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IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS AND BODIES

COURT OF JUSTICE

(2007/C 269/01)

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

OJ C 247, 20.10.2007

Past publications

OJ C 235, 6.10.2007

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

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Election of Presidents of Chambers of three Judges

(2007/C 269/02)

At a meeting on 25 September 2007, the Judges of the Court of Justice, pursuant to the second subparagraph of Article 10(1) of the Rules of Procedure, elected Mr Tizzano, Mr Bay Larsen, Mr Lõhmus and Mr Arestis as Presidents of the Fifth, Sixth, Seventh and Eighth Chambers of three Judges respectively, for a period of one year expiring on 6 October 2008.

Assignment of Judges to the Chambers of three Judges

(2007/C 269/03)

At its meeting on 9 October 2007, the Court decided to assign the Judges to the Chambers as follows:

Fifth Chamber

Mr Tizzano, President,

Mr Schintgen, Mr Borg Barthet, Mr Ilešič and Mr Levits, Judges

Sixth Chamber

Mr Bay Larsen, President,

Sir Konrad Schiemann, Mr Makarczyk, Mr Kūris, Mr Bonichot and Ms Toader, Judges

Seventh Chamber

Mr Lõhmus, President,

Mr Cunha Rodrigues, Mr Klučka, Mr Ó Caoimh, Ms Lindh and Mr Arabadjiev, Judges

Eighth Chamber

Mr Arestis, President,

Ms Silva de Lapuerta, Mr Juhász, Mr Malenovský and Mr von Danwitz, Judges

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Lists for the purposes of determining the composition of the formations of the Court

(2007/C 269/04)

At its meeting on 9 October 2007, the Court drew up the lists referred to in the second subparagraph of Article 11c(2) of the Rules of Procedure for determining the composition of the Chambers of three Judges as follows:

Fifth Chamber

Mr Schintgen

Mr Borg Barthet

Mr Ilešič

Mr Levits

Sixth Chamber

Sir Konrad Schiemann

Mr Makarczyk

Mr Kūris

Mr Bonichot

Ms Toader

Seventh Chamber

Mr Cunha Rodrigues

Mr Klučka

Mr Ó Caoimh

Ms Lindh

Mr Arabadjiev

Eighth Chamber

Ms Silva de Lapuerta

Mr Juhász

Mr Malenovský

Mr von Danwitz

Appointment of the First Advocate General

(2007/C 269/05)

The Court of Justice appointed Mr Poiares Maduro as First Advocate General for a period of one year expiring on 6 October 2008, pursuant to the third subparagraph of Article 10(1) of the Rules of Procedure.

Taking of the oath by the new members of the Court of First Instance

(2007/C 269/06)

Appointed Judges at the Court of First Instance of the European Communities for the period from 1 September 2007 to 31 August 2013 by decisions of the Representatives of the Governments of the Member States of the European Communities of 25 April 2007 ([1]) and 23 May 2007 ([2]), Mr Dittrich, Mr Soldevila Fragoso and Mr Truchot took the oath before the Court of Justice on 17 September 2007.

Appointed Judge at the Court of First Instance of the European Communities for the period from 17 September 2007 to 31 August 2010 by decision of the Representatives of the Governments of the Member States of the European Communities of 25 April 2007 ([3]), Mr Frimodt Nielsen took the oath before the Court of Justice on 17 September 2007.

([1]) OJ L 114 of 1.5.2007, p. 27.
([2]) OJ L 139 of 31.5.2007, p. 32.
([3]) OJ L 114 of 1.5.2007, p. 26.

Judgment of the Court (Grand Chamber) of 11 September 2007 — Maria-Luise Lindorfer v Council of the European Union

(Case C-227/04 P) ([1])

(Appeal — Officials — Transfer of pension rights — Professional activities prior to entering the service of the Communities — Calculation of the years of pensionable service — Article 11(2) of Annex VIII to the Staff Regulations — General implementing provisions — Principle of non-discrimination — Principle of equal treatment)

(2007/C 269/07)

Language of the case: French

Parties

Appellant: Maria-Luise Lindorfer (represented by: G. Vandersanden and L. Levi, lawyers)

Other party to the proceedings: Council of the European Union (represented by: F. Anton and M. Sims-Robertson, Agents)

Re:

Appeal against the judgment of the Court of First Instance (Fifth Chamber) of 18 March 2004 in Case T-204/01 *Lindorfer* v *Council* dismissing her action for annulment of the Council decision of 3 November 2000 calculating her years of pensionable service following transfer to the Community scheme of the redemption value of the pension rights which she had acquired under the Austrian scheme.

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the Court of First Instance of the European Communities of 18 March 2004 in Case T-204/01 Lindorfer v Council to the extent that it dismissed Ms Lindorfer's action on the ground that there was no discrimination based on sex;*

2. *Annuls the Decision of the Council of the European Union of 3 November 2000 calculating the number of Ms Lindorfer's years of pensionable service;*

3. *Dismisses the remainder of the appeal;*

4. *Orders the Council of the European Union to pay the costs at first instance and on appeal.*

([1]) JO C 190, 24.7.2004.

Judgment of the Court (Fourth Chamber) of 13 September 2007 — Commission of the European Communities v Italian Republic

(Case C-260/04) ([1])

(Failure of a Member State to fulfil obligations — Freedom of establishment and freedom to provide services — Public service concessions — Renewal of 329 horse-race betting licences without inviting competing bids — Requirements of publication and transparency)

(2007/C 269/08)

Language of the case: Italian

Parties

Applicant: Commission of the European Communities (represented by: K. Wiedner, C. Cattabriga and L. Visaggio, Agents)

Defendant: Italian Republic (represented by: I.M. Braguglia, Agent, and G. De Bellis, Lawyer)

Interveners in support of the defendant: Kingdom of Denmark (represented by: J. Molde, Agent), Kingdom of Spain (represented by: F. Díez Moreno, Agent)

Re:

Failure of a Member State to fulfil obligations — Infringement of the principle of transparency and the requirement to advertise pursuant to Article 43 *et seq*. EC and Article 49 *et seq*. EC — Renewal of 329 horse-racing betting licences without inviting competing bids.

Operative part of the judgment

The Court:

1) *Declares that, by renewing 329 licences for horse-race betting operations without inviting any competing bids, the Italian Republic failed to fulfil its obligations under Articles 43 and 49 EC and, in particular, infringed the general principle of transparency and the obligation to ensure a sufficient degree of advertising.*

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

([1]) OJ C 217, 28.8.2004.

Judgment of the Court (Second Chamber) of 20 September 2007 (reference for a preliminary ruling from the House of Lords) — The Queen, Veli Tum, Mehmet Dari v Secretary of State for the Home Department

(Case C-16/05) ([1])

(Association between the EEC and Turkey — Article 41(1) of the Additional Protocol — 'Standstill' clause — Scope — National legislation introducing, after the entry into force of the Additional Protocol, new restrictions regarding the conditions of and procedures for entry into the territory of the Member State concerned)

(2007/C 269/09)

Language of the case: English

Referring court

House of Lords

Parties to the main proceedings

Applicants: The Queen, Veli Tum, Mehmet Dari,

Defendant: Secretary of State for the Home Department

Re:

Reference for a preliminary ruling — House of Lords — Interpretation of Article 41(1) of the Additional Protocol, signed on 23 November 1970, annexed to the Agreement establishing an Association between the European Economic Community and Turkey and on measures to be taken for their entry into force (OJ 1977 L 361, p. 60) — Whether a Member State may introduce new restrictions on entry for Turkish nationals seeking to establish themselves in business in that State

Operative part of the judgment

Article 41(1) of the Additional Protocol, which was signed on 23 November 1970 at Brussels and concluded, approved and confirmed on behalf of the Community by Council Regulation (EEC) No 2760/72 of 19 December 1972, is to be interpreted as prohibiting the introduction, as from the entry into force of that protocol with regard to the Member State concerned, of any new restrictions on the exercise of freedom of establishment, including those relating to the substantive and/or procedural conditions governing the first admission into the territory of that State, of Turkish nationals intending to establish themselves in business there on their own account.

([1]) OJ C 69, 19.3.2005.

Judgment of the Court (Grand Chamber) of 11 September 2007 (reference for a preliminary ruling from the Finanzgericht Köln) — Herbert Schwarz and Marga Gootjes-Schwarz v Finanzamt Bergisch Gladbach

(Case C-76/05) ([1])

(Article 8a of the EC Treaty (now, after amendment, Article 18 EC) — European Citizenship — Article 59 of the EC Treaty (now, after amendment, Article 49 EC) — Freedom to provide services — Income tax legislation — School fees — Tax deductibility limited to school fees paid to national private establishments)

(2007/C 269/10)

Language of the case: German

Referring court

Finanzgericht Köln

Parties to the main proceedings

Applicants: Herbert Schwarz and Marga Gootjes-Schwarz

Defendant: Finanzamt Bergisch Gladbach,

Re:

Compatibility with Articles 18, 39, 43 and 49 EC of national legislation on income tax giving the benefit of a tax reduction for children's school fees, provided that the children are educated in certain national establishments — Children educated in establishments of other Member States

Operative part of the judgment

1. *Where taxpayers of a Member State send their children to a school situated in another Member State the financing of which is essentially from private funds, Article 49 EC must be interpreted as precluding legislation of a Member State which allows taxpayers to claim as special expenses conferring a right to a reduction in income tax the payment of school fees to certain private schools established in national territory, but generally excludes that possibility in relation to school fees paid to a private school established in another Member State.*

2. *Where taxpayers of a Member State send their children to a school established in another Member State, the services of which are not covered by Article 49 EC, Article 18 EC precludes legislation which allows taxpayers to claim as special expenses conferring a right to a reduction in income tax the payment of school fees to certain private schools established in national territory, but generally excludes that possibility in relation to school fees paid to a private school established in another Member State.*

([1]) OJ C 93, 16.4.2005.

