ISSN 1725-2423

Official Journal of the European Union

C 247

Volume 50

English edition

Information and Notices

20 October 2007

Notice No | Contents | Page

EN

(Continued overleaf)

EN

EN

(Continued overleaf)

EN

EN

(Continued overleaf)

EN

(Continued on inside back cover)

EN

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS AND BODIES

COURT OF JUSTICE

(2007/C 247/01)

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

OJ C 235, 6.10.2007

Past publications

OJ C 223, 22.9.2007

OJ C 211, 8.9.2007

OJ C 183, 4.8.2007

OJ C 170, 21.7.2007

OJ C 155, 7.7.2007

OJ C 140, 9.6.2007

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 Bundesfinanzhof (Germany) lodged on 14 June 2007 — Ernst & Young Deutsche Allgemeine Treuhand AG v Finanzamt Stuttgart-Körperschaften

(Case C-285/07)

(2007/C 247/02)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Ernst & Young Deutsche Allgemeine Treuhand AG

Defendant: Finanzamt Stuttgart-Körperschaften

Questions referred

1. Does Article 8(1) and (2) of Council Directive 90/434/EEC of 23 July 1990 ([1]) preclude the taxation rules of a Member State under which, on the transfer of shares in one European Union company limited by shares to another, the transferring party may maintain the book value of the shares transferred only if the receiving company has itself valued the shares transferred at their book value ('double book value carryover')?

2. If the answer is in the negative: are the above rules contrary to Articles 43 EC and 56 EC, even though the 'double book value carryover' is required also on a transfer of shares in a company limited by shares to one that is subject to unlimited taxation?

([1]) OJ 1990 L 225, p. 1.

Reference for a preliminary ruling from the Hessischer Verwaltungsgerichtshof (Germany) lodged on 5 July 2007 — Firma Baumann GmbH v Land Hessen

(Case C-309/07)

(2007/C 247/03)

Language of the case: German

Referring court

Hessischer Verwaltungsgerichtshof

Parties to the main proceedings

Applicant: Firma Baumann GmbH

Defendant: Land Hessen

Questions referred

1. Is a national legislature, when availing itself of the power laid down in Article 5(3) of Council Directive 85/73/EEC of 29 January 1985 in the version of Council Directive 96/43/EC of 26 June 1996 and in point 4(a) of Chapter I of Annex A thereto to increase the standard amounts of fees for individual establishments and in point 4(b) to collect a fee which covers actual costs, strictly bound by the fee structure laid down in points 1 and 2(a) of Chapter I of Annex A (according to type of animal, young or adult animals, carcase weight etc) or may it make a distinction, when setting the amounts of scales of fees, between inspections of slaughtering units in large establishments and other inspections and, in addition, also within those two groups adjust the rate of fees on a diminishing scale according to the number of animals slaughtered within the animal types, provided only that that reflects the actual costs?

2. On the basis of the abovementioned provisions, may a national legislature collect, in respect of slaughtering carried out outside normal slaughtering hours at the request of the owner, an additional fee on a percentage basis on top of the fee collected for slaughtering inspections in normal slaughtering hours when the latter reflects the additional actual costs, or must those costs be contained in the standard (increased) fee for all persons subject to a fee?

Reference for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 11 July 2007 — Hein Persche v Finanzamt Lüdenscheid

(Case C-318/07)

(2007/C 247/04)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Claimant: Hein Persche

Defendant: Finanzamt Lüdenscheid

Questions referred

1. Do donations of everyday goods by a national of a Member State to bodies which have their seat in a different Member State and, under the law of that Member State, are recognised as charitable, fall within the scope of application of free movement of capital (Article 56 EC)?

2. If question 1 is answered in the affirmative:

   Having regard to the obligation of tax authorities to verify statements made by taxable persons and to the principle of proportionality (Article 5(3) EC), is it incompatible with free movement of capital (Article 56 EC) for the law of a Member State to confer a tax benefit on donations to charitable bodies only if the latter are resident in that Member State?

3. If question 2 is answered in the affirmative:

   Does Directive 77/799/EEC impose an obligation on the tax authorities of Member States to obtain assistance from the administrative authorities of another Member State in order to verify facts which have occurred in that other Member State, or can the procedural rules of a taxable person's home Member State require him to bear the burden of proof (objective burden of proof) in relation to facts which have occurred abroad?

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

(Case C-326/07)

(2007/C 247/05)

Language of the case: Italian

Parties

Applicant: Commission of the European Communities (represented by: L. Pignatoro-Nolin and H. Støvlbæk, Agents)

Defendant: Italian Republic

Form of order sought

— declare that, by including provisions such as those contained in Article 1(2) of the decree of the President of the Council of Ministers of 10 June 2004 on the definition of criteria for the exercise of the special powers referred to in Article 2 of Decree-Law No 332 of 31 May 1994, converted into law with amendments by Law No 474 of 30 July 1994, and amended by Article 4(227)(a), (b) and (c) of Finance Law No 350/2004, the Italian Republic has failed to fulfil its obligations under Articles 43 and 56 of the EC Treaty;

— order the Italian Republic to pay the costs.

Pleas in law and main arguments

The Commission takes the view that the criteria referred to by Article 1(2) of the Decree of 10 June 2004 for the exercise of special powers, laid down by Article 4(227)(a), (b) and (c) of Law No 350/2004, are not precise or specific enough to enable an investor in another Member State to know when the special powers under Article 4(227)(a), (b) and (c) of Law No 350/2004 will be used.

The special powers under Article 4(227)(a), (b) and (c) of Law No 350/2004 are: to prevent investors from acquiring significant shareholdings representing at least 5 % of voting rights or a lower percentage fixed by the Ministry of Finance, to prevent the conclusion of contracts and agreements between members representing 5 % of voting rights or a lower percentage fixed by the Ministry of Finance and the power to veto the adoption of resolutions for the dissolving of companies, the transferring of shareholdings, for merger, demerger, transferring abroad of the company headquarters, or altering of company objects, criteria applicable to all the sectors mentioned in the first subparagraph of Article 4(227) of the Law (defence, transport, telecommunications, energy sources and other public services).

In light of the Court's case-law (Case C-463/00 *Commission* v *Spain* [2003] ECR I-4581; Case C-483/99 *Commission* v *France* [2002] ECR I-4781; Case C-503/99 *Commission* v *Belgium* [2002] ECR I-4809, and Joined Cases C-282/04 and C-293/04 *Commission* v *Netherlands* [2006] ECR I-9141), the Commission considers therefore that the legislation in question goes beyond what is necessary in order to safeguard the public interests provided for by Article 1.2 of the Decree of 10 June 2004 and that it is contrary to both Article 56 EC and Article 43 EC. In the Commission's view, for the sectors thus regulated, such as energy, gas or telecommunications, the aim of protecting the State's vital interests may be attained by adopting less restrictive measures regulating those activities, such as Directive 2003/54/EC ([1]) and Directive 2003/55/EC ([2]) or Directive 2002/21/EC ([3]) and Directives 2002/19/EC ([4]), 2002/20/EC ([5]), 2002/22/CE ([6]) and 2002/58/EC ([7]). It is the Commission's opinion, furthermore, that those acts guarantee the safeguarding of national minimum provisions and that there is no causal link between the need to ensure power supplies, the provision of public services and the supervision of the ownership structure or of the management of the undertaking.

([1]) OJ L 176, p. 37.
([2]) OJ L 176, p. 57.
([3]) OJ L 108, p. 33.
([4]) OJ L 108, p. 7.
([5]) OJ L 108, p. 21.
([6]) OJ L 108, p. 51.
([7]) OJ L 201, p. 37.

Action brought on 16 July 2007 — Commission of the European Communities v Hellenic Republic

(Case C-331/07)

(2007/C 247/06)

Language of the case: Greek

Parties

Applicant: Commission of the European Communities (represented by: E. Tserepa-Lacombe and F. Erlbacher)

Defendant: Hellenic Republic

Form of order sought

— a declaration that, by not having adopted all the measures necessary to remedy the serious shortage of staff in the services responsible for veterinary controls in Greece, which is likely to undermine the correct and effective application of the Community veterinary legislation, the Hellenic Republic has failed to fulfil its obligations under that legislation

— an order that the Hellenic Republic pay the costs.

Pleas in law and main arguments

By this action, the Commission asks the Court to find that by not having adopted the legal and administrative measures necessary first to comply with the obligation laid down by Article 4(2) of Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules (OJ 2004 L 165, p. 1 as amended in OJ 2004 L 191, p. 1) ('Regulation 882/2004') and the obligation to have a sufficient number of properly qualified and experienced staff to be able effectively to carry out the official controls, and secondly to comply with the obligation laid down by the provisions of the Community veterinary legislation relating to the financing of the staff necessary to carry out the prescribed veterinary controls, the Hellenic Republic has failed to fulfil its obligations under that legislation.

The Commission states that the Community veterinary legislation requires Member States to ensure that there are carried out a substantial number of checks and controls relating to the application of the prescribed conditions and requirements. Thus, certain provisions, in particular Article 4(2)(c) of Regulation 882/2004, lay down that Member States must have a sufficient number of properly qualified and experienced staff to be able to carry out the veterinary controls. Further, many of those provisions either expressly provide that certain veterinary controls — the procedures for implementation of which are more or less detailed — must be carried out, or define the conditions and specifications which presuppose the existence of veterinary controls.

However, relying on a large number of inspection reports submitted by the Food and Veterinary Office (FVO) of the Commission, the Commission states that on expiry of the period specified in the reasoned opinion and beyond that date, and despite certain efforts of the Greek authorities, the Hellenic Republic has not adopted all the measures necessary to remedy the failings for which it has been criticised. Since 1998, the FVO has made a large number of inspection visits to Greece, and has found a serious shortage of staff in the services responsible for carrying out the official controls prescribed by the Community legislation, at all levels of administration. The shortage discovered was such that, according to the Commission experts, the official controls which are essential to the effective application of the Community legislation relating to animal protection could not be carried out, the programmes to combat and eradicate animal diseases have not been completed, and the rules relating to animal welfare have not been complied with.

The majority of the recommendations addressed to the Greek authorities have been implemented either not at all or inadequately. Further, the inspection reports disclose a very worrying picture of the official controls carried out in Greece.

Reference for a preliminary ruling from the Verwaltungsgericht Hannover (Germany) lodged on 19 July 2007 — Kabel Deutschland Vertrieb und Service GmbH & Co. KG v Niedersächsische Landesmedienanstalt für privaten Rundfunk

(Case C-336/07)

(2007/C 247/07)

Language of the case: German

Referring court

Verwaltungsgericht Hannover

Parties to the main proceedings

Applicant: Kabel Deutschland Vertrieb und Service GmbH & Co. KG

Defendant: Niedersächsische Landesmedienanstalt für privaten Rundfunk

Interveners: Norddeutscher Rundfunk, Hamburg, and 39 others

Questions referred

1. Is a provision like Paragraph 37(1) of the Niedersächsisches Mediengesetz (Lower Saxony Law on the Media) compatible with Article 31(1) of the Universal Service Directive 2002/22/EC if a cable network operator is forced to provide access, on more than half of the channels permanently usable for analogue broadcasting which are available on its networks, to programmes which — although they do not cover the whole of the Land of Lower Saxony — are already being broadcast terrestrially according to the DVB-T standard?

2. Is a provision like Paragraph 37(1) of the Niedersächsisches Mediengesetz compatible with Article 31(1) of the Universal Service Directive 2002/22/EC if a cable network operator is forced to provide access to television programmes on its analogue cable networks even in those areas of the Land in which the cable end-user would in any event be in a position to receive the same television programmes terrestrially according to the DVB-T standard by means of a terrestrial antenna and a decoder?

3. Are 'television … services' within the meaning of the first sentence of Article 31(1) of the Universal Service Directive 2002/22/EC to be interpreted as including providers of media services or telemedia, for example teleshopping?

4. Is a provision like Paragraph 37(2) of the Niedersächsisches Mediengesetz compatible with Article 31(1) of the Universal Service Directive 2002/22/EC if, in the event of a shortage of channels, the competent national authority has to establish an order of priority of applicants which results in full use of the channels available to the cable network operator?

Reference for a preliminary ruling from the Corte d'Appello di Torino (Italy) lodged on 25 July 2007 — Bavaria N.V. and Bavaria Italia Srl v Bayerischer Brauerbund e.V

(Case C-343/07)

(2007/C 247/08)

Language of the case: Italian

Referring court

Corte d'Appello di Torino

Parties to the main proceedings

Applicants: Bavaria N.V. and Bavaria Italia Srl

Defendant: Bayerischer Brauerbund e.V

Questions referred

1. Is Council Regulation (EC) No 1347/2001 [1] of 28 June 2001 invalid, possibly as a consequence of the invalidity of other acts, in light of the following:

Breach of general principles

— the invalidity of Article 1(1) of Regulation (EEC) No 2081/1992 ([2]), read in conjunction with Annex I thereto, in so far as it permits the registration of geographical indications relating to 'beer', which is an alcoholic beverage listed (wrongly) in that Annex as one of the 'foodstuffs' referred to in Article 1(1), but which is not one of the 'agricultural products' listed in Annex I to the EC Treaty and referred to in Article 32 (formerly Article 38) and Article 37 (formerly Article 43) thereof, which the Council took as the legal basis for its competence to adopt Regulation (EEC) No 2081/1992;

— the invalidity of Article 17 of Regulation (EEC) No 2081/1992 in so far as it provides for an accelerated registration procedure under which the rights of interested parties are substantially limited and impaired, in so far as it makes no provision for a right of opposition, in clear breach of the principles of transparency and legal certainty, as is evident in particular from the complexity of the procedure for registering 'Bayerisches Bier', the protected geographical indication at issue, which took more than seven years from 1994 to 2001, and from the express acknowledgment to that effect in Recital (13) in the preamble to Regulation (EC) No 692/2003 ([3]), Article 15 of which repealed — for those reasons — Article 17 of Regulation (EEC) No 2081/1992;

Failure to comply with procedural requirements

— the failure of the indication 'Bayerisches Bier' to satisfy the conditions laid down in Article 17 of Regulation (EEC) No 2081/1992 for eligibility for registration in accordance with the simplified procedure provided for therein, in that, at the time when the application for registration was submitted, that indication was not a 'legally protected name' in Germany, nor had it been 'established by usage' there;

— the fact that the question whether the pre-conditions had been met for registration of the indication 'Bayerisches Bier' was not given due consideration either by the German Government before submitting the application, or by the Commission itself after receiving that application, contrary to the requirements established by the case-law of the Court of Justice (Case C-269/99 Carl Kühne and Others [2001] ECR I 9517);

— the fact that the application for registration of the indication 'Bayerisches Bier' was not submitted in good time by the German Government in accordance with Article 17(1) of Regulation (EEC) No 2081/92 (6 months after the entry into force of the Regulation, which took place on 24 July 1993), it being also the case that the subject-matter of the application initially submitted by the applicant company envisaged eight varying indications — with a reservation as to the possibility of later variations of an unspecified nature — which did not coalesce to form the current single indication 'Bayerisches Bier' until well after the deadline on 24 January 1994;

Failure to comply with substantive requirements

— failure of the indication 'Bayerisches Bier' to satisfy the substantive requirements laid down in Article 2(2)(b) of Regulation (EEC) No 2081/1992 for registration as a protected geographical indication, given the generic nature of that indication, which has historically designated beer produced in accordance with a particular method of production which originated during the nineteenth century in Bavaria, whence it spread throughout Europe and the rest of the world (the method known as 'the Bavarian method', based on bottom fermentation), and which even today in a number of European languages (Danish, Swedish, Finnish) is used as a generic term for beer and which, in any case, can at most identify, solely and generically, from among the numerous varieties of beer in existence any type of 'beer produced in the German Land of Bavaria', there being no 'direct link' (Case C-312/98 Warsteiner [2000] ECR I 9187) between a specific quality, reputation or other characteristic of the product (beer) and its specific geographical origin (Bavaria), nor evidence that this is one of the 'exceptional cases' required under Article 2(2)(b) of Regulation (EEC) No 2081/1992 in order for it to be permissible to register a geographical indication containing the name of a country;

— the fact that, as emerges from the preceding paragraph, the indication 'Bayerisches Bier' is a 'generic' indication, and as such ineligible for registration pursuant to Articles 3(1) and 17(2) of Regulation (EEC) 2081/1992;

— the fact that registration of the indication 'Bayerisches Bier' should have been refused pursuant to Article 14(3) of Regulation (EEC) 2081/1992, since, in the light of 'the reputation and renown' of the Bavaria marks and 'the length of time for which [they] have been used', registration was 'liable to mislead the consumer as to the true identity of the product'?

