Case T-411/04) ⁽¹⁾**

(2007/C 223/29)

Language of the case: French

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

⁽¹⁾ OJ C 300, 4.12.2004.

**Order of the Court of First Instance of 12 July 2007 —
Globe v Commission****(Case T-114/06) ⁽¹⁾**

(2007/C 223/31)

Language of the case: French

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

⁽¹⁾ OJ C 131, 3.6.2006.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Action brought on 11 July 2007 — Marcuccio v Commission

(Case F-133/06)

(2007/C 223/32)

Language of the case: Italian

Parties

Applicant: Luigi Marcuccio (Tricase, Italy) (represented by: G. Cipressa, lawyer)

Defendant: Commission of the European Communities

Form of order sought

- declare that there is no legal basis for or, in the alternative, annul the decision rejecting the applicant's application of 31 August 2005 to the Appointing Authority for the restoration to him of the property which was formerly situated at the accommodation provided to him by his employer in Angola and which was wrongfully seized by the Commission;
- declare that there is no legal basis for or, in the alternative, annul in so far as is necessary the decision of the Appointing Authority of 20 July 2006 rejecting the applicant's complaint against the contested decision;
- order the defendant to restore the applicant's property to him;
- order the defendant to pay the applicant the sum of EUR 1 000 000, or such other sum as the Tribunal may consider just and equitable, by way of compensation for the damage to the applicant deriving from the contested decision from the date of the request of 31 August 2005 or, in the alternative, from the date of the contested decision to the present date;
- order the defendant to pay the applicant, in respect of each day from the present date until the date on which each decision granting fully and unconditionally the request of 31 August 2005 is implemented by the defendant, the sum of EUR 300 or such other sum as the Tribunal may consider just and equitable, to be paid on the first day of each month in respect of rights accrued during the previous month, by way of compensation for the damage deriving from the contested decision and arising in the abovementioned period;
- order the defendant to pay the costs.

Pleas in law and main arguments

In support of his arguments, the applicant relies on the following three pleas in law:

- (1) absolute failure to state reasons, also on the basis that the reasons put forward by the defendant are illogical, inconsistent, confusing and in the nature of a pretext;
- (2) serious and manifest infringement of the law;
- (3) breach of the obligation to have due regard to the welfare of officials and of the principle of sound administration.

Action brought on 10 July 2007 — Marcuccio v Commission

(Case F-18/07)

(2007/C 223/33)

Language of the case: Italian

Parties

Applicant: Luigi Marcuccio (Tricase, Italy) (represented by: G. Cipressa, lawyer)

Defendant: Commission of the European Communities

Form of order sought

- annul the decision of 25 October 2005 issued by the Joint Sickness Insurance Scheme of the European Communities by which the defendant rejected the claim of 11 October 2005 brought by the applicant for recognition within the meaning and for the purposes of Article 72 of the Staff Regulations and the Rules on Sickness Insurance for Officials of the European Communities; that he has a serious illness
- annul, in so far as is necessary, the decision of the Appointing Authority of 30 November 2005, ref. ADMIN.B.2/MB/nb D(06) 27556, rejecting, in part, the complaint dated 23 August 2006 brought by the applicant against and for the annulment of the contested decision;

- declare that there is no legal basis for or, in the alternative, annul, in so far as is necessary and if it actually exists, which is uncertain at this stage, the alleged opinion of the relevant medical board referred to in the note dated 30 November 2006, the details of which are unknown to the applicant;
- order the defendant to pay the costs.

Pleas in law and main arguments

In support of his claims, the applicant relies on the following three pleas in law:

- (1) absolute failure to state reasons, also on the basis that the grounds put forward by the defendant are illogical, inconsistent, tautologous, confused, show a failure to make preliminary inquiries and are in the nature of a pretext;
- (2) manifest error of assessment and infringement of the law;
- (3) breach of the obligation to have due regard to the welfare of officials and of the principle of sound administration.