Judgment of the Court (Grand Chamber) of 11 September 2007 (reference for a preliminary ruling from the Centrale Raad van Beroep (Netherlands)) — D.P. W. Hendrix v Raad van Bestuur van het Uitvoeringsinstituut Werknemersverzekeringen

(Case C-287/05) ([1])

(Social security for migrant workers — Articles 12 EC, 17 EC, 18 EC and 39 EC — Regulation (EEC) No 1408/71 — Article 4(2a), Article 10a and Annex IIa — Regulation (EEC) No 1612/68 — Article 7(1) — Non-contributory benefits — Netherlands benefit for disabled young people — Non-exportability)

(2007/C 269/11)

Language of the case: Dutch

Referring court

Centrale Raad van Beroep (Netherlands)

Parties to the main proceedings

Applicant: D.P.W. Hendrix

Defendant: Raad van Bestuur van het Uitvoeringsinstituut Werknemersverzekeringen

Re:

Reference for a preliminary ruling — Centrale Raad van Beroep — Interpretation of Articles 4(2a) and 10a of and Annex IIa to Regulation No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed

persons and to members of their families moving within the Community (OJ, English Special Edition 1971(II), p. 416), as amended by Council Regulation (EEC) No 1247/92 of 30 April 1992 (OJ 1992 L 136, p. 1) — Interpretation of Article 7(2) of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition 1968(II), p. 475) — Interpretation of Articles 12, 18 and 39 EC — Special non-contributory benefits — Coordinating scheme provided for in Article 10a of Regulation No 1408/71 — Scope — Whether or not it includes a benefit for disabled young people referred to in Annex IIa to Regulation No 1408/71 — Recipients resident in the Netherlands

Operative part of the judgment

1. *A benefit such as that provided under the Law on provision of incapacity benefit to disabled young people (Wet arbeidsongeschiktheidsvoorziening jonggehandicapten) of 24 April 1997 must be regarded as a special non-contributory benefit within the meaning of Article 4(2a) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, as amended by Council Regulation (EC) No 1223/98 of 4 June 1998, with the result that only the coordinating provision in Article 10a of that regulation must be applied to persons who are in the situation of the applicant in the main proceedings and that payment of that benefit may validly be reserved to persons who reside on the territory of the Member State which provides the benefit. The fact that the person concerned previously received a benefit for disabled young people which was exportable is of no relevance to the application of those provisions.*

2. *Article 39 EC and Article 7 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community must be interpreted as not precluding national legislation which applies Article 4(2a) and Article 10a of Regulation No 1408/71, as amended and updated by Regulation No 118/97, as amended by Regulation No 1223/98, and provides that a special non-contributory benefit listed in Annex IIa to Regulation No 1408/71 may be granted only to persons who are resident in the national territory. However, implementation of that legislation must not entail an infringement of the rights of a person in a situation such as that of the applicant in the main proceedings which goes beyond what is required to achieve the legitimate objective pursued by the national legislation. It is for the national court, which must, so far as possible, interpret the national legislation in conformity with Community law, to take account, in particular, of the fact that the worker in question has maintained all of his economic and social links to the Member State of origin.*

([1]) OJ C 296, 26.11.2005.

Judgment of the Court (First Chamber) of 20 September 2007 — Commission of the European Communities v Kingdom of the Netherlands

(Case C-297/05) ([1])

(Identification and compulsory roadworthiness test prior to registration of vehicles in a Member State — Articles 28 EC and 30 EC — Directives 96/96/EC and 1999/37/EC — Recognition of registration certificates issued and roadworthiness tests conducted in other Member States)

(2007/C 269/12)

Language of the case: Dutch

Parties

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

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

Intervener in support of the defendant: Republic of Finland (represented by: E. Bygglin, acting as Agent)

Re:

Failure of a Member State to fulfil obligations — Breach of Articles 28 EC and 30 EC — Motor vehicles already registered in another Member State required to undergo a technical examination prior to their registration in the Netherlands

Operative part of the judgment

The Court:

1. *Declares that, by requiring vehicles which are more than three years old and which have previously been registered in other Member States to undergo testing as to their general condition prior to registration in the Netherlands, the Kingdom of the Netherlands has failed to fulfil its obligations under Articles 28 EC and 30 EC;*

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

3. *Orders the Commission of the European Communities, the Kingdom of the Netherlands and the Republic of Finland to bear their own respective costs.*

([1]) OJ C 296, of 26.11.2005.

Judgment of the Court (Fourth Chamber) of 20 September 2007 — Commission of the European Communities v Italian Republic

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

(Failure of a Member State to fulfil obligations — Directive 92/43/EEC — Conservation of natural habitats and of wild fauna and flora — Directive 79/409/EEC — Conservation of wild birds — Assessment of the environmental impact of works to modify ski runs)

(2007/C 269/13)

Language of the case: Italian

Parties

Applicant: Commission of the European Communities (represented by: M. van Beek and D. Recchia, agents)

Defendant: Italian Republic (represented by: I.M. Braguglia and G. Fiengo, agents)

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 6(2) to (4) in conjunction with Article 7 of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7) — Infringement of Article 4(1) and (2) of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (OJ 1979 L 203, p. 1) — Extension of the Santa Caterina Valfurva ski area in the Stelvio National Park (Special Protection Area IT 2040044) without any prior environmental impact assessment being carried out — Failure to take measures to avoid disturbing and damaging the habitats of species for which the special protection area was designated.

Operative part of the judgment

The Court:

1. *Declares that:*

   — *by authorising measures likely to have a significant impact on Special Protection Area IT 2040044, Parco Nazionale dello Stelvio, without making them subject to an appropriate assessment of their implications in the light of the area's conservation objectives;*

   — *by authorising such measures, without complying with the provisions which allow a project to be carried out, in spite of a negative assessment of the implications and in the absence of alternative solutions, only for imperative reasons of overriding public interest and then only after adopting and communicating to the Commission of the European Communities all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected; and*

   — *by failing to adopt measures to avoid the deterioration of natural habitats and habitats of species and the disturbance of species for which SPA IT 2040044, Parco Nazionale dello Stelvio, was designated,*

   the Italian Republic has failed to fulfil its obligations under Article 6(2) to (4) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, in conjunction with Article 7 of that directive, and under Article 4(1) and (2) of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds;

2. *Dismisses the remainder of the action;*

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

([1]) OJ C 299, 17.9.2005.

Judgment of the Court (Second Chamber) of 13 September 2007 (reference for a preliminary ruling from the Juzgado de lo Social de San Sebastián, Spain) — Yolanda Del Cerro Alonso v Osakidetsa (Servicio Vasco de Salud)

(Case C-307/05) ([1])

(Directive 1999/70/EC — Clause 4 of the framework agreement on fixed-term work — Principle of non-discrimination — Concept of 'employment conditions' — Length-of-service allowance — Inclusion — Objective grounds justifying a difference in treatment — None)

(2007/C 269/14)

Language of the case: Spanish

Referring court

Juzgado de lo Social de San Sebastian

Parties to the main proceedings

Applicant: Yolanda Del Cerro Alonso

Defendant: Osakidetsa (Servicio Vasco de Salud)

Re:

Reference for a preliminary ruling — Juzgado de lo Social San Sebastian — Interpretation of Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p. 43) — Whether working conditions include financial conditions — Length of service allowance — Non-payment due to agreements between the staff trade union and the administration — Adequate and objective reasons

Operative part of the judgment

1. *The concept of 'employment conditions' referred to in clause 4(1) of the framework agreement on fixed-term work, concluded on 18 March 1999, and which is set out in the Annex to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP must be interpreted as meaning that it can act as a basis for a claim such as that at issue in the main proceedings, which seeks the grant to a fixed-term worker of a length-of-service allowance which is reserved under national law solely to permanent staff.*

2. *Clause 4(1) of the framework agreement must be interpreted as meaning that it precludes the introduction of a difference in treatment between fixed-term workers and permanent workers which is justified solely on the basis that it is provided for by a provision of statute or secondary legislation of a Member State or by a collective agreement concluded between the staff union representatives and the relevant employer.*

([1]) OJ C 257, 15.12.2005.

Judgment of the Court (Grand Chamber) of 11 September 2007 — Commission of the European Communities v Federal Republic of Germany

(Case C-318/05) ([1])

(Failure by a Member State to fulfil its obligations — Articles 18 EC, 39 EC, 43 EC and 49 EC — Income tax legislation — School fees — Tax deductibility limited to school fees paid to national private establishments)

(2007/C 269/15)

Language of the case: German

Parties

Applicant: Commission of the European Communities (represented by: K. Gross and R. Lyal, Agents)

Defendant: Federal Republic of Germany (represented by: M. Lumma and U. Forsthoff, Agents)

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 18, 39, 43 and 49 EC — National income tax legislation which excludes without exception the possibility to deduct tax in respect of school fees of children who are receiving education abroad.

Operative part of the judgment

1) *By generally excluding school fees for attending a school situated in another Member State from the tax deduction for special expenses under Article 10(1)(9) of the Law on Income Tax (Einkommensteuergesetz) in the version published on 19 October 2002, the Federal Republic of Germany has failed to fulfil its obligations under Articles 18 EC, 39 EC, 43 EC and 49 EC.*

2) *The remainder of the action is dismissed.*

3) *The Federal Republic of Germany is ordered to pay the costs.*

([1]) OJ C 257, 15.10.2005.

Judgment of the Court (Second Chamber) of 20 September 2007 — Commission of the European Communities v Italian Republic

(Case C-388/05) ([1])

(Failure of a Member State to fulfil obligations — Conservation of natural habitats — Wild fauna and flora — Special Protection Area 'Valloni e steppe pedegarganiche')

(2007/C 269/16)

Language of the case: Italian

Parties

Applicant: Commission of the European Communities (represented by: A. Aresu and D. Recchiqa, Agents,)

Defendant:. (represented by: I. Braguglia, Agent, and G. Fiengo, Lawyer)

Re:

Failure of a Member State to fulfil obligations — Breach of Article 4(4) of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (OJ 1979 L 103, p. 1) and of Article 6(2), (3) and (4) and Article 7 of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7) — Obligation to take appropriate steps to avoid deterioration of natural habitats and species habitats within special areas of conservation — Industrial developments affecting the Gargano National Park

Operative part of the judgment

The Court:

1. *Declares that, by failing to take appropriate steps to avoid, in the special protection area 'Valloni e steppe pedegarganiche', the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which that area was established, the Italian Republic failed, in respect of the period before 28 December 1998, to fulfil its obligations under Article 4(4) of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds and, in respect of the period after that date, has failed to fulfil its obligations under Article 6(2) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora;*

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

([1]) OJ C 22, 28.1.2006.

Judgment of the Court (Grand Chamber) of 11 September 2007 (reference for a preliminary ruling from the Supremo Tribunal de Justiça — Portugal) — Merck Genericos-Produtos Farmacêuticos L.[da] v Merck & Co. Inc., Merck Sharp & Dohme, L.[da]

(Case C-431/05) ([1])

(Agreement establishing the World Trade Organisation — Article 33 of the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPs) — Patents — Minimum term of protection — Legislation of a Member State providing for a lesser term — Article 234 EC — Jurisdiction of the Court — Direct effect)

(2007/C 269/17)

Language of the case: Portugese

Referring court

Supremo Tribunal de Justiça

Parties to the main proceedings

Applicant: Merck Genéricos-Produtos Farmacêuticos L.[da]

Defendant: Merck & Co. Inc., Merck Sharp & Dohme, L.[da]

Re:

Reference for a preliminary ruling — Supremo Tribunal de Justiça — Interpretation of Article 33 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) annexed to the Agreement establishing the World Trade Organisation (OJ 1994 L 336, p. 214) — Jurisdiction in relation to interpretation — Direct effect

Operative part of the judgment

As Community legislation in the sphere of patents now stands, it is not contrary to Community law for Article 33 of the Agreement on Trade-Related Aspects of Intellectual Property Rights, constituting Annex 1C to the Agreement establishing the World Trade Organisation, signed at Marrakesh on 15 April 1994 and approved by Council Decision 94/800/EC concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994), to be directly applied by a national court subject to the conditions provided for by national law.

([1]) OJ C 36, 11.2.2006.