2. In the alternative, if Question 1 is held inadmissible or unfounded, should Council Regulation (EC) No 1347/2001 of 28 June 2001 be construed as meaning that recognition of the protected geographical indication 'Bayerisches Bier' is to have no adverse effects on the validity or usability of pre-existing marks of third parties in which the word 'Bavaria' appears?

([1]) OJ 2001 L 182, p. 3.
([2]) OJ 1992 L 208, p. 1.
([3]) OJ 2003 L 99, p. 1.

Reference for a preliminary ruling from the Tribunale amministrativo regionale del Lazio (Italy) lodged on 30 July 2007 — CEPAV DUE — Consorzio, ENI per L'Alta Velocità, Consorzio COCIV, Consorzio IRICAV DUE v Office of the President of the Council of Ministers, Ministry of Transport and Others

(Case C-351/07)

(2007/C 247/09)

Language of the case: Italian

Referring court

Tribunale amministrativo regionale del Lazio

Parties to the main proceedings

Applicants: CEPAV DUE — Consorzio ENI per l'Alta Velocità, Consorzio COCIV, Consorzio IRICAV DUE

Defendants: Office of the President of the Council of Ministers, Ministry of Transport and Others

Question referred

Does Article 12 of Decree-Law No 7 of 31 January 2007, converted, after amendment, into Article 13 of Law No 40 of 2 April 2007, in so far as it directs that the concessions relating to construction of the high-speed rail links mentioned in it are to be revoked, in such a way that the effects of that revocation extend to the agreements entered into with the general contractors, and in so far as it limits the compensation available to the general contractors under paragraph 8q, conflict with Articles 43 EC, 49 EC and 56 EC and with the Community principles concerning legal certainty and the protection of legitimate expectations, as indicated in the grounds set out in paragraph 5 [of the order for reference]?

Reference for a preliminary ruling from the Tribunale Amministrativo Regionale del Lazio (Italy) lodged on 31 July 2007 — A. Menarini Industrie Farmaceutiche Riunite Srl, F.I.R.M.A. Srl, Laboratori Guidotti Spa, Istituto Lusofarmaco d'Italia Spa, Malesi Istituto Farmacobiologico Spa, Menarini International Operations Luxembourg SA v Ministero della Salute, Agenzia Italiana del Farmaco (AIFA) and Others

(Case C-352/07)

(2007/C 247/10)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale del Lazio

Parties to the main proceedings

Applicants: A. Menarini Industrie Farmaceutiche Riunite Srl, F.I.R.M.A. Srl, Laboratori Guidotti Spa, Istituto Lusofarmaco d'Italia Spa, Malesi Istituto Farmacobiologico Spa, Menarini International Operations Luxembourg SA

Defendants: Ministero della Salute, Agenzia Italiana del Farmaco (AIFA) and Others

Questions referred

1. After the provisions contained in Articles 2 and 3 ([1]) [of Directive 89/105/EC] which modulate the relationship between the public authorities of a Member State and the pharmaceutical companies — by allowing the pricing of a medicinal product or the raising of its price to be determined on the basis of information provided by the [latter], but only in so far as is acceptable to the competent authority, and thus on the basis of dialogue between the undertakings themselves and the authorities competent to supervise pharmaceutical expenditure — Article 4(1) [of that Directive] concerning '*price freeze[s] imposed on all medicinal products or on certain categories of medicinal products*' characterises a price freeze as a general instrument, the continuing use of which is conditional upon a review which must be carried out, at least once a year, with reference to the macro-economic conditions existing in the Member State in question.

   That provision allows the competent authorities a period of 90 days in which to take a final decision, requiring them, on expiry of that period, to announce what increases or decreases in prices are being made, if any.

   On a proper construction of the reference to '*decreases in prices … being made, if any*', is that provision to be interpreted as meaning that, as well as the general remedy of freezing the prices of all categories, or certain specific categories, of medicinal product, another general remedy may be applied in the form of a reduction in the prices of all categories, and of certain specific categories, of medicinal product, or must '*decreases …, if any*' be interpreted as referring exclusively to the medicinal products which are already subject to the price freeze?

2. In requiring the competent authorities of a Member State to verify, at least once a year, in the case of price freezes, whether the macroeconomic conditions justify continuing that price freeze, may Article 4(1) [of Directive 89/105/EC] be interpreted as meaning that, if the reply to Question I is that a price reduction is permissible, it is possible to have recourse to such a measure even more than once in the course of a single year, and to do that again for many years (from 2002 until 2010)?

3. Under the terms of Article 4 [of Directive 89/105/EC] — read in the light of the preamble emphasising that the principal aim of measures controlling the prices of medicinal products is '*the promotion of public health by ensuring the availability of adequate supplies of medicinal products at a reasonable cost*' and *preventing* '*disparities in such measures [which] may hinder or distort intra-Community trade in medicinal products*' — is it compatible with the Community rules to adopt measures which refer to economic values attributed to that expenditure on the basis of 'predictions' rather than values which have been 'ascertained' (this question relates to both situations)?

4. Must the requirements relating to compliance with the ceilings for pharmaceutical expenditure which each Member State is competent to determine be linked, point by point, to pharmaceutical expenditure alone, or is it within the powers of the Member States to take account also of data relating to other health expenditure?

5. Must the principles, to be inferred from … Directive [89/105/EC], of transparency and of shared participation on the part of the undertakings with an interest in measures freezing the prices of pharmaceutical products or reducing them across the board be interpreted as requiring provision to be made, always and in any circumstances, for the possibility of derogation from the price imposed (Article 4(2) [of Directive 89/105/EC]) and for genuine participation by the applicant company, with the consequent need for the administrative authorities to state the reasons for any refusal?

([1]) 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 (OJ L 40, 11.2.1989, p. 8).

Reference for a preliminary ruling from the Tribunale Amministrativo Regionale del Lazio (Italy) lodged on 31 July 2007 — Sanofi Aventis Spa v Agenzia Italiana del Farmaco (AIFA)

(Case C-353/07)

(2007/C 247/11)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale del Lazio (AIFA)

Parties to the main proceedings

Applicant: Sanofi Aventis Spa

Defendant: Agenzia Italiana del Farmaco

Questions referred

1. After the provisions contained in Articles 2 and 3 ([1]) [of Directive 89/105/EC] which modulate the relationship between the public authorities of a Member State and the pharmaceutical companies — by allowing the pricing of a medicinal product or the raising of its price to be determined on the basis of information provided by the [latter], but only in so far as is acceptable to the competent authority, and thus on the basis of dialogue between the undertakings themselves and the authorities competent to supervise pharmaceutical expenditure — Article 4(1) [of that Directive] concerning 'price freeze[s] imposed on all medicinal products or on certain categories of medicinal products' characterises a price freeze as a general instrument, the continuing use of which is conditional upon a review which must be carried out, at least once a year, with reference to the macroeconomic conditions existing in the Member State in question.

   That provision allows the competent authorities a period of 90 days in which to take a final decision, requiring them, on expiry of that period, to announce what increases or decreases in prices are being made, if any.

   On a proper construction of the reference to '*decreases in prices … being made, if any*', is that provision to be interpreted as meaning that, as well as the general remedy of freezing the prices of all categories, or certain specific categories, of medicinal product, another general remedy may be applied in the form of a reduction in the prices of all categories, and of certain specific categories, of medicinal product, or must '*decreases …, if any*' be interpreted as referring exclusively to the medicinal products which are already subject to the price freeze?

2. In requiring the competent authorities of a Member State to verify, at least once a year, in the case of price freezes, whether the macroeconomic conditions justify continuing that price freeze, may Article 4(1) [of Directive 89/105/EC] be interpreted as meaning that, if the reply to Question I is that a price reduction is permissible, it is possible to have recourse to such a measure even more than once in the course of a single year, and to do that again for many years (from 2002 until 2010)?

3. Under the terms of Article 4 [of Directive 89/105/EC] — read in the light of the preamble emphasising that the principal aim of measures controlling the prices of medicinal products is '*the promotion of public health by ensuring the availability of adequate supplies of medicinal products at a reasonable cost*' and *preventing* '*disparities in such measures [which] may hinder or distort intra-Community trade in medicinal products*' — is it permissible to adopt measures which refer to economic values attributed to that expenditure on the basis of 'predictions' rather than values which have been 'ascertained' (this question relates to both situations)?

4. May the requirements relating to the indication of criteria which are objective and transparent, and of such a nature that the intervention of the relevant competent authorities (as regards the period up to 31 December 2006) and of the legislature (as from 1 January 2007) is verifiable be taken to be fully satisfied by the indication of the requirements relating to the ceiling for pharmaceutical expenditure which each Member State is competent to determine and to the containment of that expenditure and, in particular, by data relating to health expenditure overall or, more specifically, to pharmaceutical expenditure alone?

5. Must the principles, to be inferred from … Directive [89/105/EC], of transparency and of shared participation on the part of the undertakings with an interest in measures freezing the prices of pharmaceutical products or reducing them across the board be interpreted as requiring provision to be made, always and in any circumstances, for the possibility of derogation from the price imposed (Article 4(2) [of Directive 89/105/EC] and for genuine participation by the applicant company, with the consequent need for the administrative authorities to state the reasons for any refusal?

(1) 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 (OJ L 40, 11.2.1989, p. 8).

Reference for a preliminary ruling from the Tribunale Amministrativo Regionale del Lazio (Italy) lodged on 31 July 2007 — IFB Stroder Srl v Agenzia Italiana del Farmaco (AIFA)

(Case C-354/07)

(2007/C 247/12)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale del Lazio

Parties to the main proceedings

Applicant: IFB Stroder Srl

Defendant: Agenzia Italiana del Farmaco (AIFA)

Questions referred

1. After the provisions contained in Articles 2 and 3 (1) [of Directive 89/105/EC] which modulate the relationship between the public authorities of a Member State and the pharmaceutical companies — by allowing the pricing of a medicinal product or the raising of its price to be determined on the basis of information provided by the [latter], but only in so far as is acceptable to the competent authority, and thus on the basis of dialogue between the undertakings themselves and the authorities competent to supervise pharmaceutical expenditure — Article 4(1) [of that Directive] concerning '*price freeze[s] imposed on all medicinal products or on certain categories of medicinal products*' characterises a price freeze as a general instrument, the continuing use of which is conditional upon a review which must be carried out, at least once a year, with reference to the macro-economic conditions existing in the Member State in question.

   That provision allows the competent authorities a period of 90 days in which to take a final decision, requiring them, on expiry of that period, to announce what increases or decreases in prices are being made, if any.

   On a proper construction of the reference to '*decreases in prices … being made, if any*', is that provision to be interpreted as meaning that, as well as the general remedy of freezing the prices of all categories, or certain specific categories, of medicinal product, another general remedy may be applied in the form of a reduction in the prices of all categories, and of certain specific categories, of medicinal product, or must '*decreases …, if any*' be interpreted as referring exclusively to the medicinal products which are already subject to the price freeze?

2. In requiring the competent authorities of a Member State to verify, at least once a year, in the case of price freezes, whether the macroeconomic conditions justify continuing that price freeze, may Article 4(1) [of Directive 89/105/EC] be interpreted as meaning that, if the reply to Question I is that a price reduction is permissible, it is possible to have recourse to such a measure even more than once in the course of a single year, and to do that again for many years (from 2002 until 2010)?

3. Under the terms of Article 4 [of Directive 89/105/EC] — read in the light of the preamble emphasising that the principal aim of measures controlling the prices of medicinal products is '*the promotion of public health by ensuring the availability of adequate supplies of medicinal products at a reasonable cost*' and *preventing* '*disparities in such measures [which] may hinder or distort intra-Community trade in medicinal products*' — is it compatible with the Community rules to adopt measures which refer to economic values attributed to that expenditure on the basis of 'predictions' rather than values which have been 'ascertained' (this question relates to both situations)?

4. Must the requirements relating to compliance with the ceilings for pharmaceutical expenditure which each Member State is competent to determine be linked, point by point, to pharmaceutical expenditure alone, or is it within the powers of the Member States to take account also of data relating to other health expenditure?

5. Must the principles, to be inferred from … Directive [89/105/EC], of transparency and of shared participation on the part of the undertakings with an interest in measures freezing the prices of pharmaceutical products or reducing them across the board be interpreted as requiring provision to be made, always and in any circumstances, for the possibility of derogation from the price imposed (Article 4(2) [of Directive 89/105/EC]) and for genuine participation by the applicant company, with the consequent need for the administrative authorities to state the reasons for any refusal?

(1) 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 (OJ L 40, 11.2.1989, p. 8).

Reference for a preliminary ruling from the Tribunale Amministrativo Regionale del Lazio (Italy) lodged on 31 July 2007 — Schering Plough SpA v Agenzia Italiana del Farmaco (AIFA) and Others

(Case C-355/07)

(2007/C 247/13)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale del Lazio

Parties to the main proceedings

Applicant: Schering Plough SpA

Defendants: Agenzia Italiana del Farmaco (AIFA) and Others

Questions referred

1. After the provisions contained in Articles 2 and 3 (1) [of Directive 89/105/EC] which modulate the relationship between the public authorities of a Member State and the pharmaceutical companies — by allowing the pricing of a medicinal product or the raising of its price to be determined on the basis of information provided by the [latter], but only in so far as is acceptable to the competent authority, and thus on the basis of dialogue between the undertakings themselves and the authorities competent to supervise pharmaceutical expenditure — Article 4(1) [of that Directive] concerning '*price freeze[s] imposed on all medicinal products or on certain categories of medicinal products*' characterises a price freeze as a general instrument, the continuing use of which is conditional upon a review which must be carried out, at least once a year, with reference to the macro-economic conditions existing in the Member State in question.

That provision allows the competent authorities a period of 90 days in which to take a final decision, requiring them, on expiry of that period, to announce what increases or decreases in prices are being made, if any.

On a proper construction of the reference to '*decreases in prices … being made, if any*', is that provision to be interpreted as meaning that, as well as the general remedy of freezing the prices of all categories, or certain specific categories, of medicinal product, another general remedy may be applied in the form of a reduction in the prices of all categories, and of certain specific categories, of medicinal product, or must '*decreases …, if any*' be interpreted as referring exclusively to the medicinal products which are already subject to the price freeze?