Action brought on 27 June 2007 — Marcuccio v Commission

(Case F-20/07)

(2007/C 223/34)

Language of the case: Italian

Parties

Applicant: Luigi Marcuccio (Tricase, Italy) (represented by: G. Cipressa, lawyer)

Defendant: Commission of the European Communities

Form of order sought

- annul, in so far as is necessary, the decision rejecting the claim of 31 March 2006, submitted on 4 April 2006, in so far as that decision concerns the applicant's claim that point 4 of Article XV of Annex I to the Rules on sickness insurance for officials of the European Communities ('the Rules') should apply to the determination and subsequent reimbursement in respect of a medical examination carried out on 28 September 2005;
- annul the decision rejecting the claim of 31 March 2006;
- annul, in so far as is necessary, Calculation No 58, List No 30001052, of 24 May 2006;
- annul, in so far as is necessary, Note ADMIN.B.2/MB/nb D(06) 27556 of 30 November 2006 containing, *inter alia*,

the decision of the Appointing Authority in response to the claim of 7 August 2006, which has essentially the same purpose as the present action;

- order the defendant to pay the applicant, by way of reimbursement of the additional sum needed to make up 100 % reimbursement of the medical expenses incurred by him and in respect of which he claimed reimbursement from the Joint Scheme in the claim of 31 March 2006, the difference between the sum of EUR 720,45 paid by the applicant and the sum of EUR 396,36 actually reimbursed to him, or other such sum as the Tribunal may consider just and equitable in that regard, such sum to earn interest from 8 April 2006 at the rate of 10 % per annum to be compounded annually, or at the rate to be compounded and from the starting date which the Tribunal may consider just;
- order the defendant, in so far as is necessary, to pay the applicant the sum that he is due but has not received, within the meaning and for the purposes of point 4 of Article XV of Annex I to the Rules, in relation to the medical examination carried out on 28 September 2005, such sum to earn interest from 4 April 2006 at the rate of 10 % per annum to be compounded annually, or at the rate to be compounded and from the starting date which the Tribunal may consider just;
- order the defendant to pay the costs.

Pleas in law and main arguments

The action is brought as a result of the defendant's refusal to pay the applicant the additional sum needed to make up 100 % reimbursement of certain medical expenses incurred by him and to apply point 4 of Article XV of Annex I to the Rules on sickness insurance for officials of the European Communities to the determination of the reimbursement in respect of a medical examination carried out on 28 September 2005.

In support of his arguments, the applicant relies on the following three pleas in law:

- (1) absolute failure to state grounds also by reason of a total failure to make preliminary inquiries, inasmuch as it cannot be understood why the defendant refused the applicant's claims in the manner referred to above;
- (2) manifest error of assessment and infringement of the law on the basis that the applicant's medical condition was such as to give rise, within the meaning and for the purposes of Article 72 of the Staff Regulations, to a right on his part to 100 % reimbursement of medical expenses;
- (3) breach of the obligation to have due regard to the welfare of officials and of the principle of sound administration, given that the defendant failed to have due regard to the applicant's interests and did several acts and related deeds which are gravely unlawful.

Action brought on 4 June 2007 — Marcuccio v Commission**(Case F-21/07)**

(2007/C 223/35)

*Language of the case: Italian***Parties***Applicant:* Luigi Marcuccio (Tricase, Italy) (represented by: G. Cipressa, lawyer)*Defendant:* Commission of the European Communities**Form of order sought**

- annul the implied decision ('the contested decision') rejecting the application of 30 December 2005 submitted by the applicant on 17 January 2006;
- annul, in so far as is necessary, the decision of the Appointing Authority dated 15 November 2006 rejecting the applicant's complaint against the contested decision;
- order the defendant to pay the applicant the compensation requested in the application of 30 December 2005, namely the sum of EUR 100 000, or such other sum as the Tribunal may consider just and equitable;
- order the defendant to pay the applicant the additional sum of EUR 50 000, or such other sum as the Tribunal may consider just and equitable, by way of compensation for the damage suffered after the date of the said application;
- order the defendant to pay the applicant default interest at the rate of 10 % per annum, to be compounded annually from the date of the application of 30 December 2005 until actual payment and, more generally, until the notes complained of have been completely destroyed, or at the rate to be compounded and from the starting date which the Tribunal may consider just and equitable, on the sum of EUR 100 000 or such other sum as the Tribunal may consider just and equitable;
- order the defendant to destroy, without any further delay, the originals and all copies of the note of 20 February 2001, prot. 951883, the note of 15 November 2006 and, lastly, if it exists, the letter of 20 July 2006 to which the defendant refers in the note dated 15 November 2006;
- order the defendants to notify the applicant when physical destruction has taken place, specifying in accordance with formal requirements, in respect of each document destroyed, the place in which it was located prior to destruction and all the facts relating to the time, place and act of physical destruction, in particular the date, place and person carrying out the same;
- order the defendant to pay the applicant the sum of EUR 100, or such other sum as the Tribunal may consider just and equitable, for each day's delay in destroying the