Judgment of the Court (Third Chamber) of 13 September 2007 — Land Oberösterreich and Republic of Austria v Commission of the European Communities

(Joined Cases C-439/05 P and C-454/05 P) ([1])

(Appeal — Directive 2001/18/EC — Decision 2003/653/EC — Deliberate release into the environment of genetically modified organisms — Article 95(5) EC — National provisions derogating from a harmonisation measure justified by new scientific evidence and by a problem specific to one Member State — Principle of the right to be heard)

(2007/C 269/18)

Language of the case: German

Parties

Appellants: Land Oberösterreich (represented by G. Hörmanseder, Agent, and by F. Mittendorfer, Rechtsanwalt), Republic of Austria (represented by H. Dossi and A. Hable, Agents)

Other party to the proceedings: Commission of the European Communities (represented by: U. Wölker and M. Patakia, Agents)

Re:

Appeal brought against the judgment of the Court of First Instance (Fourth Chamber) of 5 October 2005 in Joined Cases T-366/03 *Land Oberösterreich* v *Commission* and T-235/04 *Austria* v *Commission* by which the Court of First Instance dismissed actions seeking annulment of Commission Decision 2003/653/EC of 2 September 2003 relating to national provisions on banning the use of genetically modified organisms in the region of Upper Austria notified by the Republic of Austria pursuant to Article 95(5) of the EC Treaty — National provisions derogating from a harmonisation measure justified by a problem specific to a Member State

Operative part of the judgment

The Court:

1) *Dismisses the appeals;*

2) *Orders the Land Oberösterreich and the Republic of Austria to pay the costs.*

([1]) OJ C 48, 25.2.2006.
OJ C 60, 11.3.2006.

Judgment of the Court (Second Chamber) of 13 September 2007 — Common Market Fertilizers SA v Commission of the European Communities

(Case C-443/05 P) ([1])

(Appeal — Anti-dumping duties — Article 239 of the Customs Code — Remission of import duties — First paragraph of Article 907 of Regulation (EEC) No 2454/93 — Interpretation — Legality — Commission decision — Group of experts meeting in the framework of the Customs Code Committee — Distinct entity in functional terms — Articles 2 and 5(2) of Council Decision 1999/468/EC — Article 4 of the rules of procedure of the Customs Code Committee — Conditions for the application of Article 239 of the Customs Code — No obvious negligence)

(2007/C 269/19)

Language of the case: French

Parties

Appellant: Common Market Fertilizers SA (represented by: A. Sutton, Barrister, and N. Flandin, avocat)

Other party to the proceedings: Commission of the European Communities (represented by: X. Lewis, Agent)

Re:

Appeal seeking to have set aside the judgment of the Court of First Instance of 27 September 2005 in Joined Cases T-134/03 and T-135/03 *Common Market Fertilizers* v *Commission* by which the Court dismissed the actions for annulment of Commission Decisions C(2002) 5217 final and C(2002) 5218 final of 20 December 2002 declaring the remission of import duties to be unjustified in a particular case.

Operative part of the judgment

The Court:

1) *Dismisses the appeal;*

2) *Orders Common Market Fertilizers SA to pay the costs.*

([1]) OJ C 36, 11.2.2006.

Judgment of the Court (Fourth Chamber) of 13 September 2007 (reference for a preliminary ruling from the Oberster Gerichtshof, Austria) — Mohamed Jouini, Okay Gönen, Hasan Bajric, Gerald Huber, Manfred Ortner, Sükran Karacatepe, Franz Mühlberger, Nakil Bakii, Hannes Kranzler, Jürgen Mörth, Anton Schneeberger, Dietmar Susteric, Sascha Wörnhör, Aynur Savci, Elena Peter, Egon Schmöger, Mehmet Yaman, Dejan Preradovic, Andreas Mitter, Wolfgang Sorger, Franz Schachenhofer, Herbert Weiss, Harald Kaineder, Ognen Stajkovski, Jovica Vidovic v Princess Personal Service GmbH (PPS)

(Case C-458/05) ([1])

(Social policy — Directive 2001/23/EC — Safeguarding of employees' rights — Transfer of undertakings — Concept of 'Transfer' — Temporary employment business)

(2007/C 269/20)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: Mohamed Jouini, Okay Gönen, Hasan Bajric, Gerald Huber, Manfred Ortner, Sükran Karacatepe, Franz Mühlberger, Nakil Bakii, Hannes Kranzler, Jürgen Mörth, Anton Schneeberger, Dietmar Susteric, Sascha Wörnhör, Aynur Savci, Elena Peter, Egon Schmöger, Mehmet Yaman, Dejan Preradovic, Andreas Mitter, Wolfgang Sorger, Franz Schachenhofer, Herbert Weiss, Harald Kaineder, Ognen Stajkovski, Jovica Vidovic.

Defendant: Princess Personal Service GmbH (PPS)

Re:

Reference for a preliminary ruling — Oberster Gerichtshof — Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (OJ 2001 L 82, p. 16) — Scope of application — Concept of 'part of an undertaking' — Transfer between two temporary staff agencies of an office worker, a branch manager, a customer adviser and a manager and a third of the temporary staff together with the clients using those staff.

Operative part of the Judgment

Article 1(1) of Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses must be interpreted as applying to a situation where part of the administrative personnel and part of the temporary workers are transferred to another temporary employment business in order to carry out the same activities in that business for the same clients and — which is a matter for the referring court to establish — the assets affected by the transfer are sufficient in themselves to allow the services characterising the economic activity in question to be provided without recourse to other significant assets or to other parts of the business.

([1]) OJ C 178, 29.7.2006.

Judgment of the Court (Grand Chamber) of 11 September 2007 — Reference for a preliminary ruling from the Cour d'appel de Nancy, France — Céline SARL v Celine SA

(Case C-17/06) ([1])

(Trade marks — Articles 5(1)(a) and 6(1)(a) of First Directive 89/104/EEC — Right of the proprietor of a registered trade mark to oppose the use by a third party of a sign which is identical to the mark — Use of the sign as a company, trade or shop name — Right of the third party to use his name)

(2007/C 269/21)

Language of the case: French

Referring Party

Cour d'appel de Nancy

Parties to the main proceedings

Applicant: Céline SARL

Defendant: Céline SA

Re:

Reference for a preliminary ruling — Cour d'appel de Nancy — Interpretation of Article 5(1) of Directive 89/104/EEC: First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989 L 40, p. 1) — Use of a sign identical to a registered word mark as a company name and shop name in connection with the marketing of identical goods.

Operative part of the judgment

The unauthorised use by a third party of a company name, trade name or shop name which is identical to an earlier mark in connection with the marketing of goods which are identical to those in relation to which that mark was registered constitutes use which the proprietor of that mark is entitled to prevent in accordance with Article 5(1)(a) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks, where the use is in relation to goods in such a way as to affect or to be liable to affect the functions of the mark.

Should that be the case, Article 6(1)(a) of Directive 89/104 can operate as a bar to such use being prevented only if the use by the third party of his company name or trade name is in accordance with honest practices in industrial or commercial matters.

([1]) OJ C 74, 25.3.2006.

Judgment of the Court (Fourth Chamber) of 20 September 2007 — Commission of the European Communities v Hellenic Republic

(Case C-74/06) ([1])

(Failure of a Member State to fulfil obligations — Article 90 EC — Registration tax on imported second-hand cars — Determination of taxable value — Depreciation of vehicles based solely on age — Publicising of criteria of calculation — Possibility of challenging the application of the fixed method of calculation)

(2007/C 269/22)

Language of the case: Greek

Parties

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

Defendant: Hellenic Republic (represented by: P. Mylonopoulos and K. Boskovits, Agents)

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 90 EC — Discriminatory taxation on imported second-hand cars

Operative part of the judgment

The Court:

1) *Declares that, by applying a single criterion of depreciation, based on the age of the vehicles, for the purpose of determining the taxable value of second-hand vehicles imported from another Member State into Greek territory in order to establish the registration tax, and by adopting a reduction in value of 7 % for vehicles between 6 and 12 months old or 14 % for vehicles more than a year old, which does not ensure that the tax due does not exceed, even if only in certain cases, the amount of the residual tax incorporated in the value of similar second-hand vehicles already registered in the national territory, the Hellenic Republic has failed to fulfil its obligations under Article 90 EC;*

2) *Dismisses the remainder of the action;*

3) *Orders the Hellenic Republic and the Commission to bear their own costs.*

([1]) OJ C 108, 6.5.2006.

Judgment of the Court (First Chamber) of 20 September 2007 (reference for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands)) — Staat der Nederlanden v Antroposana, Patiëntenvereniging voor Antroposofische Gezondheidszorg, Nederlandse Vereniging van Antroposofische Artsen, Weleda Nederland NV, Wala Nederland NV,

(Case C-84/06) ([1])

(Community code relating to medicinal products for human use — Articles 28 EC and 30 EC — Registration and marketing authorisation — Anthroposophic medicinal products)

(2007/C 269/23)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: Staat der Nederlanden

Defendants: Antroposana, Patiëntenvereniging voor Antroposofische Gezondheidszorg, Nederlandse Vereniging van Antroposofische Artsen, Weleda Nederland NV, Wala Nederland NV

Re:

Preliminary ruling — Hoge Raad der Nederlanden — Interpretation of Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ 2001 L 311, p. 67) — Marketing authorisation for anthroposophic medicinal products which are not homeopathic medicinal products within the meaning of Chapter 2 of Title III of the directive — National legislation which makes anthroposophic medicinal products subject to the conditions set out in Chapter 1 of Title III of the directive — Articles 28 EC and 30 EC.

Operative part of the judgment

Anthroposophic medicinal products may be marketed only on condition that they have been authorised under one of the procedures referred to in Article 6 of Directive 2001/83 of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use.

([1]) OJ C 108, 6.5.2006.

Judgment of the Court (Fourth Chamber) of 20 September 2007 (reference for a preliminary ruling from the Tampereen käräjäoikeus — Finland) — Sari Kiiski v Tampereen kaupunki

(Case C-116/06) ([1])

(Equal treatment for men and women — Protection of pregnant employees — Article 2 of Directive 76/207/EEC — Right to maternity leave — Articles 8 and 11 of Directive 92/85/EEC — Effect on the right to obtain an alteration of the duration of 'child-care leave')

(2007/C 269/24)

Language of the case: Finnish

Referring court

Tampereen käräjäoikeus

Parties to the main proceedings

Applicant: Sari Kiiski

Defendant: Tampereen kaupunki

Re:

Interpretation of Article 2 of Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (OJ 1976 L 39, p. 40), as amended by Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 (OJ 2002 L 269, p. 15), and of Articles 8 and 11 of Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (OJ 1992 L 348, p. 1) — Refusal of an employer to shorten the duration of child-care leave — Application made before the start of the leave on the ground of a new pregnancy of the person concerned — National legislation requiring unforeseeable and justified grounds as a condition for altering the duration of child-care leave, the practice adopted under the collective agreement excluding pregnancy from such grounds.

Operative part of the judgment

Article 2 of Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, as amended by Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002, which prohibits all direct and indirect discrimination on grounds of sex as regards working conditions, and Articles 8 and 11 of Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (10th individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC), which govern maternity leave, preclude provisions of national law concerning child-care leave which, in so far as they fail to take into account changes affecting the worker concerned as a result of pregnancy during the period of at least 14 weeks preceding and after childbirth, do not allow the person concerned to obtain at her request an alteration of the period of her child-care leave at the time when she claims her rights to maternity leave and thus deprive her of the rights attaching to that maternity leave.

([1]) OJ C 116, 20.5.2006.