2. In requiring the competent authorities of a Member State to verify, at least once a year, in the case of price freezes, whether the macroeconomic conditions justify continuing that price freeze, may Article 4(1) [of Directive 89/105/EC] be interpreted as meaning that, if the reply to Question I is that a price reduction is permissible, it is possible to have recourse to such a measure even more than once in the course of a single year, and to do that again for many years (from 2002 until 2010)?

3. Under the terms of Article 4 [of Directive 89/105/EC] — read in the light of the preamble emphasising that the principal aim of measures controlling the prices of medicinal products is '*the promotion of public health by ensuring the availability of adequate supplies of medicinal products at a reasonable cost*' and *preventing* '*disparities in such measures [which] may hinder or distort intra-Community trade in medicinal products*' — is it compatible with the Community rules to adopt measures which refer to economic values attributed to that expenditure on the basis of 'predictions' rather than values which have been 'ascertained' (this question relates to both situations)?

4. Must the requirements relating to compliance with the ceilings for pharmaceutical expenditure which each Member State is competent to determine be linked, point by point, to pharmaceutical expenditure alone, or is it within the powers of the Member States to take account also of data relating to other health expenditure?

5. Must the principles, to be inferred from … Directive [89/105/EC], of transparency and of shared participation on the part of the undertakings with an interest in measures freezing the prices of pharmaceutical products or reducing them across the board be interpreted as requiring provision to be made, always and in any circumstances, for the possibility of derogation from the price imposed (Article 4(2) [of Directive 89/105/EC]) and for genuine participation by the applicant company, with the consequent need for the administrative authorities to state the reasons for any refusal?

(1) 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 (OJ L 40, 11.2.1989, p. 8).

Reference for a preliminary ruling from the Tribunale Amministrativo Regionale del Lazio (Italy) lodged on 31 July 2007 — Bayer SpA v Agenzia Italiana del Farmaco (AIFA) and Ministero della Salute

(Case C-356/07)

(2007/C 247/14)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale del Lazio (Italy)

Parties to the main proceedings

Applicant: Bayer SpA

Defendants: Agenzia Italiana del Farmaco (AIFA) and Ministero della Salute

Questions referred

1. After the provisions contained in Articles 2 and 3 (1) [of Directive 89/105/EC] which modulate the relationship between the public authorities of a Member State and the pharmaceutical companies — by allowing the pricing of a medicinal product or the raising of its price to be determined on the basis of information provided by the [latter], but only in so far as is acceptable to the competent authority, and thus on the basis of dialogue between the undertakings themselves and the authorities competent to supervise pharmaceutical expenditure — Article 4(1) [of that Directive] concerning '*price freeze[s] imposed on all medicinal products or on certain categories of medicinal products*' characterises a price freeze as a general instrument, the continuing use of which is conditional upon a review which must be carried out, at least once a year, with reference to the macro-economic conditions existing in the Member State in question.

   That provision allows the competent authorities a period of 90 days in which to take a final decision, requiring them, on expiry of that period, to announce what increases or decreases in prices are being made, if any.

   On a proper construction of the reference to '*decreases in prices … being made, if any*', is that provision to be interpreted as meaning that, as well as the general remedy of freezing the prices of all categories, or certain specific categories, of medicinal product, another general remedy may be applied in the form of a reduction in the prices of all categories, and of certain specific categories, of medicinal product, or must '*decreases …, if any*' be interpreted as referring exclusively to the medicinal products which are already subject to the price freeze?

2. In requiring the competent authorities of a Member State to verify, at least once a year, in the case of price freezes, whether the macroeconomic conditions justify continuing that price freeze, may Article 4(1) [of Directive 89/105/EC] be interpreted as meaning that, if the reply to Question I is that a price reduction is permissible, it is possible to have recourse to such a measure even more than once in the course of a single year, and to do that again for many years (from 2002 until 2010)?

3. Under the terms of Article 4 [of Directive 89/105/EC] — read in the light of the preamble emphasising that the principal aim of measures controlling the prices of medicinal products is '*the promotion of public health by ensuring the availability of adequate supplies of medicinal products at a reasonable cost*' and *preventing* '*disparities in such measures [which] may hinder or distort intra-Community trade in medicinal products*' — is it compatible with the Community rules to adopt measures which refer to economic values attributed to that expenditure on the basis of 'predictions' rather than values which have been 'ascertained' (this question relates to both situations)?

4. Must the requirements relating to compliance with the ceilings for pharmaceutical expenditure which each Member State is competent to determine be linked, point by point, to pharmaceutical expenditure alone, or is it within the powers of the Member States to take account also of data relating to other health expenditure?

5. Must the principles, to be inferred from … Directive [89/105/EC], of transparency and of shared participation on the part of the undertakings with an interest in measures freezing the prices of pharmaceutical products or reducing them across the board be interpreted as requiring provision to be made, always and in any circumstances, for the possibility of derogation from the price imposed (Article 4(2) [of Directive 89/105/EC]) and for genuine participation by the applicant company, with the consequent need for the administrative authorities to state the reasons for any refusal?

(1) 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 (OJ L 40, 11.2.1989, p. 8).

Reference for a preliminary ruling from High Court of Justice (England & Wales), Queen's Bench Division (Administrative Court) (United Kingdom) made on 31 July 2007 — The Queen on the application of TNT Post UK Ltd v The Commissioners of Her Majesty's Revenue & Customs and Royal Mail Group Ltd

(Case C-357/07)

(2007/C 247/15)

Language of the case: English

Referring court

High Court of Justice (England & Wales), Queen's Bench Division (Administrative Court)

Parties to the main proceedings

Applicant: TNT Post UK Ltd

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

Interested Party: Royal Mail Group Ltd

Questions referred

1. a) How is the expression 'the public postal services' in Article 13A(1)(a) of the Sixth VAT Directive (Directive 77/388/EEC) (1) (now Article 132(1)(a) of Directive 2006/112 (2)) to be interpreted?

   b) Is the interpretation of that expression affected by the fact that postal services in a Member State have been liberalised, there are no reserved services within the meaning of Council Directive 97/67/EC (3), as amended, and there is one designated universal service provider that has been notified to the Commission pursuant to that Directive (such as Royal Mail in the United Kingdom)?

   c) in the circumstances of the present case (which are as set out in b) above) does that expression include

      (i) only the sole designated universal services provider (such as Royal Mail in the United Kingdom) or

      (ii) also a private postal operator (such as TNT Post)?

2. In the circumstances of the present case, is Article 13A(1)(a) of the Sixth VAT Directive (now Article 132(1)(a) of Directive 2006/112) to be interpreted as requiring or permitting a Member State to exempt all postal services provided by 'the public postal services'?

3. If Member States are required or permitted to exempt some, but not all, of the services provided by 'the public postal services', by reference to which criteria are those services, by reference to which criteria are those services to be identified?

(1) Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization 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).
(2) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, p. 1).
(3) Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service (OJ L 15, p. 14).

Reference for a preliminary ruling from the Monomeles Protodikio Kerkyras (Greece) lodged on 2 August 2007 — Spyridon Vassilakis and Others v Municipality of Corfu

(Case C-364/07)

(2007/C 247/16)

Language of the case: Greek

Referring court

Monomeles Protodikio Kerkyras (Corfu Court of First Instance)

Parties to the main proceedings

Applicants: Spyridon Vassilakis and Others

Defendant: Dimos Kerkyras (Municipality of Corfu)

Questions referred

1. Must a national court — as far as possible — interpret its domestic law in accordance with a directive which was transposed belatedly into its national legal system from

   (a) the time when the directive entered into force, or

   (b) the time when the time-limit for transposing it into national law elapsed without any action having been taken, or

   (c) the time when the national measure implementing it entered into force?

2. Does Clause 5(1) of the Framework Agreement on fixed-term work concluded by ETUC, UNICE and CEEP, which constitutes an integral part of Council Directive 1999/70 (OJ 1999 L 175, p. 43 of 10 July 1999) mean that, apart from reasons connected with the nature, type or characteristics of the work performed or other similar reasons, the mere fact that the conclusion of a fixed term contract is required by a provision of law or secondary legislation constitutes an objective reason for continually renewing or concluding successive fixed-term employment contracts?

3. May Clause 5(1) and (2) of the Framework Agreement on fixed-term work concluded by ETUC, UNICE and CEEP, which constitutes an integral part of Council Directive 1999/70 (OJ 1999 L 175, p. 43 of 10 July 1999), be interpreted to the effect that national provisions which lay down that fixed-term employment contracts or relationships are to be regarded as successive only provided a period of at most three months separates them and, further, that the presumption introduced in favour of the worker that successive fixed-term employment contracts or relationships should be recognised as of unlimited duration is necessarily based on the above precondition?

4. Is the prohibition in Article 21 of Law 2190/1994 of the conversion of successive fixed-term contracts of employment into contracts of unlimited duration, those contracts having been concluded for a fixed term in order to cover the exceptional or seasonal needs of the employer but in fact for the purpose of meeting its fixed and permanent needs, compatible with the principle of the effectiveness of Community law and the purpose of Clause 5(1) and (2), in conjunction with Clause 1 of the Framework Agreement on fixed-term work concluded by ETUC, UNICE and CEEP, which constitutes an integral part of Council Directive 1999/70 (OJ 1999 L 175, p. 43 of 10 July 1999)?

5. Is the fact that an independent administrative authority, the Anotato Simvoulio Epilogis Prosopikou (ASEP — the Supreme Staff Selection Council) has the final word, under a national provision, enacted in application of the above directive, on whether or not fixed-term contracts can be converted into contracts of indefinite duration compatible with the principle of the effectiveness of Community law and the purpose of Clause 5(1) and (2), in conjunction with Clause 1 of the Framework Agreement on fixed-term work concluded by ETUC, UNICE and CEEP, which constitutes an integral part of Council Directive 1999/70 (OJ 1999 L 175, p. 43 of 10 July 1999)?

Reference for a preliminary ruling from the Tribunale Amministrativo Regionale del Lazio (Italy) lodged on 2 August 2007 — Simesa SpA v Ministero della Salute and Agenzia Italiana del Farmaco (AIFA) and Others

(Case C-365/07)

(2007/C 247/17)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale del Lazio

Parties to the main proceedings

Applicant: Simesa SpA

Defendants: Ministero della Salute, Agenzia Italiana del Farmaco (AIFA) and Others

Questions referred

1. After the provisions contained in Articles 2 and 3 ([1]) [of Directive 89/105/EC] which modulate the relationship between the public authorities of a Member State and the pharmaceutical companies — by allowing the pricing of a medicinal product or the raising of its price to be determined on the basis of information provided by the [latter], but only in so far as is acceptable to the competent authority, and thus on the basis of dialogue between the undertakings themselves and the authorities competent to supervise pharmaceutical expenditure — Article 4(1) [of that Directive] concerning '*price freeze[s] imposed on all medicinal products or on certain categories of medicinal products*' characterises a price freeze as a general instrument, the continuing use of which is conditional upon a review which must be carried out, at least once a year, with reference to the macro-economic conditions existing in the Member State in question.

That provision allows the competent authorities a period of 90 days in which to take a final decision, requiring them, on expiry of that period, to announce what increases or decreases in prices are being made, if any.

On a proper construction of the reference to '*decreases in prices … being made, if any*', is that provision to be interpreted as meaning that, as well as the general remedy of freezing the prices of all categories, or certain specific categories, of medicinal product, another general remedy may be applied in the form of a reduction in the prices of all categories, and of certain specific categories, of medicinal product, or must '*decreases …, if any*' be interpreted as referring exclusively to the medicinal products which are already subject to the price freeze?

2. In requiring the competent authorities of a Member State to verify, at least once a year, in the case of price freezes, whether the macroeconomic conditions justify continuing that price freeze, may Article 4(1) [of Directive 89/105/EC] be interpreted as meaning that, if the reply to Question I is that a price reduction is permissible, it is possible to have recourse to such a measure even more than once in the course of a single year, and to do that again for many years (from 2002 until 2010)?

3. Under the terms of Article 4 [of Directive 89/105/EC] — read in the light of the preamble emphasising that the principal aim of measures controlling the prices of medicinal products is '*the promotion of public health by ensuring the availability of adequate supplies of medicinal products at a reasonable cost*' and *preventing* '*disparities in such measures [which] may hinder or distort intra-Community trade in medicinal products*' — is it compatible with the Community rules to adopt measures which refer to economic values attributed to that expenditure on the basis of 'predictions' rather than values which have been 'ascertained' (this question relates to both situations)?

4. Must the requirements relating to compliance with the ceilings for pharmaceutical expenditure which each Member State is competent to determine be linked, point by point, to pharmaceutical expenditure alone, or is it within the powers of the Member States to take account also of data relating to other health expenditure?

5. Must the principles, to be inferred from … Directive [89/105/EC], of transparency and of shared participation on the part of the undertakings with an interest in measures freezing the prices of pharmaceutical products or reducing them across the board be interpreted as requiring provision to be made, always and in any circumstances, for the possibility of derogation from the price imposed (Article 4(2) [of Directive 89/105/EC]) and for genuine participation by the applicant company, with the consequent need for the administrative authorities to state the reasons for any refusal?

(1) 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 (OJ L 40, 11.2.1989, p. 8).

Reference for a preliminary ruling from the Tribunale Amministrativo Regionale del Lazio (Italy) lodged on 2 August 2007 — Abbott Spa v Ministero della Salute and Agenzia Italiana del Farmaco (AIFA)

(Case C-366/07)

(2007/C 247/18)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale del Lazio

Parties to the main proceedings

Applicant: Abbott Spa

Defendants: Ministero della Salute and Agenzia Italiana del Farmaco (AIFA)

Questions referred

1. After the provisions contained in Articles 2 and 3 (1) [of Directive 89/105/EC] which modulate the relationship between the public authorities of a Member State and the pharmaceutical companies — by allowing the pricing of a medicinal product or the raising of its price to be determined on the basis of information provided by the [latter], but only in so far as is acceptable to the competent authority, and thus on the basis of dialogue between the undertakings themselves and the authorities competent to supervise pharmaceutical expenditure — Article 4(1) [of that Directive] concerning '*price freeze[s] imposed on all medicinal products or on certain categories of medicinal products*' characterises a price freeze as a general instrument, the continuing use of which is conditional upon a review which must be carried out, at least once a year, with reference to the macro-economic conditions existing in the Member State in question.

That provision allows the competent authorities a period of 90 days in which to take a final decision, requiring them, on expiry of that period, to announce what increases or decreases in prices are being made, if any.

On a proper construction of the reference to '*decreases in prices … being made, if any*', is that provision to be interpreted as meaning that, as well as the general remedy of freezing the prices of all categories, or certain specific categories, of medicinal product, another general remedy may be applied in the form of a reduction in the prices of all categories, and of certain specific categories, of medicinal product, or must '*decreases …, if any*' be interpreted as referring exclusively to the medicinal products which are already subject to the price freeze?

2. In requiring the competent authorities of a Member State to verify, at least once a year, in the case of price freezes, whether the macroeconomic conditions justify continuing that price freeze, may Article 4(1) [of Directive 89/105/EC] be interpreted as meaning that, if the reply to Question I is that a price reduction is permissible, it is possible to have recourse to such a measure even more than once in the course of a single year, and to do that again for many years (from 2002 until 2010)?

3. Under the terms of Article 4 [of Directive 89/105/EC] — read in the light of the preamble emphasising that the principal aim of measures controlling the prices of medicinal products is '*the promotion of public health by ensuring the availability of adequate supplies of medicinal products at a reasonable cost*' and *preventing* '*disparities in such measures [which] may hinder or distort intra-Community trade in medicinal products*' — is it compatible with the Community rules to adopt measures which refer to economic values attributed to that expenditure on the basis of 'predictions' rather than values which have been 'ascertained' (this question relates to both situations)?