documents, from the date of the judgment to be delivered until the applicant has actually been that notified that physical destruction has taken place, payable on the first day of each month in relation to rights accrued in that respect in the preceding month;

- order the defendant to pay the costs.

Pleas in law and main arguments

The present case arises out of a number of statements contained in several notes attributable to the defendant, from which, according to the applicant, unlawful acts, deeds and conduct in relation to the processing of sensitive information concerning the applicant may be inferred.

In support of his claims, the applicant relies on the following three pleas in law:

- (1) failure to state reasons in so far as, on the one hand, the applicant's application was rejected only by implication and, on the other, the reasons provided by the defendant in the note of 15 November are inconsistent, illogical and in the nature of a pretext;
- (2) infringement of the law, since the applicant satisfies the conditions for entitlement to compensation for damage sought in his application of 30 December 2005, namely: unlawful acts, deeds and conduct on the part of the defendant; the occurrence of damage to the applicant; a causal connection between the damage alleged and the conduct complained of;
- (3) breach of the obligation to have due regard to the welfare of officials and of the principle of sound administration, given that the defendant failed to have due regard to the applicant's interests and did several acts and related deeds which, as a result of their grave unlawfulness and the considerable period of time during which they were committed, constituted a breach of that obligation and principle.

Action brought on 23 July 2007 — Marcuccio v Commission**(Case F-70/07)**

(2007/C 223/36)

*Language of the case: Italian***Parties***Applicant:* Luigi Marcuccio (Tricase, Italy) (represented by: G. Cipressa, lawyer)*Defendant:* Commission of the European Communities

Form of order sought

- annul the decision ('the contested decision'), in whatever form, by which the defendant rejected the applicant's application of 22 June 2006 that the Commission pay to him that part of the costs incurred by him in Case T-176/04 *Marcuccio v Commission* ⁽¹⁾ already decided before the Court of First Instance of the European Communities, which the defendant was ordered to pay by order of 6 March 2006;
- annul, in so far as is necessary, the decision, in whatever form, rejecting the applicant's complaint against the contested decision;
- order the defendant to pay the applicant the sum of EUR 6 347,67, plus default interest thereon, appreciation, at the total rate of 10 % per annum to be compounded annually, from the date of the application of 22 June 2006 to the present, by way of compensation for the material damage caused to the applicant by the contested decision;
- order the defendant to pay the applicant the sum of EUR 1 000 by way of compensation for the loss of opportunity of which the applicant could have taken advantage if the sum due to him had been made available in due time;
- order the defendant to pay the applicant *pro bono et ex aequo* the sum of EUR 3 000, or such other sum as the Tribunal may consider just and equitable, by way of compensation for the non-material damage sustained by the applicant, including damage to his quality of life, by the contested decision;
- order the defendant to pay the applicant, in respect of each day from the present date until the date on which each decision granting fully and unconditionally the application dated 22 June 2006 is implemented by the defendant, the sum of EUR 2, or such other sum as the Tribunal may consider just and equitable, payable on the first day of each month in respect of rights accrued during the previous month, by way of compensation for the damage arising as a result of any delay in implementing the decision granting the application;
- order the defendant to pay the costs.

Pleas in law and main arguments

In support of his arguments, the applicant relies on the following three pleas in law: (1) absolute failure to state reasons; (2) infringement of the law; (3) breach of the obligation to have due regard to the welfare of officials and of the principle of sound administration.