Judgment of the Court (Second Chamber) of 20 September 2007 — Commission of the European Communities v Kingdom of Spain

(Case C-177/06) ([1])

(State Aid — Aid scheme — Incompatibility with the common market — Commission decision — Implementation — Abolition of the aid scheme — Cancellation of outstanding aid — Recovery of aid made available — Failure to fulfil obligations — Defences — Illegality of the decision — Absolute impossibility of giving effect to a decision)

(2007/C 269/25)

Language of the case: Spanish

Parties

Applicant: Commission of the European Communities (represented by: F. Castillo de la Torre and C. Urraca Caviedes, acting as Agents)

Defendant: Kingdom of Spain (represented by: N. Díaz Abad, Agent)

Re:

Member State's failure to fulfil its obligations — Failure to adopt, within the period prescribed, the measures necessary to ensure implementation of Articles 2 and 3 of the Commission's Decisions of 20 December 2001 on a State aid scheme implemented by Spain in 1993 for certain newly established firms in Guipúzcoa (Spain) (C(2001) 4448) (OJ L 77 of 24 March 2003, p. 1), in Álava (Spain) (C(2001) 4475) (OJ L 17 of 22 January 2003, p. 20) and in Vizcaya (Spain) (C(2001) 4478) (OJ L 40 of 14 February 2003, p. 11).

Operative part of the judgment

The Court rules:

1. *In failing to take the necessary measures within the prescribed period, to comply with Articles 2 and 3 of each of:*

   — *Commission Decision 2003/28/EC of 20 December 2001 on a State aid scheme implemented by Spain in 1993 for certain newly established firms in Álava (Spain);*

   — *Commission Decision 2003/86/EC of 20 December 2001 on a State aid scheme implemented by Spain in 1993 for certain newly established firms in Vizcaya (Spain);*

   — *Commission Decision 2003/192/EC of 2 December 2001 on a State aid scheme implemented by Spain in 1993 for certain newly established firms in Guipúzcoa (Spain),*

   the Kingdom of Spain has failed to fulfil its obligations under those provisions;

2. *The Kingdom of Spain is ordered to pay the costs.*

([1]) OJ C 143, 17.6.2006.

Judgment of the Court (Third Chamber) of 20 September 2007 — Société des Produits Nestlé SA v Office for Harmonisation in the Internal Market (Trade Marks and Designs), Quick Restaurants SA

(Case C-193/06 P) ([1])

(Appeal — Community trade mark — Regulation (EC) No 40/94 — Article 8(1)(b) — Figurative mark containing the word 'QUICKY' — Opposition of holder of earlier national word marks QUICKIES — Likelihood of confusion — Overall assessment)

(2007/C 269/26)

Language of the case: French

Parties

Appellant: Société des Produits Nestlé SA (represented by: D. Masson, avocat)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (represented by: A. Folliard-Monguiral, agent), Quick Restaurants SA (represented by E. De Gryse, F. de Visscher and D. Moreau, avocats)

Re:

Appeal brought against the judgment of the Court of First Instance (First Chamber) of 22 February 2006 in Case T-74/04 *Nestlé* v *OHIM*, intervener: Quick Restaurants SA., dismissing the action for annulment of the decision of the Second Board of Appeal of OHIM of 17 December 2003 (Case R 922/2001-2) concerning opposition proceedings in which the parties were Société des Produits Nestlé SA and Quick Restaurants SA

Operative part of the judgment

The Court:

1. *Annuls the judgment of the Court of First Instance of the European Communities of 22 February 2006 in Case T-74/04 Nestlé v OHIM-Quick (QUICKY) to the extent that, contrary to Article 8(1)(b) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark, the Court did not assess the visual similarity of the signs at issue when relying on the overall impression given by them;*

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

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

4. *Reserves the costs.*

([1]) OJ C 165 of 15.7.2006.

Judgment of the Court (Fourth Chamber) of 13 September 2007 — Il Ponte Finanziaria SpA v Office for Harmonisation in the Internal Market (Trade Marks and Designs), F.M.G. Textiles Srl, formerly Marine Enterprise Projects — Società Unipersonale di Alberto Fiorenzi Srl

(Case C-234/06 P) ([1])

(Appeal — Community trade mark — Registration of the trade mark BAINBRIDGE — Opposition by the proprietor of earlier national trade marks all having the component 'Bridge' in common — Opposition rejected — Family of trade marks — Proof of use — Concept of 'defensive trade marks')

(2007/C 269/27)

Language of the case: Italian

Parties

Appellant: Il Ponte Finanziaria SpA (represented by: P.L. Roncaglia, A. Torrigiani Malaspina and M. Boletto, avvocati)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: O. Montalto and M. Buffolo, Agents), F.M.G. Textiles Srl, formerly Marine Enterprise Projects — Società Unipersonale di Alberto Fiorenza Srl (represented by: D. Marchi, avvocato)

Re:

Appeal against the judgment of the Court of First Instance (Fourth Chamber) of 23 February 2006 in Case T-194/03 *Il Ponte Finanziaria SpA* v *OHIM* dismissing an action brought by the proprietor of the word, figurative and three-dimensional trade marks 'Bridge', 'Old Bridge', 'The Bridge Basket', 'THE BRIDGE', 'The Bridge', 'FOOTBRIDGE', 'The Bridge Wayfarer' and 'OVER THE BRIDGE', for goods in Classes 18 and 25, for annulment of Decision R 1015/2001-4 of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (OHIM) of 17 March 2003 dismissing the appeal against the decision of the Opposition Division rejecting the opposition to the application for registration of the figurative mark 'Bainbridge' for goods in Classes 18 and 25.

Operative part of the judgment

The Court:

1) *dismisses the appeal;*

2) *orders Il Ponte Finanziaria SpA to pay the costs.*

([1]) OJ C 178, 29.7.2006.

Judgment of the Court (Sixth Chamber) of 20 September 2007 (reference for a preliminary ruling from the Hoge Raad der Nederlanden — The Netherlands) — Benetton Group SpA v G-Star International BV

(Case C-371/06) ([1])

(Trade marks — Directive 89/104/EEC — Article 3(1)(e), third indent, and Article 3(3) — Sign — Shape which gives substantial value to goods — Use — Advertising campaigns — Attractiveness of a shape acquired prior to the date of application for registration on account of recognition of it as a distinctive sign)

(2007/C 269/28)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: Benetton Group SpA

Defendant: G-Star International BV

Re:

Reference for a preliminary ruling — Hoge Raad der Nederlanden — Interpretation of Article 3(1)(e), third indent, of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989 L 40, p. 1) — Jeans whose distinctive sign is the features of working or motorcycling clothes with knee pads — Sign consisting of a shape which gives substantial value to the goods

Operative part of the judgment

The third indent of Article 3(1)(e) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks is to be interpreted as meaning that the shape of a product which gives substantial value to that product cannot constitute a trade mark under Article 3(3) of that directive where, prior to the application for registration, it acquired attractiveness as a result of its recognition as a distinctive sign following advertising campaigns presenting the specific characteristics of the product in question.

([1]) OJ C 371, 2.12.2006.

Judgment of the Court (Eighth Chamber) of 13 September 2007 — Commission of the European Communities v Hellenic Republic

(Case C-381/06) ([1])

(Failure of a Member State to fulfil obligations — Directive 2002/14/EC — Informing and consulting employees — Failure to transpose within the period prescribed)

(2007/C 269/29)

Language of the case: Greek

Parties

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

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

Re:

Failure of a Member State to fulfil obligations — Failure to adopt, within the period prescribed, all the provisions necessary to comply with Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community — Joint declaration of the European Parliament, the Council and the Commission on employee representation (OJ 2002 L 80, p. 29)

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt, within the period prescribed, all the laws, regulations and administrative provisions necessary to comply with Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community, the Hellenic Republic has failed to fulfil its obligations under that directive;*

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

([1]) OJ C 261, 28.10.2006.

Judgment of the Court (Sixth Chamber) of 13 September 2007 (reference for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands)) — Codirex Expeditie BV v Staatssecretaris van Financiën

(Case C-400/06) ([1])

(Common Customs Tariff — Combined Nomenclature — Tariff classification — Subheading 0202 30 50 — Cuts of frozen boned meat from a part of the forequarter of bovine animals)

(2007/C 269/30)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: Codirex Expeditie BV

Defendant: Staatssecretaris van Financiën

Re:

Preliminary ruling — Hoge Raad der Nederlandem — Interpretation of Additional Note 1.A.(h)(11) to Chapter 2 of Commission Regulation (EC) No 2204/1999 of 12 October 1999 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1999 L 278, p. 1) — Frozen boned meat derived from a part of the forequarter

Operative part of the judgment

1. *Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended by Commission Regulation (EC) No 2204/1999 of 12 October 1999, must be interpreted as meaning that pieces of frozen boned meat from the forequarter part of the bovine animal come under subheading 0202 30 50 of the Combined Nomenclature.*

2. *Annex I to Regulation No 2658/87, as amended by Regulation No 2204/1999, must be interpreted as meaning that pieces of frozen boned meat from the forequarter of the bovine animal do not have to satisfy any other conditions, and in particular, do not have to come from the same animal, in order to be classified under subheading 0202 30 50.*

([1]) JO C 310, 16.12.2006.

Reference for a preliminary ruling from the Landesgericht Klagenfurt (Austria), lodged on 9 July 2007 — A-Punkt Schmuckhandels GmbH v Claudia Schmidt

(Case C-315/07)

(2007/C 269/31)

Language of the case: German

Referring court

Landesgericht Klagenfurt

Parties to the main proceedings

Applicant: A-Punkt Schmuckhandels GmbH

Defendant: Claudia Schmidt

Questions referred

1. Does a rule of a Member State which prohibits the sale of silver jewellery by way of calling on private individuals for the purposes of selling, and collecting orders for, items of silver jewellery with a maximum individual value of EUR 40 constitute a restriction on the free movement of goods within the meaning of Articles 28 EC and 30 EC, if market access for Community goods is possible only by way of an additional burden on those goods in the form of the costs involved in changing marketing structures and making changes to, and extending, product ranges?

   If Question 1 is answered in the affirmative:

2. Does a national rule which, contrary to Articles 28 EC and 30 EC, prohibits the sale of items of silver jewellery with a maximum individual value of EUR 40 by way of calling on private individuals for the purposes of selling, and collecting orders for, such silver jewellery constitute a justifiable and proportionate measure which precludes the right of an individual to sell items of silver jewellery with a maximum individual value of EUR 40 by way of calling on private individuals for the purposes of selling, and collecting orders for, silver jewellery?

Reference for a preliminary ruling from the Verwaltungsgericht Giessen lodged on 9 July 2007 — Markus Stoß v Wetteraukreis

(Case C-316/07)

(2007/C 269/32)

Language of the case: German

Referring court

Verwaltungsgericht Giessen

Parties to the main proceedings

Applicant: Markus Stoß

Defendant: Wetteraukreis

Questions referred

1. Are Articles 43 and 49 EC to be interpreted as precluding a national monopoly on certain gaming, such as sports betting, where there is no consistent and systematic policy to limit gaming in the Member State concerned as a whole, in particular because the operators which have been granted a licence within that Member State encourage participation in other gaming — such as State-run lotteries and casino games — and, moreover, other games with the same or a higher suspected potential danger of addiction — such as betting on certain sporting events (e.g. horse racing) and slot machines — may be provided by private service providers?