4. Must the requirements relating to compliance with the ceilings for pharmaceutical expenditure which each Member State is competent to determine be linked, point by point, to pharmaceutical expenditure alone, or is it within the powers of the Member States to take account also of data relating to other health expenditure?

5. Must the principles, to be inferred from … Directive [89/105/EC], of transparency and of shared participation on the part of the undertakings with an interest in measures freezing the prices of pharmaceutical products or reducing them across the board be interpreted as requiring provision to be made, always and in any circumstances, for the possibility of derogation from the price imposed (Article 4(2) [of Directive 89/105/EC]) and for genuine participation by the applicant company, with the consequent need for the administrative authorities to state the reasons for any refusal?

(1) 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 (OJ L 40, 11.2.1989, p. 8).

Reference for a preliminary ruling from the Tribunale Amministrativo Regionale del Lazio (Italy) lodged on 2 August 2007 — Baxter Spa v Agenzia Italiana del Farmaco (AIFA) and Others

(Case C-367/07)

(2007/C 247/19)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale del Lazio

Parties to the main proceedings

Applicant: Baxter Spa

Defendant: Agenzia Italiana del Farmaco (AIFA) and Others

Questions referred

1. After the provisions contained in Articles 2 and 3 (1) [of Directive 89/105/EC] which modulate the relationship between the public authorities of a Member State and the pharmaceutical companies — by allowing the pricing of a medicinal product or the raising of its price to be determined on the basis of information provided by the [latter], but only in so far as is acceptable to the competent authority, and thus on the basis of dialogue between the undertakings themselves and the authorities competent to supervise pharmaceutical expenditure — Article 4(1) [of that Directive] concerning '*price freeze[s] imposed on all medicinal products or on certain categories of medicinal products*' characterises a price freeze as a general instrument, the continuing use of which is conditional upon a review which must be carried out, at least once a year, with reference to the macro-economic conditions existing in the Member State in question.

   That provision allows the competent authorities a period of 90 days in which to take a final decision, requiring them, on expiry of that period, to announce what increases or decreases in prices are being made, if any.

   On a proper construction of the reference to '*decreases in prices … being made, if any*', is that provision to be interpreted as meaning that, as well as the general remedy of freezing the prices of all categories, or certain specific categories, of medicinal product, another general remedy may be applied

in the form of a reduction in the prices of all categories, and of certain specific categories, of medicinal product, or must '*decreases …, if any*' be interpreted as referring exclusively to the medicinal products which are already subject to the price freeze?

2. In requiring the competent authorities of a Member State to verify, at least once a year, in the case of price freezes, whether the macroeconomic conditions justify continuing that price freeze, may Article 4(1) [of Directive 89/105/EC] be interpreted as meaning that, if the reply to Question I is that a price reduction is permissible, it is possible to have recourse to such a measure even more than once in the course of a single year, and to do that again for many years (from 2002 until 2010)?

3. Under the terms of Article 4 [of Directive 89/105/EC] — read in the light of the preamble emphasising that the principal aim of measures controlling the prices of medicinal products is '*the promotion of public health by ensuring the availability of adequate supplies of medicinal products at a reasonable cost*' and *preventing* '*disparities in such measures [which] may hinder or distort intra-Community trade in medicinal products*' — is it compatible with the Community rules to adopt measures which refer to economic values attributed to that expenditure on the basis of 'predictions' rather than values which have been 'ascertained' (this question relates to both situations)?

4. Must the requirements relating to compliance with the ceilings for pharmaceutical expenditure which each Member State is competent to determine be linked, point by point, to pharmaceutical expenditure alone, or is it within the powers of the Member States to take account also of data relating to other health expenditure?

5. Must the principles, to be inferred from … Directive [89/105/EC], of transparency and of shared participation on the part of the undertakings with an interest in measures freezing the prices of pharmaceutical products or reducing them across the board be interpreted as requiring provision to be made, always and in any circumstances, for the possibility of derogation from the price imposed (Article 4(2) [of Directive 89/105/EC]) and for genuine participation by the applicant company, with the consequent need for the administrative authorities to state the reasons for any refusal?

(1) 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 (OJ L 40, 11.2.1989, p. 8).

Reference for a preliminary ruling from the Vestre Landsret (Denmark) lodged on 6 August 2007 — Danfoss A/S and AstraZeneca A/S v Skatteministeriet

(Case C-371/07)

(2007/C 247/20)

Language of the case: Danish

Referring court

Vestre Landsret

Parties to the main proceedings

Applicants: Danfoss A/S and AstraZeneca A/S

Defendant: Skatteministeriet

Questions referred

1. Is the second subparagraph of Article 17(6) of the Sixth VAT Directive (1) to be interpreted in such a way that it is a condition for the refusal by a Member State of a right to deduct value added tax on supplies used for the provision of meals to business contacts and staff in a company's canteen in connection with meetings that there was, prior to the entry into force of the directive, authority under national legislation for the deduction refusal in question and that this authority was applied in practice by the tax authorities in such a way that the right to deduct value added tax on these supplies was refused?

2. Does it have any significance in answering Question 1 *that* company-operated canteens were not subject to VAT under the national VAT rules in force in the Member State in question before the implementation of the Sixth VAT Directive in 1978, *that* the national deduction exclusion rules were not changed by the implementation of the Sixth VAT Directive, and *that* it was exclusively as a result of the fact that company-operated canteens became subject to VAT on the implementation of the Sixth VAT Directive that the deduction exclusion rule could become relevant to that type of business?

3. Is an exclusion from the right to deduct 'retained' within the meaning of the second subparagraph of Article 17(6) of the Sixth VAT Directive if, from the implementation of the Sixth VAT Directive in 1978 until 1999, as a result of an administrative practice such as that described in the main proceedings there was a right to deduct VAT on the expenditure in question?

4. Are subparagraphs (a) and (b) of Article 6(2) of the Sixth VAT Directive to be interpreted in such a way that the provision covers the supply of meals by the company free of charge to business contacts in its own canteen in connection with meetings at the company?

5. Are subparagraphs (a) and (b) of Article 6(2) of the Sixth VAT Directive to be interpreted in such a way that the provision covers the supply of meals by the company free of charge to its staff in its own canteen in connection with meetings at the company?

(1) Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization 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).

Appeal brought on 3 August 2007 by Mebrom NV against the judgment of the Court of First Instance (Second Chamber) delivered on 22 May 2007 in Case T-216/05: Mebrom NV v Commission of the European Communities

(Case C-373/07 P)

(2007/C 247/21)

Language of the case: English

Parties

Appellant: Mebrom NV (represented by: K. Van Maldegem, avocat, C. Mereu, avocat)

Other party to the proceedings: Commission of the European Communities

Form of order sought

The appellant claims that the Court should:

— Declare the present appeal admissible and well-founded;

— Set aside the Judgment of the Court of First Instance of 22 May 2007 in Case T-216/05;

— Declare the Appellant's requests in Case T-216/05 admissible and well-founded;

— Grant the application for annulment made in first instance or, in the alternative, refer the case to the Court of First Instance to rule on the merits; and

— Order the Commission of the European Communities to bear all costs and expenses of both proceedings.

Pleas in law and main arguments

The appellant submits that the Court of First Instance (hereafter 'CFI') did not ensure that the law is observed in the interpretation and application of Community law, as it is required to do under Art. 220 EC. The contested judgment dismissed the action for annulment on the basis of an incorrect interpretation and application of Arts. 3, 4, 5, 6 and 7 of Regulation 2037/2000 (1). Moreover, the judgment lacked sufficient and consistent reasoning and it contained a series of errors of law and distortion of facts on record. The appellant maintains that the CFI erroneously held that the defendant was right to conclude that import quotas were no longer to be granted to importers but that it follows from Art. 7 of the regulation that, as of 2005, quotas were to be allocated to fumigators only (being users as opposed to importers). The CFI ruled that Art. 7 of regulation 2037/2000 left the defendant free to choose in this respect. Additionally, the appellant submits that the CFI failed to assess properly whether the defendant has made acceptable use of its alleged discretion in this regard. The CFI also failed to acknowledge that the defendant acted ultra vires and, furthermore, did not assess and address correctly whether the defendant infringed the legitimate expectations of the appellant. Finally, it is argued that the CFI also failed to adjudicate fully and properly the Applicant's arguments as submitted in the application.

(1) Regulation (EC) No 2037/2000 of the European Parliament and of the Council of 29 June 2000 on substances that deplete the ozone layer (OJ L 244, p. 1).

Appeal brought on 3 August 2007 by Mebrom NV against the judgment of the Court of First Instance (Second Chamber) delivered on 22 May 2007 in Case T-198/05: Mebrom NV v Commission of the European Communities

(Case C-374/07 P)

(2007/C 247/22)

Language of the case: English

Parties

Appellant: Mebrom NV (represented by: K. Van Maldegem, avocat, C. Mereu, avocat)

Other party to the proceedings: Commission of the European Communities

Form of order sought

The appellant claims that the Court should:

— Declare the present appeal admissible and well-founded;

— Set aside the judgment of the Court of First Instance of 22 May 2007 in Case T-198/05;

— Declare the Appellant's requests in Case T-198/05 admissible and well-founded;

— Grant the request for damages made by the Appellant at first instance or, in the alternative, refer the case to the Court of First Instance to rule on the merits; and

— Order the Defendant to bear all the costs and expenses of both proceedings.

Pleas in law and main arguments

The appellant submits that the contested judgment should be set aside on the following grounds:

Distortion of facts and evidence and manifest error in the legal assessment of facts:

— Incorrect assessment of questions and answers provided as evidence in the form of questionnaires;

— Incorrect assessment of the questionnaires regarding the seasonal use of methyl bromide;

— Omission of sales figures presented by the appellant and an obvious confusion between sales and import figures provided by the appellant and the defendant respectively;

— Failure to properly evaluate the sales figures;

— Contradictions and incoherence in the legal assessment of facts;

— Failure to assess the evidence collectively and in combined form.

Misapplication of the legal requirement to establish actual damage:

— Confusion of the existence of damage with the extent of damage;

— Confusion of the examination of the existence of damage with the examination of a causal link;

— Requirement to show that the damage could not be made up.

The CFI placed a disproportionate and unjustified burden of proof on the appellant.

Inconsistency in reasoning.

Procedural error in the application of the legal standard related to the receipt of new evidence in the course of proceedings.

Infringement of the rights of defence, the right to a fair hearing and equality of arms.

Action brought on 9 August 2007 — Italian Republic v European Parliament

(Case C-393/07)

(2007/C 247/23)

Language of the case: Italian

Parties

Applicant: Italian Republic (represented by: I.M. Braguglia, agent, and P. Gentili, Avvocato dello Stato)

Defendant: European Parliament

Form of order sought

— annul Decision P6_TA-PROV(2007)0209 of the European Parliament of 24 May 2007, notified on 28 May 2007, concerning the verification of Beniamino Donnici's credentials;

— order the European Parliament to pay the costs.

Pleas in law and main arguments

The action is based on five grounds.

By the first ground, the Italian Government alleges infringement of rules of law by reference to Articles 6 (formerly 4), 8 (formerly 7), 12 (formerly 11) and 13 (formerly 12) of Decision 76/787/ECSC, EEC, Euratom, relating to the Act concerning the election of Members of the European Parliament by direct universal suffrage of 20 September 1976 ('the 1976 Act'), as amended most recently by Decision No 2002/772/EC/Euratom of 25 June 2002 ([1]), and by reference to Article 6 EU. In verifying the credentials of Members, the European Parliament cannot as a matter of fact examine the lawfulness of national electoral procedures and must simply take cognisance of the results lawfully declared under those procedures. The prohibition on Members who are bound by binding instructions or under a binding mandate laid down in Article 6 of the 1976 Act has no bearing on the express decision of an unelected candidate not to replace an elected candidate who has ceased to hold office.

By its second ground, the Italian Government alleges infringement of rules of law by reference to Article 2 of the Statute for Members of the European Parliament adopted by Decision 2005/684/EC, Euratom of 28 September 2005 ([2]). Those provisions will in fact enter into force with effect from the 2009 legislative period and in any event concern only sitting Members and are therefore irrelevant for the purposes of assessing the decision of an unelected candidate not to replace an elected candidate who has ceased to hold office.

By its third ground, the Italian Government alleges infringement of rules of law by reference to Article 199 EC and Rules 3 and 4 of the Rules of Procedure of the European Parliament. Those provisions govern only the internal procedures of the Parliament, *inter alia*, when verifying credentials and the power cannot therefore be inferred from those provisions to examine the lawfulness of national electoral procedures, not even with regard to the replacement of elected candidates who have ceased to hold office with unelected candidates.

By its fourth ground, the Italian Government alleges infringement of rules of law by reference to Article 6 EU and Articles 10 and 230 EC. The European Parliament did not have the power to disapply the judgment of the Italian Consiglio di Stato, which is final and conclusive and which established that the election of Mr Donnici was lawful. The European Parliament should, if necessary, have challenged that judgment by initiating third-party proceedings. In any event, the decision of the European Parliament is contrary to the general principle of *res judicata*, which is common to all the Member States.

By its fifth ground, the Italian Government claims that the contested decision failed to give adequate reasons. Indeed, that decision does not state the relevant facts on the basis of which the Parliament concluded that Mr Occhetto's decision not to replace Mr Di Pietro was not freely made.

([1]) OJ 2002 L 283, p. 1.
([2]) OJ 2005 L 262, p. 1.

Action brought on 23 August 2007 — Commission of the European Communities v Federal Republic of Germany

(Case C-395/07)

(2007/C 247/24)

Language of the case: German

Parties

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

Defendant: Federal Republic of Germany

Form of order sought

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary fully 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 to notify the Commission of any such provisions, the Federal Republic of Germany has failed to fulfil its obligations under that directive;

— order the Federal Republic of Germany to pay the costs.

Pleas in law and main arguments

The period for transposition of the directive expired on 29 April 2006.

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

Action brought on 28 August 2007 — Commission of the European Communities v Portuguese Republic

(Case C-399/07)

(2007/C 247/25)

Language of the case: Portuguese

Parties

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

Defendant: Portuguese Republic

Form of order sought

— declare that, by failing to bring into force the laws, regulations and administrative provisions necessary to comply with Commission Directive 2005/6/EC ([1]) of 26 January 2005 amending Directive 71/250/EEC as regards reporting and interpretation of analytical results required under Directive 2002/32/EC or, in any case, 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 the transposition of the directive into domestic law expired on 16 February 2006.

(1) OJ 2005 L 24, p. 33.

Action brought on 7 September 2007 — Commission of the European Communities v Ireland

(Case C-412/07)

(2007/C 247/26)

Language of the case: English

Parties

Applicant: Commission of the European Communities (represented by: R. Vidal Puig, Agent, M. Petite, Agent)

Defendant: Ireland

The applicant claims that the Court should:

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2004/36/EC (1) of the European Parliament and of the Council of 21 April 2004 on the safety of third-country aircraft using Community airports, or in any event by failing to communicate them to the Commission, Ireland has failed to fulfil its obligations under the Directive;

— order Ireland to pay the costs.

Pleas in law and main arguments

The period within which the directives had to be transposed expired on 30 April 2006.

(1) OJ L 143, p. 76.