⁽¹⁾ OJ C 121, 20.05.2006, p. 12. As a result of a clerical error, the applicant refers to Case T-176/03 instead of Case T-176/04.

Action brought on 3 July 2007 — Stefan Meierhofer v Commission

(Case F-74/07)

(2007/C 223/37)

Language of the case: German

Parties

Applicant: Stefan Meierhofer (Munich, Germany) (represented by: H.-G. Schiessl, lawyer)

Defendant: Commission of the European Communities

Form of order sought

- Annulment of the defendant's decision of 10 May 2007 concerning the applicant;
- Annulment of the defendant's appeal decision of 19 June 2007;
- Order the defendant to reassess in the light of the current assessment criteria the oral examination taken by the applicant on 29 March 2007;
- Order the defendant to take a new decision on the applicant's inclusion on the reserve list for recruitment competition AD/26/05 in the light of the new examination results;
- Order the defendant to give reasons for its new decisions;
- Order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

The applicant participated in EU recruitment competition AD/26/05 (AD5 officials). On completion of the examination the applicant was notified by the examination board that he had not been placed on the reserve list as he had not obtained the mark required.

The applicant claims that insufficient reasons were given for the Commission's decision not to place him on the reserve list and claims that procedural errors occurred during the oral examination.

Action brought on 31 July 2007 — Labate v Commission**(Case F-77/07)**

(2007/C 223/38)

*Language of the case: English***Parties**

Applicant: Kay Labate (Tarquinia, Italy) (represented by: I. S. Forrester, Queen's Counsel)

Defendant: Commission of the European Communities

Form of order sought

The applicant claims that the Tribunal should:

- Annul the Commission's decisions of 6 October 2006 and 18 October 2004,
- Order the Commission to pay to the Applicant the sums provided for by the Article 73 of the Staff Regulations of Officials of the European Communities (the 'Staff Regulations') and Article 9 of the Common Rules on the insurance of officials of the European Communities against the risk of accident and of occupational disease (the 'Insurance Rules'),
- Prescribe such other or further relief as justice may require,
- Order the Commission to pay the costs of the present action.

Pleas in law and main arguments

The applicant, Mrs. Kay Labate, widow of former European Commission official Mario Labate, on her own behalf and on behalf of her husband's estate, contests the Commission's decisions refusing to recognise the lung cancer of her husband as an occupational disease.

Mr Labate was an official with the Commission for 29 years, during which time he was exposed, according to the Applicant,

to a large amount of secondhand tobacco smoke. He was declared permanently invalid following the discovery of the lung cancer which subsequently led to his death. He submitted a request for recognition of the illness as an occupational disease. While acknowledging Mr Labate's exposure to secondhand tobacco smoke and finding no other cause for his lung cancer, the Medical Committee in its decision nonetheless stated that it could not establish with certainty the connection with his professional activities. The Commission accordingly denied the request, following the finding by the Medical Committee that the connection between the disease and Mr Labate's professional activities was not sufficiently established.

The applicant submits that the Commission erred as a matter of law by concluding that the cancer suffered by Mr. Labate is not covered by Article 73 of the Staff Regulations. She claims that the standard of 'certainty' employed by the Medical Committee is unreasonably strict and contrary to the case-law.

The applicant also submits that the Medical Committee failed to address the possibility that the secondhand tobacco smoke which Mr. Labate was exposed to could have aggravated his cancer, as defined in Article 3 of the Insurance Rules. Further, the Commission failed to address the issue that although secondhand tobacco smoke is not itself listed under that Article, several specific carcinogenic elements of secondhand tobacco smoke are listed and therefore covered by Article 73 of the Staff Regulations. The applicant claims that the Medical Committee wrongly attempted to examine questions of proof and evidence, beyond its competence, rather than merely establishing the medical facts.

Finally the Applicant contends that the decision by the Commission contained inadequate reasoning and that the time it took the Commission to arrive at a decision was excessive and contrary to principle of good administration. Had the decision been taken before Mr Labate's death and had it recognised his illness as work related, he would have received 8 years of salary by way of compensation.