2. Are Articles 43 and 49 EC to be interpreted as meaning that authorisations to operate sports betting, granted by State bodies specifically designated for that purpose by the Member States, which are not restricted to the particular national territory, entitle the holder of the authorisation and third parties appointed by it to make and implement offers to conclude contracts also in other Member States without any additional national authorisations being required?

Reference for a preliminary ruling from the Unabhängiger Finanzsenat, Außenstelle Wien (Austria), lodged on 16 July 2007 — Jobra Vermögensverwaltungs-Gesellschaft mbH v Finanzamt Amstetten Melk Scheibbs

(Case C-330/07)

(2007/C 269/33)

Language of the case: German

Referring court

Unabhängiger Finanzsenat, Außenstelle Wien

Parties to the main proceedings

Appellant: Jobra Vermögensverwaltungs-Gesellschaft mbH

Respondent: Finanzamt Amstetten Melk Scheibbs

Question referred

Do the provisions relating to the freedom of establishment (Article 43 EC et seq.) and/or the freedom to provide services (Article 49 EC *et seq.*) preclude national legislation in force on 31 December 2003 under which the grant to a trader of a tax advantage (investment growth premium) for the acquisition of unused tangible assets is conditional also upon those assets being used exclusively in a domestic place of business, whereas that tax advantage (investment growth premium) is not available for the acquisition of unused tangible assets which are used in a foreign place of business, including, therefore, in a place of business that is located elsewhere in the European Union?

Reference for a preliminary ruling from the Verwaltungsgerichtshof (Austria) lodged on 17 July 2007 — Josef Holzinger v Bundesministerium für Bildung, Wissenschaft und Kultur

(Case C-332/07)

(2007/C 269/34)

Language of the case: German

Referring court

Verwaltungsgerichtshof (Administrative Court)

Parties to the main proceedings

Applicant: Josef Holzinger

Defendant: Bundesministerium für Bildung, Wissenschaft und Kultur

Questions referred

1. Is Article 9(1) of Annex I to the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons [1] directly effective?

2. Is that provision to be interpreted as meaning that periods of employment completed in Switzerland before the entry into force of the Agreement (1 June 2002) must be taken into account for the purposes of advancement in comparable employment subsequently pursued in a Member State of the European Community, irrespective of when those periods of employment were completed?

[1] OJ 2002 L 114, p. 6.

Reference for a preliminary ruling from the Verwaltungsgericht Stuttgart (Germany), lodged on 20 July 2007 — Ibrahim Altun v Stadt Böblingen

(Case C-337/07)

(2007/C 269/35)

Language of the case: German

Referring court

Verwaltungsgericht Stuttgart

Parties to the main proceedings

Applicant: Ibrahim Altun

Defendant: Stadt Böblingen

Questions referred

1. Does the acquisition of the rights under the first sentence of Article 7 of Decision No 1/80 of the EEC-Turkey Association Council require that the 'principal' person entitled, with whom the member of the family has been legally resident for the period of three years, satisfies the conditions of the first sentence of Article 7 of Decision No 1/80 throughout the whole of that period?

2. Does it suffice in this respect for a member of the family to acquire the rights under the first sentence of Article 7 of Decision No 1/80 that the 'principal' person entitled is employed during that period for two years and six months with different employers, is then unemployed through no fault of his own for six months, and also remains unemployed for a substantial period thereafter?

3. Can a person also rely on the first sentence of Article 7 of Decision No 1/80 if he, as a member of the family, has received permission to join a Turkish national whose right to stay, and hence his lawful access to the labour force of a Member State, is based solely on the granting of political asylum on the ground of political persecution in Turkey?

4. In the event that Question 3 is to be answered in the affirmative: Can a member of the family rely on the first sentence of Article 7 of Decision No 1/80 even if the grant of political asylum, and on that basis the right of stay and lawful access to the labour market of the 'principal' person entitled (in this case the father), are based on false statements?

5. In the event that Question 4 is to be answered in the negative: Is it necessary in such a case, before refusal of the rights under the first sentence of Article 7 of Decision No 1/80 to the member of the family, that the rights of the 'principal' person entitled (in this case the father) are first formally withdrawn or revoked?

Reference for a preliminary ruling from the Bundesgerichtshof (Germany), lodged on 20 July 2007 — Rechtsanwalt Christopher Seagon als Insolvenzverwalter über das Vermögen der Frick Teppichboden Supermärkte GmbH v Deko Marty Belgium N.V.

(Case C-339/07)

(2007/C 269/36)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Rechtsanwalt Christopher Seagon als Insolvenzverwalter über das Vermögen der Frick Teppichboden Supermärkte GmbH (Christopher Seagon, lawyer, as liquidator in insolvency proceedings in respect of the assets of Frick Teppichboden Supermärkte GmbH)

Defendant: Deko Marty Belgium N.V.

Questions referred

1. On interpreting Article 3(1) of Council Regulation (EC) No 1346/2000 ([1]) of 29 May 2000 on insolvency proceedings and Article 1(2)(b) of Council Regulation (EC) No 44/2001 ([2]) of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, do the courts of the Member State within the territory of which insolvency proceedings regarding the debtor's assets have been opened have international jurisdiction under Regulation (EC) No 1346/2000 in respect of an action in the context of the insolvency to set a transaction aside that is brought against a person whose registered office is in another Member State?

2. If the first question is to be answered in the negative:

   Does an action in the context of the insolvency to set a transaction aside fall within Article 1(2)(b) of Regulation (EC) No 44/2001?

([1]) OJ 2000 L 160, p. 1.
([2]) OJ 2001 L 12, p. 1.

Reference for a preliminary ruling from the Sächsisches Landessozialgericht (Germany), lodged on 30 July 2007 — Kattner Stahlbau GmbH v Maschinenbau- und Metall-Berufsgenossenschaft

(Case C-350/07)

(2007/C 269/37)

Language of the case: German

Referring court

Sächsisches Landessozialgericht

Parties to the main proceedings

Applicant: Kattner Stahlbau GmbH

Defendants: Maschinenbau- und Metall-Berufsgenossenschaft

Questions referred

1. Is the respondent Maschinenbau- und Metall-Berufsgenossenschaft an undertaking within the meaning of Articles 81 EC and 82 EC?
2. Does the compulsory affiliation of the appellant to the respondent infringe Community law?

Reference for a preliminary ruling from the Verwaltungsgericht Stuttgart (Germany), lodged on 2 August 2007 — Kulpa Automatenservice Asperg GmbH v Land Baden-Württemberg

(Case C-358/07)

(2007/C 269/38)

Language of the case: German

Referring court

Verwaltungsgericht Stuttgart

Parties to the main proceedings

Applicant: Kulpa Automatenservice Asperg GmbH

Defendant: Land Baden-Württemberg

Questions referred

1. Are Articles 43 and 49 EC to be interpreted as precluding a national monopoly on certain gaming, such as sports betting and lotteries, where there is no consistent and systematic policy to limit gaming in the Member State concerned as a whole, because the operators which have been granted a licence within that Member State encourage and advertise participation in other gaming — such as State-run sports betting and lotteries — and, moreover, other games with the same or even higher potential danger of addiction — such as betting on certain sporting events (horse racing), slot machines and casino games — may be provided by private service providers?
2. Are Articles 43 and 49 EC to be interpreted as meaning that authorisations to operate sports betting, granted by the competent State bodies of the Member States, which are not restricted to the particular national territory, entitle the holder of the authorisation and third parties appointed by it to make and implement offers to conclude contracts in other Member States as well without any additional national authorisations being required?

Reference for a preliminary ruling from the Verwaltungsgericht Stuttgart (Germany), lodged on 2 August 2007 — SOBO Sport & Entertainment GmbH v Land Baden-Württemberg

(Case C-359/07)

(2007/C 269/39)

Language of the case: German

Referring court

Verwaltungsgericht Stuttgart

Parties to the main proceedings

Applicant: SOBO Sport & Entertainment GmbH

Defendant: Land Baden-Württemberg

Questions referred

1. Are Articles 43 and 49 EC to be interpreted as precluding a national monopoly on certain gaming, such as sports betting and lotteries, where there is no consistent and systematic policy to limit gaming in the Member State concerned as a whole, because the operators which have been granted a licence within that Member State encourage and advertise participation in other gaming — such as State-run sports betting and lotteries — and, moreover, other games with the same or even higher potential danger of addiction — such as betting on certain sporting events (horse racing), slot machines and casino games — may be provided by private service providers?

2. Are Articles 43 and 49 EC to be interpreted as meaning that authorisations to operate sports betting, granted by the competent State bodies of the Member States, which are not restricted to the particular national territory, entitle the holder of the authorisation and third parties appointed by it to make and implement offers to conclude contracts in other Member States as well without any additional national authorisations being required?

Reference for a preliminary ruling from the Verwaltungsgericht Stuttgart (Germany), lodged on 2 August 2007 — Andreas Kunert v Land Baden-Württemberg

(Case C-360/07)

(2007/C 269/40)

Language of the case: German

Referring court

Verwaltungsgericht Stuttgart

Parties to the main proceedings

Applicant: Andreas Kunert

Defendant: Land Baden-Württemberg

Questions referred

1. Are Articles 43 and 49 EC to be interpreted as precluding a national monopoly on certain gaming, such as sports betting and lotteries, where there is no consistent and systematic policy to limit gaming in the Member State concerned as a whole, because the operators which have been granted a licence within that Member State encourage and advertise participation in other gaming — such as State-run sports betting and lotteries — and, moreover, other games with the same or even higher potential danger of addiction — such as betting on certain sporting events (horse racing), slot machines and casino games — may be provided by private service providers?

2. Are Articles 43 and 49 EC to be interpreted as meaning that authorisations to operate sports betting, granted by the competent State bodies of the Member States, which are not restricted to the particular national territory, entitle the holder of the authorisation and third parties appointed by it to make and implement offers to conclude contracts in other Member States as well without any additional national authorisations being required?

Reference for a preliminary ruling from the Conseil de Prud'Hommes de Beauvais (France) lodged on 2 August 2007 — Olivier Polier v Najar EURL

(Case C-361/07)

(2007/C 269/41)

Language of the case: French

Referring court

Conseil de Prud'Hommes de Beauvais

Parties to the main proceedings

Applicant: Olivier Polier

Defendant: Najar EURL

Question referred

Is Order No 2005-893 ([1]) of 2 August 2005, which allows dismissal during the consolidation period of two years provided for in the New Recruitment Contract (Contrat Nouvelle Embauche) without giving details as to the legitimacy of the termination and without prior information, valid in the light of:

(1) European law, as defined in the Charter of Fundamental Rights, which makes it clear that workers are entitled not to be dismissed without valid reason;

(2) [Convention No] 158 of the International Labour Organisation concerning termination of employment; and

(3) The European Social Charter?

([1]) Order No 2005-893 of 2 August 2005 concerning the 'New Recruitment' Employment Contract, JORF No 179, of 3 August 2005, p. 12689.