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

(Case C-417/07)

(2007/C 247/27)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: R. Vidal Puig, 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 2004/36/CE of the European Parliament and of the Council of 21 April 2004 on the safety of third-country aircraft using Community airports (1) or, in any event, by failing to communicate those provisions 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 prescribed for transposition of Directive 2004/36/CE expired on 30 April 2006.

(1) OJ 2004 L 143, p. 76.

Order of the President of the Second Chamber of the Court of 11 July 2007 (reference for a preliminary ruling from the Cour d'appel de Bruxelles — Belgium) — Belgacom Mobile SA v Institut belge des services postaux et des télécommunications

(Case C-190/06) (1)

(2007/C 247/28)

Language of the case: French

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

(1) OJ C 154, 1.7.2006.

Order of the President of the Court of 26 April 2007 — Commission of the European Communities v Ireland

(Case C-330/06) ([1])

(2007/C 247/29)

Language of the case: English

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

([1]) OJ C 224, 16.9.2006.

Order of the President of the Court of 15 May 2007 — Commission of the European Communities v Grand Duchy of Luxembourg

(Case C-51/07) ([1])

(2007/C 247/30)

Language of the case: French

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

([1]) OJ C 69, 24.3.2007.

COURT OF FIRST INSTANCE

Judgment of the Court of First Instance of 12 September 2007 — MTU Friedrichshafen v Commission

(Case T-196/02) [1]

(State aid — Restructuring aid — Decision ordering the recovery of aid incompatible with the common market — Article 13(1) of Regulation (EC) No 659/1999 — Joint and several liability)

(2007/C 247/31)

Language of the case: German

Parties

Applicant: MTU Friedrichshafen GmbH (Friedrichshafen, Germany) (represented by F. Montag and T. Lübbig, lawyers)

Defendant: Commission of the European Communities (represented by V. Kreuschitz, V. Di Bucci and T. Scharf, acting as Agents)

Re:

Application for the annulment of Article 3(2) of Commission Decision 2002/898/EC of 9 April 2002 on the State aid implemented by Germany for SKL Motoren- und Systembautechnik GmbH (OJ 2002 L 314, p. 75).

Operative part of the judgment

The Court:

1. *Annuls Article 3(2) of Commission Decision 2002/898/EC of 9 April 2002 on the State aid implemented by Germany for SKL Motoren- und Systembautechnik GmbH, in so far as it orders MTU Friedrichshafen GmbH to repay jointly and severally a sum of EUR 2,71 million;*

2. *orders the Commission to bear its own costs and to pay the costs incurred by MTU Friedrichshafen.*

[1] OJ C 219, 14.9.2002.

Judgment of the Court of First Instance of 12 September 2007 — Olympiaki Aeroporia Ypiresies v Commission

(Case T-68/03) [1]

(State aid — Restructuring aid granted by the Hellenic Republic to the airline Olympic Airways — Decision declaring the aid incompatible with the common market and ordering its recovery — Misuse of the aid — New aid — Burden of proof — Right to be heard — Private creditor test — Error of fact — Manifest error of assessment — Statement of reasons — Articles 87(1) EC and (3)(c) EC)

(2007/C 247/32)

Language of the case: Greek

Parties

Applicant: Olympiaki Aeroporia Ypiresies AE, formerly Olympiaki Aeroporia AE (Athens, Greece) (represented first by D. Waelbroeck and E. Bourtzalas, lawyers, J. Ellison and M. Hall, Solicitors, and A. Kalogeropoulos and C. Tagaras, lawyers, and then by P. Anestis, lawyer, and T. Soames, Solicitor)

Defendant: Commission of the European Communities (represented by: D. Triantafyllou and J. L. Buendía Sierra, acting as Agents, and A. Oikonomou, lawyer)

Re:

Application for the annulment of Commission Decision 2003/372/EC of 11 December 2002 on aid granted by Greece to Olympic Airways (OJ 2003, L 132, p. 1)

Operative part of the judgment

The Court hereby:

1. *Annuls Articles 2 and 3 of Commission Decision 2003/372/EC of 11 December 2002 on aid granted by Greece to Olympic Airways in so far as they concern tolerance of persistent non-payment of airport charges owed by Olympic Airways to Athens International Airport and of VAT owed by Olympic Aviation on fuel and spare parts.*

2. *Dismisses the remainder of the application.*

3. *Orders Olympiaki Aeroporia Ypiresies AE to pay 75 % of its own costs and of those of the Commission and orders the Commission to pay 25 % of its own costs and of those of Olympiaki Aeroporia Ypiresies.*

(1) OJ C 112 of 10.5.2003.

Judgment of the Court of First Instance of 12 September 2007 — Nikolaou v Commission

(Case T-259/03) (1)

(Non-contractual liability — Inquiry of the European Anti-Fraud Office (OLAF) concerning a Member of the Court of Auditors — Divulgence of information — Protection of personal information — Access to the inquiry file and to OLAF's report — Sufficiently serious breach of the rules of law conferring rights on individuals — Causal link — Loss)

(2007/C 247/33)

Language of the case: Greek

Parties

Applicant: Kalliopi Nikolaou (Athens, Greece) (represented by: V. Christianos and V. Vlassi, lawyers)

Defendant: Commission of the European Communities (represented by: M. Condou-Durande and C. Ladenburger, acting as Agents)

Re:

Action for damages, pursuant to the second paragraph of Article 288 EC, for the loss suffered by the applicant following publication of information concerning an inquiry carried out concerning her by the European Anti-Fraud Office (OLAF) and OLAF's refusal to grant her access to the inquiry file and to supply her with a copy of its final report.

Operative part of the judgment

The Court:

1. *Orders the Commission to pay Ms Kalliopi Nikolaou compensation of EUR 3 000;*

2. *Dismisses the remainder of the action;*

3. *Orders Ms Nikolaou to bear three quarters of her own costs and three quarters of the costs incurred by the Commission, which is to bear a quarter of its own costs and pay a quarter of the costs incurred by Ms Nikolaou.*

(1) OJ C 264, 1.11.2003.

Judgment of the Court of First Instance of 12 September 2007 — Consorzio per la tutela del formaggio Grana Padano v OHIM — Biraghi (GRANA BIRAGHI)

(Case T-291/03) (1)

(Community trade mark — Invalidity proceedings — Community word mark GRANA BIRAGHI — Protection of the designation of origin 'grana padano' — Lack of generic nature — Article 142 of Regulation (EC) No 40/94 — Regulation (EEC) No 2081/92)

(2007/C 247/34)

Language of the case: Italian

Parties

Applicant: Consorzio per la tutela del formaggio Grana Padano (Desenzano del Garda, Italy) (represented by: P. Perani, P. Colombo and A. Schmitt, lawyers)

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

Intervener in support of the defendant: Italian Republic (represented by G. Aiello, lawyer)

The other party to the proceedings before the Board of Appeal of OHIM, intervener before the Court of First Instance, being: Biraghi SpA, (Cavallermaggiore Italy) (represented by F. Antenucci, F. Giuggia, P. Mayer and J.-L. Schiltz, lawyers)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 16 June 2003 (Case R 153/2002-1) relating to invalidity proceedings between Consorzio per la tutela del formaggio Grana Padano and Biraghi SpA

Operative part of the judgment

The Court:

1. *Annuls the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 16 June 2003 (Case R 153/2002-1);*

2. *Orders OHIM to bear its own costs and to pay those incurred by Consorzio per la tutela del formaggio Grana Padano;*

3. *Orders the Italian Republic and Biraghi SpA to bear their own costs.*

(1) OJ C 289, 29.11.2003.

Judgment of the Court of First Instance of 12 September 2007 — Koninklijke Friesland Foods v Commission

(Case T-348/03) (1)

(State aid — Tax scheme of aid implemented by the Netherlands — International financing activities of groups of companies — Decision declaring the aid scheme to be incompatible with the common market — Transitional provision — Protection of legitimate expectations — Principle of equal treatment — Admissibility — Legal interest in bringing proceedings)

(2007/C 247/35)

Language of the case: Dutch

Parties

Applicant: Koninklijke Friesland Foods NV, formerly Friesland Coberco Dairy Foods Holding NV (Meppel, Netherlands) (represented by: E. Pijnacker Hordijk and W. Geursen, lawyers)

Defendant: Commission of the European Communities (represented by: H. van Vliet, V. Di Bucci and S. Noë, Agents)

Re:

Action for annulment of Article 2 of Commission Decision 2003/515/EC of 17 February 2003 on the State aid implemented by the Netherlands for international financing activities (OJ 2003 L 180, p. 52) in so far as it excludes from the transitional scheme those operators who, as at 11 July 2001, had lodged a request with the Netherlands tax authority for application of the aid scheme in question but whose request had not yet been determined by that date.

Operative part of the judgment

The Court:

1. *Annuls Article 2 of Commission Decision 2003/515/EC of 17 February 2003 on the State aid implemented by the Netherlands for international financing activities in so far as it excludes from the transitional scheme which it lays down those operators who, as at 11 July 2001, had lodged a request with the Netherlands tax authority for application of the aid scheme in question but whose request had not yet been determined by that date;*

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

(1) OJ C 21 of 24.1.2004.

Judgment of the Court of First Instance of 12 September 2007 — González y Díez v Commission

(Case T-25/04) (1)

(State aid — Aid to cover exceptional restructuring costs — Withdrawal of an earlier decision — Expiry of the ECSC Treaty — Competence of the Commission — Continuity of the Community legal order — No infringement of essential procedural requirements — Protection of legitimate expectations — Manifest error of assessment)

(2007/C 247/36)

Language of the case: Spanish

Parties

Applicant: González y Díez SA, (Villabona-Llanera, Spain), (represented by J. Díez-Hochleitner and A. Martínez Sánchez, lawyers),

Defendant: Commission of the European Communities (represented initially by J. Buendía Sierra, acting as Agent, and subsequently by C. Urraca Caviedes, acting as Agent, the latter assisted by Buendía Sierra, lawyer)

Re:

Action for annulment of Articles 1, 3 and 4 of Commission Decision 2004/340/EC of 5 November 2003 on aid for González y Díez SA to cover exceptional expenses (aid for 2001 and misuse of aid for 1998 and 2000), and amending Commission Decision 2002/827/ECSC (OJ 2004 L 119, p. 26).

Operative part of the judgment

The Court:

1. *Annuls Article 3(b), in so far as it concerns the amount of EUR 54 057,63 (ESP 8 994 433), and Article 4(1)(b) of Commission Decision 2004/340/EC of 5 November 2003 concerning aid to the company González y Díez SA to cover exceptional costs (aid for 2001 and incorrect use of the aid for 1998 and 2000), amending Decision No 2002/827/ECSC.*

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

3. *Orders the applicant to bear four-fifths of its own costs and to pay four-fifths of the costs incurred by the Commission. The Commission shall bear a fifth of its own costs and pay a fifth of the costs incurred by González y Díez.*

([1]) OJ C 71, 20.3.2004.

Judgment of the Court of First Instance of 12 September 2007 — API v Commission

(Case T-36/04) ([1])

(Access to documents — Pleadings lodged by the Commission in proceedings before the Court of Justice and the Court of First Instance — Decision refusing access)

(2007/C 247/37)

Language of the case: English

Parties

Applicant: Association de la presse internationale a.s.b.l. (API) (Brussels, Belgium) (represented by: S. Völcker, F. Louis and J. Heithecker, avocats)

Defendant: Commission of the European Communities (represented by: C. Docksey and P. Aalto, Agents)

Re:

Application for the annulment of the Commission's decision of 20 November 2003 rejecting an application by the applicant for access to the pleadings lodged by the Commission in proceedings before the Court of Justice and the Court of First Instance

Operative part of the judgment

The Court:

1. *Annuls the Commission's decision of 20 November 2003 in so far as it refused access to the pleadings submitted by the Commission before the Court of Justice in Case C-466/98 Commission v United Kingdom; Case C-467/98 Commission v Denmark; Case C-468/98 Commission v Sweden; Case C-469/98 Commission v Finland; Case C-471/98 Commission v Belgium; Case C-472/98 Commission v Luxembourg; Case C-475/98 Commission v Austria and Case C-476/98 Commission v Germany and before the Court of First Instance in Case T-342/99 Airtours v Commission;*

2. *Dismisses the remainder of the action;*

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

([1]) OJ C 71, 20.3.2004.

Judgment of the Court of First Instance (Second Chamber) of 12 September 2007 — Finland v Commission

(Case T-230/04) ([1])

(EAGGF — Guarantee section — System of control of area aid in certain regions — Expenditure excluded from Community financing)

(2007/C 247/38)

Language of the case: Finnish

Parties

Applicant: Republic of Finland (represented: initially by A. Guimaraes-Purokoski and T. Pynnä and subsequently by A. Guimaraes-Purokoski and E. Bygglin, Agents)

Defendant: Commission of the European Communities (represented by: M. Huttunen and L. Visaggio, Agents)

Re:

Application for annulment of Commission Decision 2004/136/EC of 4 February 2004 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ 2004 L 40, p. 31) in so far as it excludes certain expenditure incurred by the Republic of Finland in connection with area aid in certain regions, because of the insufficiency of the system of control applied.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

([1]) OJ C 146, 29.5.2004 (formerly Case C-162/04).

Judgment of the Court of First Instance of 12 September 2007 — Italy and Brandt Italia v Commission

(Joined Cases T-239/04 and T-323/04) ([1])

(State aid — Legislation providing for urgent measures to assist employment for undertakings in difficulties — Decision declaring the aid scheme incompatible with the common market and ordering recovery of aid paid)

(2007/C 247/39)

Language of the case: Italian

Parties

Applicant in Case T-239/04: Italian Republic (represented by: D. Del Gaizo, Agent)

Applicant in Case T-323/04: Brandt Italia SpA (Verolanuova, Italy) (represented by: M. van Empel, C. Visco and S. Lamarca, lawyers)

Defendant: Commission of the European Communities (represented by: V. Di Bucci, C. Giolito and E. Righini, Agents)

Re:

Annulment of Commission Decision 2004/800/EC of 30 March 2004 on the State aid scheme put into effect by Italy providing for urgent measures to assist employment (OJ 2004 L 352, p. 10).

Operative part of the judgment

The Court:

1. *Dismisses the actions;*

2. *Orders the Italian Republic to bear its own costs and to pay those incurred by the Commission in Case T-239/04;*

3. *Orders Brandt Italia SpA to bear its own costs and to pay those incurred by the Commission in Case T-323/04.*

([1]) OJ C 217, 28.8.2004.

Judgment of the Court of First Instance of 12 September 2007 — Combescot v Commission

(Case T-249/04) ([1])

(Staff case — Officials — Mental harassment — Duty to provide assistance — Career development report for the period 2001/2002 — Action for annulment — No legal interest in bringing proceedings — Action for damages)

(2007/C 247/40)

Language of the case: Italian

Parties

Applicant: Philippe Combescot (Popayan, Colombia) (represented by: A. Maritati and V. Messa, lawyers)

Defendant: Commission of the European Communities (represented by: V. Joris and M. Velardo, Agents and C. Corongui, lawyer)

Re:

First, declare that the conduct of the applicant's hierarchical superiors is unlawful, declare that the applicant is entitled to assistance and annul his career development report for the period from 1 July 2001 and 31 December 2002 and, secondly, award damages to compensate the applicant for the loss suffered.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders each of the parties to bear its own costs.*

([1]) OJ C 217, 28.8.2004.