Reference for a preliminary ruling from the Tribunal d'instance du VII[ème] arrondissement de Paris (France), lodged on 2 August 2007 — Kip Europe SA, KIP UK Ltd, Caretrex Logistiek BV, Utax GmbH v Administration des douanes — Direction générale des douanes et droits indirects

(Case C-362/07)

(2007/C 269/42)

Language of the case: French

Referring court

Tribunal d'instance du VIIème arrondissement de Paris

Parties to the main proceedings

Applicants: Kip Europe SA, Kip UK Ltd, Caretrex Logistiek BV, Utax GmbH

Defendant: Administration des douanes — Direction générale des douanes et droits indirects

Questions referred

1. Does the copy function of a multifunction apparatus of the kind described in these proceedings, designed to operate through a direct connection or a network with one or more computers, but capable, as regards the copying function only, of operating autonomously, constitute a 'specific function other than data processing' within the meaning of Note 5(E) to Chapter 84 of the Combined Nomenclature?

2. In the event of an affirmative answer to the first question, does the existence of that specific function, which is expressly acknowledged not to give the product its essential character, mean that classification in Chapter 84, pursuant to Note 5(E), is to be excluded, despite the existence of printing and scanner functions associated with data processing?

3. If that is the case, and in relation to equipment made up of three materially distinct modules (printer, scanner and computer), should the classification not be made on the basis of General Rule 3(b)?

4. More generally, on a correct interpretation of the Harmonised System and of the Combined Nomenclature, must printers of the kind described in this procedure be classified under heading 8471 60 or 9009 12 00?

5. Is it not the case that Commission Regulation (EC) No 400/2006 of 8 March 2006 ([1]) is invalid, in particular because it is contrary to the Harmonised System, to the Combined Nomenclature and to Rules 1 and 3(b) of the General Rules for the Interpretation of the Harmonised System and the Combined Nomenclature, in so far as it relies on the concept of a 'function that gives the apparatus its essential character' and its effect would be to classify printers of the kind described under heading 9009 12 00?

([1]) Commission Regulation (EC) No 400/2006 of 8 March 2006 concerning the classification of certain goods in the Combined Nomenclature (OJ 2006 L 70, p. 9).

Reference for a preliminary ruling from the Tribunal d'instance du VII[ème] arrondissement de Paris (France), lodged on 2 August 2007 — Hewlett Packard International SARL v Administration des douanes — Direction générale des douanes et droits indirects

(Case C-363/07)

(2007/C 269/43)

Language of the case: French

Referring court

Tribunal d'instance du VIIème arrondissement de Paris

Parties to the main proceedings

Applicant: Hewlett Packard International SARL

Defendant: Administration des douanes — Direction générale des douanes et droits indirects,

Questions referred

1. Does the copy function of a multifunction apparatus of the kind described in these proceedings, designed to operate through a direct connection or a network with one or more computers, but capable, as regards the copying function only, of operating autonomously, constitute a 'specific function other than data processing' within the meaning of Note 5(E) to Chapter 84 of the Combined Nomenclature?

2. In the event of an affirmative answer to the first question, does the existence of that specific function, which is expressly acknowledged not to give the product its essential character, mean that classification in Chapter 84, pursuant to Note 5(E), is to be excluded despite the existence of printing and scanner functions associated with data processing?

3. If that is the case, and in relation to equipment made up of two materially distinct modules (printer and scanner), should the classification not be made on the basis of General Rule 3(b)?

4. More generally, on a correct interpretation of the Harmonised System and of the Combined Nomenclature, must printers of the kind described in this procedure be classified under heading 8471 60 or 9009 12 00?

5. Is it not the case that Commission Regulation (EC) No 400/2006 of 8 March 2006 ([1]) is invalid, in particular because it is contrary to the Harmonised System, to the Combined Nomenclature and to Rules 1 and 3(b) of the General Rules for the Interpretation of the Harmonised System and the Combined Nomenclature, in so far as it relies on the concept of a 'function that gives the apparatus its essential character' and its effect would be to classify printers of the kind described under heading 9009 12 00?

([1]) Commission Regulation (EC) No 400/2006 of 8 March 2006 concerning the classification of certain goods in the Combined Nomenclature (OJ 2006 L 70, p. 9).

Action brought on 3 August 2007 — Commission of the European Communities v Hellenic Republic

(Case C-369/07)

(2007/C 269/44)

Language of the case: Greek

Parties

Applicant: Commission of the European Communities (represented by: E. Righini and I. Khatzigiannis)

Defendant: Hellenic Republic

Form of order sought

— Declare that by not having taken the necessary measures to comply with the judgment of the Court of 12 May 2005 in Case C-415/03, relating to the failure of the Hellenic Republic to fulfil its obligations under Article 3 of the decision of 2002 on aid granted by Greece to Olympic Airways, the Hellenic Republic has failed to fulfil its obligations under that decision and Article 228(1) EC;

— Order the Hellenic Republic to pay to the Commission the proposed penalty payment of EUR 53 611 for each day of delay in compliance with the judgment in Case C-415/03 relating to the decision of 2002, running from the date of delivery of the judgment in the present case until the date upon which the judgment in Case C-415/03 has been complied with;

— Order the Hellenic Republic to make a lump sum payment to the Commission, the amount of which is calculated by multiplying a daily amount by the number of days over which the failure to fulfil obligations continues, running from the date of delivery of the judgment in Case C-415/03 until the date of delivery of the judgment in the present case in relation to the decision of 2002;

— Order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

1. In the judgment of 12 May 2005 in Case C-415/03 the Court held that, by failing to take within the prescribed period all the measures necessary for repayment of the aid found to be unlawful and incompatible with the common market — except that relating to the contributions to the national social security institution (IKA) —, in accordance with Article 3 of Commission Decision 2003/372 of 11 December 2002, the Hellenic Republic had failed to fulfil its obligations under that article.

2. Given that the Hellenic Republic has not notified the Commission of any measure to comply with the judgment of the Court in Case C-415/03, despite assurances to the contrary from the Greek authorities, and that the Hellenic Republic has not yet recovered the aid held to be incompatible with the decision of 2002, the Commission has decided to bring the case before the Court of Justice under Article 228 EC.

3. In accordance with Article 228 EC and the relevant case-law of the Court, where the Commission brings proceedings before the Court of Justice because a Member State has not taken the measures necessary to comply with a judgment of the Court within the time limit laid down by the Commission, the Commission is to specify the amount of the lump sum and/or penalty payment to be paid by the Member State and which the Commission considers appropriate in the circumstances. The final decision as to the financial penalties to be imposed, as provided for by Article 228 EC, is taken by the Court, which in this case has unlimited jurisdiction.

4. Both the amount of the penalty payment and the amount of the lump sum proposed by the Commission to the Court in the present action are calculated according to the method established in the Communication of the Commission of 13 December 2005 on the application of Article 228 EC.

Reference for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on 3 August 2007 — Staatssecretaris van Financiën v Heuschen & Schrouff Oriental Foods Trading BV

(Case C-375/07)

(2007/C 269/45)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Appellant: Staatssecretaris van Financiën

Respondent: Heuschen & Schrouff Oriental Foods Trading BV

Questions referred

1. Do sheets as described in the annex to Commission Regulation (EC) No 1196/97 of 27 June 1997 ([1]) come under heading 1905 of the Combined Nomenclature if they are prepared from rice flour, salt and water and then dried, but do not undergo any heat treatment?

2. In the light of the answer to Question 1, is Regulation (EC) No 1196/97 valid?

3. Must Article 871 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code [CCC] ([2]), as amended by Commission Regulation (EC) No 1677/98 of 29 July 1998 ([3]), be construed as meaning that if, under Article 871(1) thereof, there is an obligation on the customs authority to transmit a case to the Commission before it can decide to dispense with post-clearance recovery in that case, a national court ruling on an appeal by a tax debtor against the decision of the customs authority to proceed (in fact) with post-clearance recovery does not have the power to set aside that post-clearance recovery on the ground of its finding that the conditions laid down in Article 220(2)(b) for (mandatorily) setting aside post-clearance recovery are satisfied, where that finding is not supported by the Commission?

4. If the answer to Question 3 should be that the fact that the Commission has the power to take a decision in regard to demands for post-clearance recovery of customs duties does not involve any limitation on the jurisdiction of national courts which are called on to rule in an appeal concerning a demand for post-clearance recovery of customs duties, does Community law contain any separate provision which guarantees uniform application of Community law in the specific case where there is a discrepancy between the views of the Commission and those of the national court concerning the criteria to be applied in the context of Article 220 of the CCC ([4]) for the purpose of determining whether a mistake on the part of the customs authority could have been detected by a tax debtor?

([1]) Regulation concerning the classification of certain goods in the Combined Nomenclature (OJ 1997 L 170, p. 13).
([2]) OJ 1993 L 253, p. 1.
([3]) OJ 1998 L 212, p. 18.
([4]) OJ 1992 L 302, p. 1.

Reference for a preliminary ruling from the Hoge Raad der Nederlanden lodged on 3 August 2007 — Staatssecretaris van Financiën v Kamino International Logistics BV

(Case C-376/07)

(2007/C 269/46)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: Hoge Raad der Nederlanden

Defendant: Kamino International Logistics B.V.

Questions referred

1. Must Note 5 to Chapter 84 of the Combined Nomenclature (CN) in the version of Annex I to Commission Regulation (EC) No 1789/2003 of 11 September 2003 ([1]) be interpreted as meaning that a colour monitor which can display both signals from an automatic data-processing machine as referred to in heading 8471 of the CN and from other sources is excluded from classification under heading 8471 of the CN?

2. If classification in heading 8471 of the CN of the colour monitor referred to in question one above is not excluded, on the basis of which criteria must it then be determined whether it is a unit of the sort that is solely or principally used in an automatic data-processing system?

3. Does the scope of application of Commission Regulation (EC) No 754/2004 of 21 April 2004 on the classification of certain goods in the CN [2] extend to the monitor at issue and, if so, in light of the answers to the first and second questions, is that regulation valid?

([1]) Regulation amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 2003 L 281, p. 1).
([2]) OJ 2004 L 118, p. 32.

Reference for a preliminary ruling from the Rethymnon Court of First Instance (Single Judge) (Greece) lodged on 8 August 2007 — K. Angelidaki, A. Aïvali, A Bavouraki, Kh. Kaparou, M. Lioni, E. Makriyiannaki, E. Nisanaki, Kh. Panayiotou, A. Pitsidianaki, M. Khalkiadaki, Kh. Khalkiadaki v Nomarkhiaki Avtodiikisi Rethymnis

(Case C-378/07)

(2007/C 269/47)

Language of the case: Greek

Referring court

Rethymnon Court of First Instance

Parties to the main proceedings

Applicants: Kyriaki Angelidaki, Anastasia. Aïvali, Angeliki Bavouraki, Khrisi. Kaparou, Manina. Lioni, Evangelia Makriyiannaki, Eleonora. Nisanaki, Khristiana. Panayiotou, A. nna Pitsidianaki, Maria Khalkiadaki and Khrisi. Khalkiadaki

Defendant: Nomarkhiaki Avtodiikisi Rethymnis

Questions referred

1. Do clause 5 and clause 8(1) and (3) of the Framework Agreement on fixed-term work concluded by ETUC, UNICE and CEEP, which forms an integral part of Council Directive 1999/70/EC (OJ 1999 L 175 p. 43), mean that Community law (by reason of the application of the said Framework Agreement) does not allow a Member State to adopt measures (a) where an equivalent legal measure within the meaning of clause 5(1) of the Framework Agreement already existed under national law before the directive entered into force and (b) where the measures adopted in order to apply the Framework Agreement reduce the general level of protection afforded to fixed-term workers under national law?

2. If question 1 is answered in the affirmative, is the reduction in the protection afforded to fixed-term workers in the case of a single fixed-term employment contract (rather than several, successive contracts), under which the worker is in fact to provide services to meet 'fixed and permanent', rather than temporary, exceptional or urgent, requirements, connected to the application of the said Framework Agreement and the above directive and is such a reduction therefore permitted or not permitted from the point of view of Community law?

3. If question 1 is answered in the affirmative, where there is an equivalent legal measure under national law, within the meaning of clause 5(1) of the Framework Agreement, which existed before Directive 1999/70/EC entered into force, such as Article 8(3) of Law 2112/1920 at issue in the main proceedings, is the adoption of a legal measure by reason of the application of the Framework Agreement, such as Article 11 of Presidential Decree 164/2004 at issue in the main proceedings, an unacceptable reduction in the general level [of protection] afforded to fixed-term workers under national law within the meaning of clause 8(1) and (3) of the Framework Agreement:

   (a) when the scope of the legal measure in question applying the Framework Agreement extends only to successive fixed-term employment contracts or relationships and not to persons who have concluded a single fixed-term contract of employment (rather than several, successive contracts) in order for the worker to meet 'fixed and permanent' requirements of the employer, while the earlier equivalent legal measure applied to all fixed-term contracts of employment, even where the worker concluded a single fixed-term employment contract, under which, in fact, the worker was to provide services to meet 'fixed and permanent' (rather than temporary, exceptional or urgent) requirements, and

   (b) when the legal measure in question for application of the Framework Agreement provides, as a legal consequence, for the purpose of protecting fixed-term workers and preventing abuse within the meaning of the Framework Agreement on fixed-term work, for fixed-term contracts thereafter (*ex nunc*) to be qualified as contracts of indefinite duration, while the earlier equivalent legal measure made provision for fixed-term contracts of employment to be qualified as contracts of indefinite duration from the time when they were originally concluded (*ex tunc*)?

4. If question 1 is answered in the affirmative, where an equivalent legal measure within the meaning of clause 5(1) of the Framework Agreement on fixed-term work, which forms an integral part of Directive 1999/70/EC, already existed in the national legal order before that directive entered into force, as in the case of Article 8(3) of Law 2112/1920 at issue in the main proceedings, is the choice made by the Greek legislature, in transposing the above directive into Greek law, on the one hand, to exclude the said cases of abuse in which the worker has concluded a single fixed-time contract, under

which, in fact, the worker was to provide services to meet 'fixed and permanent' (rather than temporary, exceptional or urgent) requirements, from the scope of protection of the above Presidential Decree 164/2004, and on the other hand, not to enact a similar, effective measure/legal consequence specific to the case, affording to workers in such cases of abuse protection over and above the general protection which is provided as standard under general Greek employment law whenever work is provided under an invalid contract, irrespective of whether or not there has been abuse within the meaning of the Framework Agreement, and which includes a claim on the part of the worker to payment of his wages and severance pay, regardless of whether or not he worked under a valid contract,

an unacceptable reduction in the general level of protection afforded to fixed-term workers under national law within the meaning of clause 8(1) and (3) of the Framework Agreement, bearing in mind

(a) that the obligation to pay wages and severance pay is provided for under national law for all employment relationships and is not intended specifically to prevent abuse within the meaning of the Framework Agreement, and

(b) that the legal consequence of the application of the earlier equivalent legal measure is that a (single) fixed-term contract of employment is recognised as a contract of indefinite duration?

5. If all the above questions are answered in the affirmative, should the national court, in interpreting national law in accordance with Directive 1999/70/EC, disapply the provisions of the legal measure which are not compatible with it, but which were adopted by reason of the application of the Framework Agreement and result in a reduction in the general level of protection afforded to fixed-term workers under national law, such as those in Presidential Decree 164/2004, which tacitly and indirectly (but clearly) deny the relevant protection in cases of abuse when the worker has concluded a single fixed-term contract of employment under which, in fact, he is to provide services to meet 'fixed and permanent' (rather than temporary, exceptional or urgent) requirements — and apply instead an equivalent legal measure which existed before the directive entered into force, such as Article 8(3) of Law 2112/1920?

6. If the national court finds that a provision (in this case Article 8(3) of Law 2112/1920) that constitutes an equivalent legal measure within the meaning of clause 5(1) of the Framework Agreement on fixed-term work, which is an integral part of Directive 1999/70/EC, is applicable in principle to a dispute over fixed-term work and, on the basis of that provision, the finding that even a single contract of employment was concluded as a fixed-term contract for no objective reason relating to the nature, type or features of the work offered means that the contract must be recognised as a contract of employment of indefinite duration, then

(a) is it compatible with Community law for a national court to interpret and apply national law to the effect that the fact that a legal provision governing employment under a fixed-term contract of employment in order to meet seasonal, periodic, temporary, exceptional or additional social needs (in this case Law 3250/2004, FEK A 124A/7.7.2004) was used as the legal basis for concluding a fixed-term contract constitutes an objective reason in all cases for concluding such contracts, even though the requirements covered were in fact fixed and permanent, and

(b) is it compatible with Community law for a national court to interpret and apply national law to the effect that a provision prohibiting the conversion of fixed-term contracts of employment in the public sector to contracts of indefinite duration must be construed as an absolute prohibition in any circumstance on converting a fixed-term employment contract or relationship in the public sector to a employment contract or relationship of indefinite duration, even if it was wrongfully concluded as a fixed-term contract, that is to say, when the requirements met were in fact fixed and permanent, and that the national court has no discretion in such cases to make a finding as to the true character of the legal employment relationship at issue and correctly qualify it as a contract of indefinite duration? Alternatively, should the prohibition in question be restricted solely to fixed-term contracts of employment which were in fact concluded in order to meet temporary, unforeseeable, urgent, exceptional or similar types of special requirements and not to cases in which they were in fact concluded in order to meet fixed and permanent requirements?

Reference for a preliminary ruling from the Rethymnon Court of First Instance (Single Judge) lodged on 8 August 2007 — Kharikleia Giannoudi v Municipality of Geropotamos

(Case C-379/07)

(2007/C 269/48)

Language of the case: Greek

Referring court

Rethymnon Court of First Instance

Parties to the main proceedings

Applicant: Kharikleia Giannoudi

Defendant: Municipality of Geropotamos

Questions referred

1. Do clause 5 and clause 8(1) and (3) of the Framework Agreement on fixed-term work concluded by ETUC, UNICE and CEEP, which forms an integral part of Council Directive 1999/70/EC (OJ 1999 L 175 p. 43), mean that Community law (by reason of the application of the said Framework Agreement) does not allow a Member State to adopt measures

   (a) where an equivalent legal measure within the meaning of clause 5(1) of the Framework Agreement already existed under national law before the directive entered into force and

   (b) where the measures adopted in order to apply the Framework Agreement reduce the general level of protection afforded to fixed-term workers under national law?

2. If question 1 is answered in the affirmative, where there is an equivalent legal measure under national law, within the meaning of clause 5(1) of the Framework Agreement, which existed before Directive 1999/70/EC entered into force, such as Article 8(3) of Law 2112/1920 at issue in the main proceedings, is the adoption of a legal measure by reason of the application of the Framework Agreement, such as Article 11 of Presidential Decree 164/2004 at issue in the main proceedings, an unacceptable reduction in the general level [of protection] afforded to fixed-term workers under national law within the meaning of clause 8(1) and (3) of the Framework Agreement:

   (a) when the legal measure in question applying the Framework Agreement was adopted after the time-limit for transposing Directive 1999/70/EC had elapsed, but only fixed-term employment contracts and relationships which were in effect before its entry into force or had expired within a certain period before its entry into force but after the time-limit for transposing the Directive had elapsed fall within its chronological scope, although the equivalent legal measure which already existed does not have a chronologically restricted scope of application and covers all fixed-term employment contracts which had been concluded, were in effect or had expired when Directive 199/70/EC came into force and the time-limit for its transposition had elapsed;

   (b) when fixed-term employment contracts or relationships only fall within the scope of application of the legal measure in question applying the Framework Agreement if they can be regarded as successive within the meaning of that measure, satisfying the cumulative requirements:

      (1) that there is a maximum period of three months between them;

      (2) that they extend for a total of at least 24 months before the measure in question enters into force, irrespective of the number of contract renewals or that, on the basis of those renewals, there has been a minimum total period of work of 18 months over an overall period of 24 months from the original contract, provided that there are at least three renewals since the original contract, whereas the existing equivalent legal measure does not lay down such conditions but covers all the fixed-term (successive) employment contracts, irrespective of a minimum total period of work and a minimum number of contract renewals;

   (c) when the legal measure in question applying the Framework Agreement provides as a legal consequence for the protection of fixed-term workers and the prevention of abuse, within the meaning of the Framework Agreement on fixed-term work, for the qualification thereafter (*ex nunc*) of fixed-term employment contracts as contracts of indefinite duration, whereas the pre-existing legal measure provides for the qualification of fixed-term contracts as contracts of indefinite duration from the time they were originally concluded (*ex tunc*)?

3. If question 1 is answered in the affirmative, where an equivalent legal measure within the meaning of clause 5(1) of the Framework Agreement on fixed-term work, which forms an integral part of Directive 1999/70/EC, already existed in the national legal order before that directive entered into force, as in the case of Article 8(3) of Law 2112/1920 at issue in the main proceedings, is the adoption of a legal measure by reason of the application of the Framework Agreement, such as Article 7 of Presidential Decree 164/2004 at issue in the main proceedings an unacceptable reduction in the general level of protection afforded to fixed-term workers under national law within the meaning of clause 8(1) and (3) of the Framework Agreement, when that provides, as the sole means of protection of fixed-term workers from abuse, for an obligation on the part of the employer to pay wages and severance pay where workers have wrongfully been employed under successive fixed-term employment contracts, bearing in mind

   (a) that the obligation to pay wages and severance pay is provided for under national law for all employment relationships and is not intended specifically to prevent abuse within the meaning of the Framework Agreement, and

   (b) that the legal consequence of the application of the earlier equivalent legal measure is that successive fixed-term contracts of employment are recognised as a contract of indefinite duration?

4. If all the above questions are answered in the affirmative, should the national court, in interpreting national law in accordance with Directive 1999/70/EC, disapply the provisions of the legal measure which are not compatible with it, but which were adopted by reason of the application of the Framework Agreement and result in a reduction in the general level of protection afforded to fixed-term workers under national law, such as Articles 7 and 11 of Presidential Decree 164/2004 and apply instead an equivalent legal measure which existed before the directive entered into force, such as Article 8(3) of Law 2112/1920?