Judgment of the Court of First Instance of 12 September 2007 — Combescot v Commission

(Case T-250/04) ([1])

(Staff case — Officials — Filling the post of Head of Delegation, Columbia — Rejection of candidature — Action for annulment — No legal interest in bringing proceedings — Action for damages)

(2007/C 247/41)

Language of the case: Italian

Parties

Applicant: Philippe Combescot (Popayan, Colombia) (represented by: A. Maritati and V. Messa, lawyers)

Defendant: Commission of the European Communities (represented by: V. Joris and M. Velardo, Agents and C. Corongui, lawyer)

Re:

First, declare that the decision to exclude the applicant from the competition to fill the post of Head of Delegation, Colombia is unlawful, annul the procedure for that competition and annul the decision to fill the post concerned and, secondly, award damages to compensate the applicant for the loss suffered.

Operative part of the judgment

The Court:

1. *Orders the Commission to pay to the applicant, Mr Philippe Combescot, damages of EUR 3 000;*

2. *Dismisses the remainder of the action;*

3. *Orders the Commission to bear its own costs and to pay half the applicant's costs;*

4. *Orders the applicant to bear half his own costs.*

([1]) OJ C 217, 28.8.2004.

Judgment of the Court of First Instance of 12 September 2007 — Neumann v OHIM (Form of a microphone head grill)

(Case T-358/04) ([1])

(Community trade mark — Application for a three-dimensional Community trade mark in the form of a microphone head grill — Absolute grounds for refusal — Lack of distinctive character — Article 7(1)(b) of Regulation (EC) No 40/94)

(2007/C 247/42)

Language of the case: German

Parties

Applicant: Georg Neumann GmbH (Berlin, Germany) (represented by: R. Böhm, lawyer)

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

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 17 June 2004 (Case R 919/2002-2) refusing to register, as a Community trade mark, a three-dimensional sign in the form of a microphone head grill.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Georg Neumann GmbH to pay the costs.*

([1]) OJ C 284, 20.11.2004.

Judgment of the Court of First Instance of 12 September 2007 — Koipe v OHIM — Aceites del Sur (La Española)

(Case T-363/04) ([1])

(Community trade mark — Application for Community figurative mark 'La Española' — Opposition by the proprietor of the national and Community figurative marks 'Carbonell' — Rejection of the opposition — Dominant elements — Similarity — Likelihood of confusion — Power to alter decisions)

(2007/C 247/43)

Language of the case: Spanish

Parties

Applicant: Koipe Corporación SL (San Sebastián, Spain) (represented by: M. Fernández de Béthencourt, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance: Aceites del Sur SA (Seville, Spain) (represented by: C.L. Fernández-Palacios and R. Jiménez Díaz, lawyers)

Re:

Action against the decision of the Fourth Board of Appeal of OHIM of 11 May 2004 (R 1109/2000-4) relating to opposition proceedings between Koipe Corporación SL and Aceites del Sur SA

Operative part of the judgment

The Court:

1. *Alters the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 11 May 2004 (Case R 1109/2000-4) so as to hold that the appeal brought by the applicant before the Board of Appeal is well founded and, consequently, that the opposition is to be upheld.*

2. *Orders OHIM and the intervener to pay the costs.*

([1]) OJ C 284, 20.11.2004.

Judgment of the Court of First Instance of 12 September 2007 — Commission v Trends

(Case T-448/04) ([1])

(Arbitration clause — Fourth Framework Programme for research, technological development and demonstration — Contracts involving projects in the field of telematics applications of common interest — Lack of supporting documents and non-compliance with the contractual requirements for part of the declared expenses — Reimbursement of the sums paid)

(2007/C 247/44)

Language of the case: Greek

Parties

Applicant: Commission of the European Communities (represented by: M. Patakia, Agent, and M. Bra, K. Kapoutzidou, S. Chatzigiannis, and then by K. Kapoutzidou and S. Chatzigiannis, lawyers)

Defendant: Transport Environment Development Systems (Trends) (Athens, Greece) (represented by: V. Christianos and V. Vlassi, lawyers)

Re:

Application by the Commission under an arbitration clause within the meaning of Article 238 EC seeking an order that Trends reimburse the Commission in the sum of EUR 48 046 plus contractual interest or, in the alternative, plus default interest.

Operative part of the judgment

1. *The interlocutory application is dismissed;*

2. *Transport Environment Development Systems (Trends) is ordered to pay to the Commission the sum of Eur 48 046 plus default interest at the rate of 5,5 % per annum from 1 January 1999 until payment in full of the sum owed;*

3. *Trends is ordered to pay the costs.*

([1]) OJ C 184, 2.8.2003 (formerly Case C-248/03).

Judgment of the Court of First Instance of 12 September 2007 — Commission v Trends

(Case T-449/04) ([1])

(Arbitration clause — Second Framework Programme for research, technological development and demonstration — Contracts involving projects in the field of road transport informatics and telecommunications — Lack of supporting documents for part of the declared expenses — Termination of contracts — Expired contracts)

(2007/C 247/45)

Language of the case: Greek

Parties

Applicant: Commission of the European Communities (represented by: M. Patakia, Agent, and by K. Kapoutzidou and S. Chatzigiannis, lawyers)

Defendant: Transport Environment Development Systems (Trends) (Athens, Greece) (represented by: V. Christianos and V. Vlassi, lawyers)

Re:

Application by the Commission under an arbitration clause within the meaning of Article 238 EC seeking an order that Trends reimburse the Commission in the sum of EUR 195 435 plus contractual interest or, in the alternative, plus default interest.

Operative part of the judgment

1. *The action is dismissed;*

2. *The interlocutory application is dismissed;*

3. *The Commission is ordered to pay the costs except for those arising from the interlocutory application;*

4. *Transport Environment Development Systems (Trends) is ordered to pay the costs of the interlocutory application.*

([1]) OJ C 184, 2.8.2003 (formerly Case C-249/03).

Judgment of the Court of First Instance of 12 September 2007 — Prym and Prym Consumer v Commission

(Case T-30/05) ([1])

(Competition — Cartels — European haberdashery market (needles) — Product market sharing — Geographic market sharing — Fine — Guidelines on the method of setting fines — Duty to state reasons — Gravity and duration of the infringement — Leniency notice)

(2007/C 247/46)

Language of the case: German

Parties

Applicants: William Prym GmbH & Co. KG (Stolberg, Germany) and Prym Consumer GmbH & Co. KG (Stolberg) (represented by: H. Meyer-Lindemann, lawyer)

Defendant: Commission of the European Communities (represented by: F. Castillo de la Torre and K. Mojzesowicz, acting as Agents)

Re:

Application, principally, for annulment of Commission Decision C(2004) 4221 final of 26 October 2004 relating to a proceeding under Article 81 [EC] (Case COMP/F-1/38.338 — PO/Needles) in so far as it relates to the applicants, and, in the alternative, for annulment or reduction of the fine imposed on the applicants.

Operative part of the judgment

The Court:

1. *Sets the amount of the fine imposed on William Prym GmbH & Co. KG and Prym Consumer GmbH & Co. KG under Article 2 of Commission Decision C(2004) 4221 final of 26 October 2004 relating to a proceeding under Article 81 [EC] (Case COMP/F-1/38.338 — PO/Needles) at EUR 27 million;*

2. *Dismisses the remainder of the application;*

3. *Orders William Prym and Prym Consumer to bear 90 % of their own costs and to pay 90 % of the costs incurred by the Commission, and the Commission to bear 10 % of its own costs and to pay 10 % of the costs incurred by William Prym and Prym Consumer.*

(1) OJ C 106 of 30.4.2005.

Judgment of the Court of First Instance of 12 September 2007 — Coats Holdings and Coats v Commission

(Case T-36/05) (1)

(Competition — Cartels — European haberdashery market (needles) — Product market sharing — Geographic market sharing — Assessment of evidence — Participation in meetings — Tripartite agreement — Fine — Gravity and duration of the infringement — Attenuating circumstances)

(2007/C 247/47)

Language of the case: English

Parties

Applicants: Coats Holdings Ltd (Uxbridge, Middlesex, United Kingdom) and J & P Coats Ltd (Uxbridge) (represented by: W. Sibree and C. Jeffs, lawyers)

Defendant: Commission of the European Communities (represented by: F. Castillo de la Torre and K. Mojzesowicz, Agents)

Re:

Application, principally, for annulment of Commission Decision C(2004) 4221 final of 26 October 2004 relating to a proceeding under Article 81 [EC] (Case COMP/F-1/38.338 — PO/Needles) and, in the alternative, for annulment or reduction of the fine imposed on the applicants.

Operative part of the judgment

The Court:

1. *Annuls Commission Decision C(2004) 4221 final of 26 October 2004 relating to a proceeding under Article 81 [EC] (Case COMP/F-1/38.338 — PO/Needles) in so far as the Decision finds that the applicants infringed Article 81(1) EC after 13 March 1997;*

2. *Sets the amount of the fine imposed on the applicants under Article 2 of the Decision at EUR 20 million;*

3. *Dismisses the remainder of the application;*

4. *Orders the applicants to bear two thirds of their own costs and to pay two thirds of the costs incurred by the Commission, and the Commission to bear one third of its own costs and to pay one third of the costs incurred by the applicants.*

(1) OJ C 93, 16.4.2005.

Judgment of the Court of First Instance (Second Chamber) of 12 September 2007 — UFEX and Others v Commission of the European Communities

(Case T-60/05) (1)

(Competition — Abuse of a dominant position — International express courier market — Decision dismissing complaint — Annulment by Community judicature of decision dismissing complaint — Re-examination and dismissal anew of complaint — Public undertaking)

(2007/C 247/48)

Language of the case: French

Parties

Applicants: Union française de l'express (UFEX) (Roissy-en-France, France), DHL Express (France) SAS, formerly DHL International SA (Roissy-en-France); Federal express international (France) SNC (Gennevilliers, France); and CRIE SA, (Asnières, France) (represented by: É. Morgan de Rivery and J. Derenne, lawyers)

Defendant: Commission of the European Communities (represented initially by A. Bouquet and O. Beynet, then by A. Bouquet and V. Di Bucci, agents)

Interveners in support of the defendant: Chronopost SA, (Issy-les-Moulineaux, France), represented by D. Berlin, lawyer and La Poste, (Paris, France), represented by H. Lehman, lawyer

Re:

Annulment of Commission decision SG-Greffe (2004) D/205294 of 19 November 2004 rejecting the action brought by the applicants against La Poste and the French Government concerning the international express courier market in France.

Operative part of the judgment

The Court:

1. *orders removal of CRIE SA from the list of applicants;*

2. *dismisses the action;*

3. *orders Union française de l'express (UFEX), DHL Express (France) SAS, and Federal express international (France) SNC to pay, in addition to their own costs, three quarters of the costs of Chronopost SA and La Poste, Chronopost SA and La Poste to bear one quarter of their own costs; orders CRIE to pay, in addition to its own costs, one quarter of the costs of the Commission, the Commission to bear three quarters of its own costs.*

([1]) OJ C 93 of 16.4.2005.

Judgment of the Court of First Instance of 12 September 2007 — Hellenic Republic v Commission

(Case T-243/05) ([1])

(EAGGF — Guarantee Section — Expenditure excluded from Community financing — Arable crops — Olive oil — Financial audit — Period of 24 months)

(2007/C 247/49)

Language of the case: Greek

Parties

Applicant: Hellenic Republic, (represented by G. Kanellopoulos and E. Svolopoulou, agents)

Defendant: Commission of the European Communities, (represented by H. Tserepa-Lacombe and L. Visaggio, agents, assisted by N. Korogiannakis, lawyer)

Re:

Action for annulment of the Commission Decision of 29 April 2005 excluding from Community financing certain expenditure by the Member States under the European Agricultural Guarantee and Guidance Funds (EAGGF), Guarantee section (OJ 2005 L 112, p. 14), in so far as it excludes certain expenditure by Greece in the sectors of arable crops and olive oil and in the matter of financial audit.

Operative part of the judgment

The Court:

1. *Annuls Commission Decision 2005/354/EC of 29 April 2005 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 imposes a specific adjustment on the Hellenic Republic of EUR 200 146,68 for the financial years of 1996 to 1998 (consumption aid for olive oil);*

2. *Dismisses the remainder of the action;*

3. *Orders the Hellenic Republic to bear its own costs and to pay 70 % of those incurred by the Commission, which shall bear 30 % of its own costs.*

([1]) OJ C 205, 20.8.2005.

Judgment of the Court of First Instance of 12 September 2007 — Cain Cellars, Inc. v OHIM (Device of a pentagon)

(Case T-304/05) ([1])

(Community trade mark — Application for a figurative Community trade mark consisting of the device of a pentagon — Absolute ground for refusal — Absence of distinctive character — Simplicity of the sign)

(2007/C 247/50)

Language of the case: German

Parties

Applicant: Cain Cellars, Inc. (St. Helena, California, United States) (represented by: J. Albrecht and W.-W. Wodrich, lawyers)

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

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 23 May 2005 (Case R 975/2004-1) concerning the registration of the device of a pentagon as a Community trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Cain Cellars, Inc. to pay the costs.*

([1]) OJ C 257 of 15.10.2005.

Judgment of the Court of First Instance of 12 September 2007 — Philips Morris Products v OHIM (Shape of a packet of cigarettes)

(Affaire T-140/06) ([1])

(Community trade mark — Application for a three-dimensional Community trade mark — Shape of a packet of cigarettes — Refusal of registration — Absolute grounds for refusal — Lack of distinctive character — Article 7(1)(b) of Regulation (EC) No 40/94)

(2007/C 247/51)

Language of the case: French

Parties

Applicant: Philip Morris Products, SA (Neuchâtel, Switzerland) (represented by: T. van Innis and C.S. Moreau, lawyers)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (OHIM), of 24 February 2006, (Case R 0075/2005-4) concerning registration of the shape of a packet of cigarettes as a Community trade mark.

Operative part of the judgment

1) *The action is dismissed;*

2) *Philip Morris Products SA is ordered to pay the costs.*

([1]) OJ C 165, 15.7.2006.

Order of the Court of First Instance of 12 September 2007 — Glaverbel v OHIM (Texture of a glass surface)

(Case T-141/06) ([1])

(Community trade mark — Application for a Community figurative mark representing the texture of a glass surface — Absolute ground for refusal — Absence of evidence of distinctive character acquired through use)

(2007/C 247/52)

Language of the case: English

Parties

Applicant: Glaverbel SA (Brussels, Belgium) (represented by: S. Möbus and T. Koerl, lawyers)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 1 March 2006 (Case R 0986/2004-4), relating to an application for registration as a Community trade mark of a figurative mark representing the texture of a glass surface.

Operative part of the judgment

The Court:

1. *Dismisses the action.*

2. *Orders Glaverbel SA to pay the costs.*

([1]) OJ C 178, 29.7.2006.

Judgment of the Court of First Instance of 12 September 2007 — ColArt/Americas/OHIM (BASICS)

(Case T-164/06) ([1])

(Community trade mark — Application for the Community word mark BASICS — Absolute grounds for refusal — Lack of distinctive character — Descriptive mark — Article 7(1)(b) and (c) of Regulation (EC) No 40/94 — Distinctive character acquired through use — Article 7(3) of Regulation No 40/94)

(2007/C 247/53)

Language of the case: English

Parties

Applicant: ColArt/Americas, Inc (Piscataway, New Jersey, United States) (represented by: E. Soler Borda and R. Zeineh, lawyers)

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

Re:

Application for annulment of the decision of the Fourth Board of Appeal of OHIM of 7 April 2006 (Case R 788/2005-4) refusing to register the word mark BASICS as a Community trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders ColArt/Americas, Inc. to pay the costs.*

([1]) OJ C 190, 12.8.2006.

Judgment of the Court of First Instance (Second Chamber) of 12 September 2007 — Commission v Internet Commerce Network and Dane-Elec Memory

(Case T-184/06) ([1])

(Arbitration clause — Contract concluded in the framework of a special programme in the field of information society technologies (Crossmarc project) — Non-performance of the contract — Repayment of the advance paid by the Community — At-first-demand guarantee of the contractual obligations — Default procedure)

(2007/C 247/54)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented: initially by L. Ström van Lier and subsequently by L. Escobar Guerrero, Agents, assisted by P. Elvinger, lawyer)

Defendants: Internet Commerce Network (Bagnolet, France) and Dane-Elec Memory (Bagnolet)

Re:

Action, based on an arbitration clause, for an order that the defendants repay the amount of the advance paid by the Community, and interest for late payment, following the non-performance of Contract No 2000-25366 concluded in the framework of a special programme for research, technological development and demonstration in the field of information society technologies (IST) (1998-2002) concerning the Crossmarc project (Cross-lingual Multi Agent Retail Comparison).

Operative part of the judgment

The Court:

1. *Orders Dane-Elec Memory to pay to the Commission of the European Communities the principal sum of EUR 55 878 with interest thereon:*

   — *at the annual rate of 4,75 % from 16 March 2004 to 31 December 2005;*

— *at the annual rate of 5 % from 1 January to 31 December 2006;*

— *at the annual rate of 5,25 % from 1 January 2007 until the debt is paid in full;*

2. *Decides that there is no need to adjudicate on the claim against Internet Commerce Network;*

3. *Orders Dane-Elec Memory to bear its own costs and pay those incurred by the Commission;*

4. *Orders Internet Commerce Network to bear its own costs.*

([1]) OJ C 212 of 2.9.2006.

Judgment of the Court of First Instance of 12 September 2007 — Commission v Chatziioannidou

(Case T-20/07) ([1])

(Appeal — Staff case — Officials — Pensions — Annulment at first instance of Commission decisions calculating the number of years of pensionable service — Transfer of national pension rights)

(2007/C 247/55)

Language of the case: French

Parties

Appellant: Commission of the European Communities (represented by: D. Martin and K. Herrmann, Agents)

Other party to the proceedings: Eleni Chatziioannidou (Auderghem, Belgium) (represented by: S. Pappas, lawyer)

Re:

Appeal brought against the judgment of the European Union Civil Service Tribunal (First Chamber) of 14 November 2006 in Case F-100/05 *Chatziioannidou* v *Commission* (not yet published in the ECR) seeking to have that judgment set aside.

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

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

([1]) OJ C 69, 24.3.2007.

Order of the Court of First Instance of 29 August 2007 — SELEX Sistemi Integrati v Commission

(Case T-186/05) ([1])

(Action for damages — Non-contractual liability — Competition — Decision of the Commission rejecting a complaint under Article 82 EC — Action in part manifestly inadmissible and in part manifestly without foundation in law — Actual loss)

(2007/C 247/56)

Language of the case: Italian

Parties

Applicant: SELEX Sistemi Integrati SpA, formerly Alenia Marconi Systems SpA (Rome, Italy) (represented by: F. Sciaudone, lawyer)

Defendant: Commission of the European Communities (represented by: A. Bouquet, L. Visaggio and F. Amato, acting as Agents)

Re:

Action for damages for the loss allegedly suffered by the applicant as a result of the decision of the Commission of 12 February 2004 rejecting the complaint brought by the applicant against Eurocontrol in respect of alleged infringements of the provisions of the EC Treaty on competition.

Operative part of the order

1. *The action is dismissed as in part manifestly inadmissible and in part manifestly without foundation in law.*

2. *SELEX Sistemi Integrati Spa shall pay the costs.*

([1]) OJ C 217, 3.9.2005.

Order of the Court of First Instance of 28 August 2007 — Galileo Lebensmittel v Commission

(Case T-46/06) ([1])

(Action for annulment — Implementation of the Top Level Domain 'eu' — Registration of the domain name 'galileo.eu' — Use restricted to the institutions and bodies of the Community — Locus standi — Inadmissibility)

(2007/C 247/57)

Language of the case: German

Parties

Applicant: Galileo Lebensmittel GmbH & Co. KG (Trierweiler, Germany) (represented by: K. Bott, lawyer)

Defendant: Commission of the European Communities (represented initially by: E. Montaguti and T. Jürgensen, then by: G. Braun and E. Montaguti, acting as Agents)

Re:

Action for annulment of the Commission's decision to register 'galileo.eu' as an eu. Top Level Domain reserved for use by the Community institutions and bodies, pursuant to Article 9 of Commission Regulation (EC) No 874/2004 of 28 April 2004 laying down public policy rules concerning the implementation and functions of the '.eu' Top Level Domain and the principles governing registration (OJ 2004 L 162, p. 40)

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *Galileo Lebensmittel GmbH & Co. KG is ordered to bear its own costs and pay those incurred by the Commission.*

([1]) OJ C 86, 8.4.2006.

Action brought on 5 August 2007 — Lumenis v OHIM (FACES)

(Case T-301/07)

(2007/C 247/58)

Language of the case: English

Parties

Applicant: Lumenis Ltd (Yokneam, Israel) (represented by: S. Malynicz, Barrister, B. Gerber, Solicitor)

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

Form of order sought

— The decision of the Second Board of Appeal dated 1 June 2007 in Case R 1532/2006-2 shall be annulled;

— the Office shall bear its own costs and pay those of the applicant.

Pleas in law and main arguments

Community trade mark concerned: The international word mark 'FACES' for goods in class 10 — International registration No W0874799

Decision of the examiner: Refused registration in whole

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: In support of its claims, the applicant advances the following grounds:

First, the applicant claims that the Board failed to analyse distinctiveness in relation to all the goods applied for;

Second, according to the applicant, the Board's finding that promotion and marketing in the trade commonly employs facial photographs was unsupported and, in any event, relevant, if at all, to Article 7(1)(b) or Article 7(1)(c);

Third, the applicant contends that the Board failed to analyse the aptness of the term FACES as a descriptive indication in relation to the goods concerned;

Fourth, the applicant submits that the Board committed an error of law by imposing a requirement that the mark be striking, imaginative or creative in order to avoid the objections under Article 7(1)(b) CTMR.

Action brought on 17 August 2007 — gardeur v OHIM — Blue Rose (g)

(Case T-310/07)

(2007/C 247/59)

Language in which the application was lodged: English

Parties

Applicant: gardeur AG (Mönchengladbach, Germany) (represented by: A. Beschorner, B. Glaser, C. Thomas, lawyers)

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

Other party to the proceedings before the Board of Appeal: Blue Rose Inc. (Nashville Tennessee, United States)

Form of order sought

— annul the decision of the Second Board of Appeal No R 878/2006 2 of 15 June 2007, regarding Community trademark No 1153741 'g' in so far as it dismisses the appeal in relation to goods in Class 25;

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

Pleas in law and main arguments

Registered Community trade mark subject of the application for a declaration of invalidity: The figurative mark consisting of a circle containing the letter 'g' for goods and services in Classes 9, 25, and 41

Proprietor of the Community trade mark: Blue Rose Inc.

Party requesting the declaration of invalidity of the Community trade mark: Gardeur ag

Trade mark right of the party requesting the declaration of invalidity: The Community figurative mark picturing a black square containing the letter 'g' for goods and services in Class 3, 18 and 25 — application No 1153741

Decision of the Cancellation Division: Rejected the request for a declaration of invalidity

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 4 and Article 8(1)(b) of the CTMR.

Action brought on 28 August 2007 — National Association of Licensed Opencast Operators v Commission

(Case T-318/07)

(2007/C 247/60)

Language of the case: English

Parties

Applicant: The National Association of Licensed Opencast Operators (Chester-le-Street, United Kingdom) (represented by: H. Bracegirdle, Solicitor, M. Hoskins and C. West, Barristers)

Defendant: Commission of the European Communities

Form of order sought

— The Commission Decision of 18 June 2007 be annulled.

— The Commission pay the applicant's costs.

Pleas in law and main arguments

The applicant seeks the annulment of the Commission's Decision in Case COMP/35.821 of 18 June 2007 by which the Commission rejected the applicant's complaint made in 1990 that members of its association had been the victims of a price discrimination as the prices paid by the Central Electricity Generating Board ('CEGB') between 1984-1990 for coal produced by members of the applicant was lower than the prices paid by the CEGB for coal produced by the British Coal Corporation ('BCC'), without there being any objective justification for that difference in treatment.

The Commission found in the contested decision that there was a difference between the prices paid by the CEGB to the applicant's members and the prices paid to the BCC, but sustained that the BCC and the applicant's members did not supply coal under comparable conditions. The CEGB was therefore justified in paying higher prices for the BCC's coal in order to ensure that it would meet its statutory duty to supply the electricity needed in the United Kingdom.

In support of its application, the applicant contends that the Commission's finding that the BCC and the applicant's members did not supply coal under comparable conditions was not supported by the evidence upon which the Commission based its decision.

Furthermore, the applicant submits that the payment of a premium price for the BCC's coal would constitute state aid that had not been notified and which would therefore be unlawful.

Moreover, the applicant alleges that the Commission's findings are inconsistent with a previous Commission decision from 1991 in respect of the same complaint.

As regards the Commission's rejection of the applicant's complaint in relation to the period from 1984 to 1986 on grounds of inadmissibility and lack of Community interest, the applicant submits that:

— the Commission erred in finding that it no longer enjoys an exclusive competence under the ECSC Treaty to rule on the existence of discrimination in the said period;

— the Commission erred in finding that the applicant's members can bring claims before the national courts in respect of the said period; and

— the delay in resolving the issues raised in the applicant's complaint from 1990 is the result of previous legal errors made by the Commission.

Action brought on 24 August 2007 — Jones e.a. v Commission

(Case T-320/07)

(2007/C 247/61)

Language of the case: English

Parties

Applicants: Glenn Jones and Daphne Jones (Neath, Wales), FForch-y-Garron Coal Company Ltd (Neath, Wales), Desmond Ivor Evans and David Raymond Evans (Maesteg, Wales) (represented by: D.I.W. Jeffreys, Solicitor)

Defendant: Commission of the European Communities

Form of order sought

— Annulment of Commission Decision of 18 June 2007 in Case COMP/37.037 concerning the applicants' complaint of unlawful price discrimination by the Central Electricity Generating Board;

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

Pleas in law and main arguments

This is an application lodged pursuant to Article 230 EC seeking annulment of Commission Decision of 18 June 2007 (Case COMP/37.037 — SWSMA) rejecting a complaint according to which pricing practices adopted by the Central Electricity Generating Board in the period 1984 to 1990 in relation to coal producers constituted unlawful price discrimination towards private coal producers including the applicants, which was contrary to Article 4(b) of the European Coal and Steel Community Treaty then in force.

The applicants contend that, in reaching this decision, the Commission has committed a number of fundamental errors of law and/or of appreciation and thus, the decision should be annulled.

The applicants claim that the Commission was wrong as a matter of law to assess the question of price-discrimination on a country-wide basis rather than with reference to the local market in which the complainants operated. Moreover, the applicants submit that the Commission was wrong in stating that the licensed private mines could only supply limited amounts of coal and on a short term basis, taking into account the size of the mining facilities and British Coal Corporation's licensing policy. Finally, the applicants claim that the Commission was wrong to conclude that since the ECSC Treaty has expired and that it no longer enjoys exclusive competence with regards to infringements of the latter, a Commission decision was no longer required before judicial protection was sought before national courts.

Action brought on 28 August 2007 — Plant and Others v Commission

(Case T-324/07)

(2007/C 247/62)

Language of the case: English

Parties

Applicants: Gerry Plant (Varteg Pontypool, United Kingdom), Mary Kathleen Plant (Varteg Pontypool, United Kingdom), Dennis Jones (Neath, United Kingdom), William Meyrick (Swansea, United Kingdom), J.G. Evans (Ammanford, United Kingdom), David Vivian Austin (Neath, United Kingdom), D. Powell (Neath, United Kingdom), James Rowland McCann (Neath, United Kingdom), D. B. Diplock (Neath, United Kingdom), John Phillips (Neath, United Kingdom) and Richard Thomas Kingston (Swansea, United Kingdom) (represented by: W. Graham, Solicitor)

Defendant: Commission of the European Communities

Form of order sought

— Annul the Commission's Decision dated 18 June 2007 in Case No. 37037 — SWSMA;

— take such further action as the Court may think just;

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

Pleas in law and main arguments

The pleas in law and main arguments relied on by the applicants are similar to those relied on in Case T-318/07 *National Association of Licensed Opencast Operators* v *Commission*.

Action brought on 30 August 2007 — Cheminova and Others v Commission

(Case T-326/07)

(2007/C 247/63)

Language of the case: English

Parties

Applicants: Cheminova A/S (Harboøre, Denmark), Cheminova Agro Italia Srl (Rome, Italy), Cheminova Bulgaria EOOD (Sofia, Bulgaria), Agrodan SA (Madrid, Spain) and Lodi SAS (Grand Fougeray, France) (represented by: C. Mereu and K. Van Maldegem, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Order the annulment of Commission Decision 2007/389/EC;

— order the defendant to pay all costs and expenses in these proceedings.

Pleas in law and main arguments

Council Directive 91/414 concerning the placing of plant protection products on the market [1] provides that Member States shall not authorise a plant protection product unless its active substances are listed in Annex I and any conditions laid down therein are fulfilled. The applicants seek the annulment of Commission Decision 2007/389/EC of 6 June 2007 concerning the non-inclusion of malathion in Annex I to Council Directive 91/414/EEC and the withdrawal of authorisations for plant protection products containing that substance [2].

In support of their application, the applicants submit that the contested decision is scientifically incomplete and flawed in that it fails to consider all the scientific evidence on malathion submitted to the defendant. According to the applicants, it furthermore violates Articles 4(1), 5(1) of Directive 91/414 and Article 95(3) EC as the defendant refused to peer review the most resent data.

The applicants further contend that the contested decision was based on a scientific report which was not established within the time-limit set out in Article 8(7) of Regulation 451/2000.

Moreover, the applicants allege among others a violation of the principles of proportionality, non-discrimination, subsidiarity and sound administration as well as the obligation to state reasons and their right to be heard.

Finally, the applicants submit that they will not be able to exercise their intellectual property rights pursuant to Article 13 of Directive 91/414 in connection with the data package submitted to the defendant.

([1]) Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market (OJ 1991 L 230, p. 1).

([2]) OJ 2007 L 146, p. 19.

Action brought on 29 August 2007 — Patrick Holding v OHIM — Cassera (PATRICK EXCLUSIVE)

(Case T-327/07)

(2007/C 247/64)

Language in which the application was lodged: English

Parties

Applicant: Patrick Holding ApS (Fredensborg, Denmark) (represented by: J. Løje, lawyer)

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

Other party to the proceedings before the Board of Appeal: Cassera SpA (Milan, Italy)

Form of order sought

— The decision taken by the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) on 28 June 2007 in Case No R 727/2006-2 be annulled and the defendant be ordered to register the contested trade mark;

— the defendant pays the costs.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The figurative mark 'PATRICK EXCLUSIVE' for goods in class 25 — application No 3 063 427

Proprietor of the mark or sign cited in the opposition proceedings: Cassera SpA

Mark or sign cited: Community, national and international figurative marks and word marks 'G. PATRICK' for goods in classes 24 and 25

Decision of the Opposition Division: Opposition upheld in its entirety

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 40/94 as there is no likelihood of confusion between the conflicting trade marks.

Action brought on 3 September 2007 — UPS Europe and UPS Deutschland v Commission

(Case T-329/07)

(2007/C 247/65)

Language of the case: English

Parties

Applicants: UPS Europe NV/SA (Brussels, Belgium) and UPS Deutschland Inc. & Co. OHG (Neuss, Germany) (represented by: T. Ottervanger and E. Henny, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— To declare in accordance with Article 232 EC that the Commission has failed to act by not having defined a position with respect to the applicants' complaint lodged with the Commission on 11 May 2004;

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

Pleas in law and main arguments

The applicants claim that the Commission has failed to act by not having defined its position after having been invited to do so under Article 232 EC on the applicants' complaint lodged with the Commission on 11 May 2004 regarding unlawful state aid allegedly granted to Deutsche Post by Germany in form of among others state guarantees, contributions to Deutsche Post's pension fund and exemption from various statutory obligations.

In support of their application, the applicants submit that the Commission is required to conduct a diligent and impartial examination of the complaint received in particular in the light of the Commission's exclusive jurisdiction to assess the compatibility of aid measures with the common market.

The applicants further submit that Article 232 EC must be interpreted as entitling individuals or undertakings to bring an action for failure to act against an institution for failure to adopt measures which would have been of direct and individual concern to them, even though they are not the potential addressees of these measures.

Finally, the applicants contend that the measures which the Commission failed to adopt can be considered to be of direct and individual concern to the applicants as competing undertakings of Deutsche Post.

Action brought on 7 September 2007 — Chupa Chups SA v Commission of the European Communities

(Case T-331/07)

(2007/C 247/66)

Language of the case: Spanish

Parties

Applicant: Chupa Chups, SA (Barcelona, Spain) (represented by: Ramón Falcón Tella, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— Annul Article 1(2) of the decision adopted by the Commission declaring incompatible with the common market regional aid to the amount of EUR 800 000, granted in 2003 under the 'Minería 2' programme, and declaring consequently that that aid may not be implemented;

— Alternatively, annul the last sentence of Article 1(2) of the decision, according to which 'this part of the aid may accordingly not be implemented';

— In either case, order the Commission to pay the costs.

Pleas in law and main arguments

The contested decision regards as incompatible with the common market regional aid to the amount of EUR 800 000, granted in 2003 under the 'Minería 2' programme, previously authorised by the Commission. The contested decision considers that the applicant was not eligible for aid within that programme since firms in difficulty are excluded from it.

In support of its claims, the applicant accuses the Commission of a manifest error of assessment and of infringement of the principle of protection of legitimate expectations.

As regards the factual inaccuracies and the error of assessment by the Commission, the applicant claims that 2002 was the first year in which losses were recorded, and that in announcing the aid, the national authorities could not have been aware of those losses, given that the accounts had not been approved.

Further, the applicant submits that the firm cannot be regarded as a firm in difficulty within the meaning of paragraph 5(a) of the Community Guidelines on state aid for rescuing and restructuring firms in difficulty, which provides that a firm is regarded as being in difficulty if it has lost half of its registered capital and a quarter of that capital has been lost over the preceding 12 months. The Commission makes a manifest error of assessment in that, in order to calculate the percentage represented by the losses and to determine if those affect the capital, it has not taken into account the legal and voluntary reserves which the company had, which were of an amount more than sufficient to cover all the losses.

It was the firm itself, with its own resources and those contributed by creditors and private banks, which overcame the loss-making situation, and accordingly the firm cannot be regarded as a firm in difficulty, under paragraph 4 of the Community Guidelines on state aid for rescuing and restructuring firms in difficulty, which defines firms in difficulty as those which are unable to overcome such a situation without outside assistance.

Nor did there occur the signs referred to in paragraph 6 of the guidelines, since the losses did not increase, but decreased. The stock inventories are not growing but diminishing. The debt did not mount, but declined. And the interest charges did not rise, but significantly fell between 2002 and 2003.

The applicant also claims that the prohibition at issue from making payment of the aid of EUR 800 000, granted in 2003 within a programme of regional aid approved by the Commission, infringes the principle of protection of legitimate expectations.

On that point, it is asserted that the prohibition of actual payment of the aid has the same negative effect on the firm's balance sheet of profits and losses as a decision ordering repayment, with the sole difference that in the present case no interest payments are incurred.

The aid was approved by the Commission and Chupa Chups had no reason to believe that it was not eligible for that aid. If the regional aid had not existed, decisions on investment might have been different.

Order of the Court of First Instance (Fifth Chamber) of 6 September 2007 — easyJet v Commission

(Case T-300/04) ([1])

(2007/C 247/67)

Language of the case: English

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

([1]) OJ C 262, 23.10.2004.

Order of the Court of First Instance of 5 September 2007 — JAKO-O v OHIM — P.I. Fashion (JAKO-O)

(Case T-220/06) ([1])

(2007/C 247/68)

Language of the case: English

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

([1]) OJ C 249, 14.10.2006.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Action brought on 6 July 2007 — Gering v Europol

(Case F-68/07)

(2007/C 247/69)

Language of the case: Dutch

Parties

Applicant: Radolf Gering (The Hague, Netherlands) (represented by: P. de Casparis, lawyer)

Defendant: European Police Office (Europol)

Form of order sought

— annul the complaints decision of 5 April 2007, sent on 10 April 2007, and, so far as is necessary, the contract of 24 April 2007 also, in so far as it concerns classification.

— order Europol:

  — primarily: to pay the applicant, as from 1 August 2003, a salary corresponding to Grade 4.2 or, if the Tribunal considers it necessary, a salary corresponding to Grade 4.1;

  — in the alternative: to pay the applicant, as from 1 August 2003, a salary corresponding to Grade 4.6, as from 1 August 2005, a salary corresponding to Grade 4.8 and, as from 1 August 2007, a salary corresponding to Grade 4.9;

— order Europol to pay the costs.

Pleas in law and main arguments

The applicant challenges in particular the Europol decision of 5 April 2007 and the addendum of 24 April 2007 to his recruitment contract inasmuch as those acts classified him in Grade 4, step 2, with effect from 1 December 2004 and not with effect from 1 August 2003, which was the date of his recruitment.

The applicant submits that Europol should have respected the principle of equality in remunerating and classifying the members of its staff. According to Europol, the decision to classify the applicant in a higher grade as from 1 December 2004, and not as from 1 August 2003, is justified by the fact that it was as from 1 December 2004 only that the applicant started performing activities of a similar importance to those of heads of unit classified in Grade 4 and involving similar responsibilities. The applicant challenges that argument and submits that Europol has failed to explain how his tasks and responsibilities in the period from 1 August 2003 to 1 December 2004 differed from those of other heads of units. Furthermore, Europol has not established the facts and circumstances to show that the applicant's activities were less intense and/or included fewer responsibilities than those of other heads of unit.

Action brought on 27 July 2007 — Boudova and Others v Commission

(Case F-78/07)

(2007/C 247/70)

Language of the case: French

Parties

Applicants: Stanislava Boudova (Luxembourg, Luxembourg) and Others (represented by: M.-A. Lucas, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— Annul the implied decision of the Commission of 23 September 2006, confirmed by the letter of the Director-General of the Office for Official Publications of the European Communities (OPOCE), to reject the applicants' application of 23 May 2006, the purpose of which was:

  — the revision of their classification in grade B*3 by the decision to recruit them as probationary officials and their reclassification in grade B*6 as at the time at which that decision took effect;

— the reconstitution on that basis of their careers between the date when they took up their duties as probationary officials and the date of the decision to be taken;

— the payment of the difference between the remuneration to which they would have been entitled during that period if they had been classified in grade B*6 and that which they received on account of their classification in grade B*3;

— order the defendant to pay the costs

Pleas in law and main arguments

The applicants state that they were recruited by the Commission as auxiliary staff to the posts of proofreaders within OPOCE before the entry into force, on 1 May 2004, of Council Regulation (EC, Euratom) No 723/2004 of 22 March 2004 amending the Staff Regulations of Officials of the European Communities and the Conditions of Employment of other servants of the European Communities ([1]) in view of the enlargement and of filling those posts by open competition.

After they had passed the open competitions published at grade B5/B4 before 1 May for the purpose of filling those posts, the applicants were recruited as probationary officials on the basis of reserve lists published after that date. They were classified in grade B*3 on the basis of Article 12(3) of Annex XIII to the Staff Regulations of Officials of the European Communities ('the Staff Regulations').

The applicants submit that their action is admissible on account of a new substantial fact although they did not bring a complaint against the decisions laying down their classification in grade in the period laid down in the Staff Regulations for filing a complaint. That new substantial fact is the decision of the Bureau of the European Parliament of 13 February 2006 to reclassify the temporary servants who were appointed officials, on the basis of open competitions, after 1 May 2004, in the grade in which they would have been classified if they had been recruited as officials before that date.

The applicants consider that they have been discriminated against by the reclassification of those officials of the Parliament and take the view that they should be entitled to the same treatment, inasmuch as they submit that they were really recruited as temporary servants and not as auxiliary staff. In their opinion, their contracts fall within the scope of Article 2 of the Conditions of Employment of Other Servants (CEOS) and not of Article 3a thereof given that they had to fill posts which were temporarily vacant and not to replace officials or temporary servants who were unable for the time being to perform their duties. In the alternative, the applicants submit that, even if they had been recruited as auxiliary staff, their position would in any event have been analogous to that of temporary servants.

In support of their action, the applicants rely on one plea in law alleging infringement of Article 5(3) and (4) and Article 12(3) of Annex XIII to the Staff Regulations interpreted by reference to the principle of equal treatment. In particular, Article 5(4) of Annex XIII to the Staff Regulations should be interpreted as meaning that it is applicable to temporary servants who were appointed officials on the basis of open competitions, something which would preclude the classification in grade of that group from being fixed on the basis of Article 12(3) of Annex XIII to the Staff Regulations.

([1]) OJ L 124, 27.4.2004, p. 1.

Action brought on 6 August 2007 — Barbin v Parliament

(Case F-81/07)

(2007/C 247/71)

Language of the case: French

Parties

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

Defendant: European Parliament

Form of order sought

— annul the Parliament's decision not to promote the applicant to grade AD 12 in the 2006 promotion procedure

— order the defendant to pay the costs

Pleas in law and main arguments

The applicant submits that, according to the internal provisions of the Parliament governing promotion, the average length of time spent in grade AD 11 is four years. The applicant has been classified in that grade since 1 April 2001 and had reached the relevant threshold for promotion to grade AD 12 in the 2006 promotion procedure. Furthermore, the Promotion Committee entered her name on the list of officials who were recommended for promotion to that grade by virtue of the procedure in question.

According to the applicant, the Appointing Authority did not provide any information to explain the refusal to promote her and thus infringed the obligation to state reasons. Furthermore, the contested decision is based on the decision, which is the subject-matter of Case F-44/07 ([1]), to allocate the applicant only one merit point. Lastly, the applicant alleges infringement of Article 1d of the Staff Regulations of Officials of the European Communities.

([1]) OJ C 155 of 7.7.2007, p. 45.

Action brought on 25 August 2007 — Marcuccio v Commission

(Case F-86/07)

(2007/C 247/72)

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 Commission rejected the applicant's claim of 10 July 2006 for compensation for damage caused to him by the unlawful actions and conduct, particularly psychological harassments, perpetrated by the Commission's servants during the applicant's assignment to the Commission delegation in Angola;

— annul, so far as necessary, the note dated 9 October 2006, prot. PMO.3/MLP/mc D(2006) 9277;

— annul, so far as necessary, the note dated 23 April 2007, ref. ADMINB.2/MB/ade D(2007) 8725, rejecting the applicant's complaint of 27 December 2006 against the contested decision and the note of 9 October 2006;

— annul, so far as necessary, the note of 27 September 2005, ref. ADMIN/IDOC/GC/eh D(2005) 22005;

— ascertain the reality of the actions and conduct complained of in the applicant's claim of 10 July 2006, declaring them to be unlawful, or, in the alternative, order the Commission to carry out an investigation without delay;

— order the Commission to communicate the results of such investigation without delay and in writing, giving them suitable publicity and making them available to the public;

— order the Commission forthwith to destroy the original and all copies of the archive note dated 14 August 2001, headed 'Conduite professionnelle de M. Luigi Marcuccio, conseiller économique à la délégation en Angola', and to notify the applicant in writing of that destruction;

— order the Commission to pay the applicant the sum of EUR 1 520 000, or such other sum as the Tribunal may consider just, in compensation for damage suffered by the applicant to date;

— order the Commission to pay the applicant, from tomorrow until final implementation of judgment in favour of the applicant, the daily sum of EUR 1 000, or such other sum as the Tribunal may consider just, to be paid on the first day of each month in arrear, in respect of damage suffered by the applicant during the period between tomorrow and the date of implementation.

— order the Commission to pay the costs.

Pleas in law and main arguments

Absolute failure to state reasons, and illogicality, inconsistency, irrationality, confusion and pretexts in the reasons put forward by the Commission; (2) serious and manifest breach of the law; (3) infringement of the duty to pay due regard to the welfare of officials and of the duty of sound administration.

Action brought on 31 August 2007 — Marcuccio v Commission

(Case F-87/07)

(2007/C 247/73)

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 note of 18 December 2006, prot. ADMIN.B.2 MB/hm (2006) 29517;

— annul the decision, in whatever form, by which the Commission rejected the applicant's claim of 2 August 2006, seeking: (1) compensation for damage suffered by the applicant through unlawful actions and conduct concerning three medical certificates produced by the applicant in the summer of 2001 (the damage in question); and (2) authorisation under Article 19 of the Staff Regulations of Officials of the European Communities to give evidence in legal proceedings which the applicant intends to bring in relation to the above actions and conduct, and to produce before the competent courts a note dated 14 August 2001;

— annul, so far as necessary, the note dated 27 April 2007, ref. ADMINB.2/MB/ade D(07) 9132, rejecting the applicant's complaint of 12 January 2007 against the rejection of the claim of 2 August 2006;

— annul, so far as necessary, the note of 27 September 2005, ref. ADMIN/IDOC/GC/eh D(2005) 22005;

— ascertain the reality of the actions and conduct complained of in the applicant's claim of 2 August 2006, and declare them unlawful,

— order the Commission to pay the applicant the sum of EUR 100 000, or such other sum as the Tribunal may consider just, in compensation for damage suffered by the applicant to date;

— order the Commission to pay the applicant, from tomorrow until final implementation of judgment in favour of the applicant, the daily sum of EUR 20, or such other sum as the Tribunal may consider just, to be paid on the first day of each month in arrear, in respect of damage suffered by the applicant during the period between tomorrow and the date of implementation.

— order the Commission to pay the costs.

Pleas in law and main arguments

Absolute failure to state reasons, and illogicality, inconsistency, irrationality, confusion and pretexts in the reasons put forward by the Commission; (2) serious and manifest breach of the law; (3) infringement of the duty to pay due regard to the welfare of officials and of the duty of sound administration.

CORRIGENDA

Corrigendum to the notice in the Official Journal in Case T-263/07

('Official Journal of the European Union' C 223 of 22 September 2007, p 12)

(2007/C 247/74)

The notice in the Official Journal in Case T-263/07 *Estonia* v *Commission* should read as follows:

'Action brought on 16 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 Uibo, 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;

— 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.

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