5. If the national court finds that — in principle — a provision (in this case Article 8(3) of Law 2112/1920) that constitutes an equivalent legal measure within the meaning of clause 5(1) of the Framework Agreement on fixed-term work, which is an integral part of Directive 1999/70/EC, is applicable to a dispute over fixed-term work and, on the basis of that provision, the finding that successive contracts of employment were concluded as a fixed-term contract for no objective reason relating to the nature, type or features of the work offered means that the contracts must be recognised as a contract of employment of indefinite duration, then

   (a) is it compatible with Community law for a national court to interpret and apply national law to the effect that the fact that a legal provision governing employment under a fixed-term contract of employment in order to meet seasonal, periodic, temporary, exceptional needs was used as the legal basis for concluding a fixed-term contract constitutes an objective reason in all cases for concluding such contracts, even though the requirements covered were in fact fixed and permanent, and

   (b) is it compatible with Community law for a national court to interpret and apply national law to the effect that a provision prohibiting the conversion of fixed-term contracts of employment in the public sector to contracts of indefinite duration must be construed as an absolute prohibition in any circumstance to convert a fixed-term employment contract or relationship in the public sector to an employment contract or relationship of indefinite duration, even if it was wrongfully concluded as a fixed-term contract, that is to say, when the requirements met were in fact fixed and permanent, and that the national court has no discretion in such cases to make a finding as to the true character of the legal employment relationship at issue and correctly qualify it as a contract of indefinite duration? Alternatively should the prohibition in question be restricted solely to fixed-term contracts of employment which were in fact concluded in order to meet temporary, unforeseeable, urgent, exceptional or similar types of special requirements and not to cases in which they were in fact concluded in order to meet fixed and permanent requirements?

Reference for a preliminary ruling from the Rethymnon Court of First Instance lodged on 8 August 2007 — Georgios Karabousanos and Sophocles Mikhopoulos v Municipality of Geropotamos

(Case C-380/07)

(2007/C 269/49)

Language of the case: Greek

Referring court

Rethymnon Court of First Instance

Parties to the main proceedings

Applicants: Georgios Karabousanos and Sophocles Mikhopoulos

Defendant: Municipality of Geropotamos

Questions referred

1. Do clause 5 and clause 8(1) and (3) of the Framework Agreement on fixed-term work concluded by ETUC, UNICE and CEEP, which forms an integral part of Council Directive 1999/70/EC (OJ 1999 L 175 p. 43), mean that Community law (by reason of the application of the said Framework Agreement) does not allow a Member State to adopt measures (a) where an equivalent legal measure within the meaning of clause 5(1) of the Framework Agreement already existed under national law before the directive entered into force and (b) where the measures adopted in order to apply the Framework Agreement reduce the general level of protection afforded to fixed-term workers under national law?

2. If question 1 is answered in the affirmative, where there is an equivalent legal measure under national law, within the meaning of clause 5(1) of the Framework Agreement, which existed before Directive 1999/70/EC entered into force, such as Article 8(3) of Law 2112/1920 at issue in the main proceedings, is the adoption of a legal measure by reason of the application of the Framework Agreement, such as Article 11 of Presidential Decree 164/2004 at issue in the main proceedings, an unacceptable reduction in the general level [of protection] afforded to fixed-term workers under national law within the meaning of clause 8(1) and (3) of the Framework Agreement:

   (a) when the legal measure in question applying the Framework Agreement was adopted after the time-limit for transposing Directive 1999/70/EC had elapsed, but only fixed-term employment contracts and relationships which were in effect before its entry into force or had

expired within a certain period before its entry into force but after the time-limit for transposing the Directive had elapsed fall within its chronological scope, although the equivalent legal measure which already existed does not have a chronologically restricted scope of application and covers all fixed-term employment contracts which had been concluded, were in effect or had expired when Directive 199/70/EC came into force and the time-limit for its transposition had elapsed;

(b) when fixed-term employment contracts or relationships only fall within the scope of application of the legal measure in question applying the Framework Agreement if they can be regarded as successive within the meaning of that measure, satisfying the cumulative requirements:

(1) that there is a maximum period of three months between them;

(2) that they extend for a total of at least 24 months before the measure in question enters into force, irrespective of the number of contract renewals or that, on the basis of those renewals, there has been a minimum total period of work of 18 months over an overall period of 24 months from the original contract, provided that there are at least three renewals since the original contract, whereas the existing equivalent legal measure does not lay down such conditions but covers all the fixed-term (successive) employment contracts, irrespective of a minimum total period of work and a minimum number of contract renewals;

(c) when the legal measure in question applying the Framework Agreement provides as a legal consequence for the protection of fixed-term workers and the prevention of abuse, within the meaning of the Framework Agreement on fixed-term work, for the qualification thereafter (*ex nunc*) of fixed-term employment contracts as contracts of indefinite duration, whereas the pre-existing legal measure provides for the qualification of fixed-term contracts as contracts of indefinite duration from the time they were originally concluded (*ex tunc*)?

3. If question 1 is answered in the affirmative, where an equivalent legal measure within the meaning of clause 5(1) of the Framework Agreement on fixed-term work, which forms an integral part of Directive 1999/70/EC, already existed in the national legal order before that directive entered into force, as in the case of Article 8(3) of Law 2112/1920 at issue in the main proceedings, is the adoption of a legal measure by reason of the application of the Framework Agreement, such as Article 7 of Presidential Decree 164/2004 at issue in the main proceedings an unacceptable reduction in the general level of protection afforded to fixed-term workers under national law within the meaning of clause 8(1) and (3) of the Framework Agreement, when that provides, as the sole means of protection of fixed-term workers from abuse, for an obligation on the part of the employer to pay wages and severance pay where workers have wrongfully been employed under successive fixed-term employment contracts, bearing in mind

(a) that the obligation to pay wages and severance pay is provided for under national law for all employment relationships and is not intended specifically to prevent abuse within the meaning of the Framework Agreement, and

(b) that the legal consequence of the application of the earlier equivalent legal measure is that successive fixed-term contracts of employment are recognised as a contract of indefinite duration?

4. If all the above questions are answered in the affirmative, should the national court, in interpreting national law in accordance with Directive 1999/70/EC, disapply the provisions of the legal measure which are not compatible with it, but which were adopted by reason of the application of the Framework Agreement and result in a reduction in the general level of protection afforded to fixed-term workers under national law, such as Articles 7 and 11 of Presidential Decree 164/2004 and apply instead an equivalent legal measure which existed before the directive entered into force, such as Article 8(3) of Law 2112/1920?

5. If the national court finds that — in principle — a provision (in this case Article 8(3) of Law 2112/1920) that constitutes an equivalent legal measure within the meaning of clause 5(1) of the Framework Agreement on fixed-term work, which is an integral part of Directive 1999/70/EC, is applicable to a dispute over fixed-term work and, on the basis of that provision, the finding that successive contracts of employment were concluded as a fixed-term contract for no objective reason relating to the nature, type or features of the work offered means that the contracts must be recognised as a contract of employment of indefinite duration, then

(a) is it compatible with Community law for a national court to interpret and apply national law to the effect that the fact that a legal provision governing employment under a fixed-term contract of employment in order to meet seasonal, periodic, temporary, exceptional needs was used as the legal basis for concluding a fixed-term contract constitutes an objective reason in all cases for concluding such contracts, even though the requirements covered were in fact fixed and permanent, and

(b) is it compatible with Community law for a national court to interpret and apply national law to the effect that a provision prohibiting the conversion of fixed-term contracts of employment in the public sector to contracts of indefinite duration must be construed as an absolute prohibition in any circumstance to convert a fixed-term employment contract or relationship in the public sector to an employment contract or relationship of indefinite duration, even if it was wrongfully concluded as a fixed-term contract, that is to say, when the requirements met were in fact fixed and permanent, and that the national court has no discretion in such cases to make a finding as to the true character of the legal employment relationship at issue and correctly qualify it as a contract of indefinite duration? Alternatively should the prohibition in question be restricted solely to fixed-term contracts of employment which were in fact concluded in order to meet temporary, unforeseeable, urgent, exceptional or similar types of special requirements and not to cases in which they were in fact concluded in order to meet fixed and permanent requirements?

Reference for a preliminary ruling from the Conseil d'Etat (France) lodged on 8 August 2007 — Association Nationale pour la Protection des Eaux et Rivieres — TOS v Ministry of the Environment and Sustainable Development

(Case C-381/07)

(2007/C 269/50)

Language of the case: French

Referring court

Conseil d'Etat

Parties to the main proceedings

Applicant: Association Nationale pour la Protection des Eaux et Rivieres — TOS

Defendant: Ministry of the Environment and Sustainable Development

Question referred

May Article 6 of Directive 2006/11/EC of the European Parliament and of the Council of 15 February 2006 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community ([1]) be interpreted as allowing the Member States, once programmes to reduce water pollution including environmental quality standards have been adopted under that article, to introduce a declaratory scheme, in respect of facilities regarded as being low-polluting in nature, with a reference to those standards and a right on the part of the administrative authority to object to the commencement of the operations or to impose limits on discharges specific to the facility concerned?

([1]) OJ L 64 of 4.3.2006, p. 52.

Appeal brought on 13 August 2007 by Der Grüne Punk — Duales System Deutschland GmbH against the judgment of the Court of First Instance (First Chamber) delivered on 24 May 2007 in Case T-151/01 Der Grüne Punkt — Duales System Deutschland GmbH v Commission of the European Communities, supported by Vfw AG, Landbell AG für Rückhol-Systeme and Belland Vision GmbH

(Case C-385/07 P)

(2007/C 269/51)

Language of the case: German

Parties

Appellant: Der Grüne Punk — Duales System Deutschland GmbH (represented by: W. Deselaers, E. Wagner, B. Meyring, Rechtsanwälte)

Other party to the proceedings: Commission of the European Communities, Vfw AG, Landbell AG für Rückhol-Systeme and Belland Vision GmbH

Form of order sought

— Annulment of the judgment of the Court of First Instance of the European Communities of 24 May 2007 in Case T-151/01;

— annulment of Commission Decision 2001/463/EC of 20 April 2001 relating to a proceeding pursuant to Article 82 EC (Case COMP D3/34493 — DSD) ([1]);

— in the alternative, refer the case to the Court of First Instance for reassessment in accordance with the Court's judgment;

— in any case, order the Commission to pay the costs both before the Court of First Instance and before the Court of Justice.

Grounds of appeal and main arguments

The appellant bases its appeal against the above mentioned judgment of the Court of First Instance on eight grounds of appeal.

By its first ground of appeal the appellant claims that the Court of First Instance infringed its duty to give reasons and thus also Article 82 EC with its contradictory finding of the conduct leading to an abuse. In one instance the Court found that there had been an abuse on the basis that the appellant requires undertakings, which do not use its system or use it only in respect of certain packaging carrying its logo, to pay the full licence fee. In another instance the Court states that it only '*could be the case*' under the provisions in dispute of the Trade Mark Agreement that the appellant charges the price of the collection and recovery service for sales packaging which is not part of its system.

The second, fifth and sixth grounds of appeal relate to the assessment of the scope of the licence offered by the appellant, which, it is argued, is inadequate, manifestly misleading and wrong in law as being at variance with the documents and evidence submitted. Had the Court carried out its assessment of the facts correctly it would have had to recognise that the appellant does not grant licences in isolation in such a way that the contested decision would have to be understood as a finding that the refusal to grant such a licence is abusive and that the order to cease charging any licence fee for partial quantities of sales packaging in Article 3 of the contested decision is tantamount to an order to charge a compulsory licence fee. However, the Court wrongly failed to respect the requirements resulting from the case-law to give reasons and failed to have regard to the fact that a compulsory licence is not possible from the point of view of trade mark and packaging law. The appellant claims in that regard that the duty to give reasons, the fundamental principle of proportionality and Article 82 EC and Article 3 of Council Regulation No 17 were infringed.

By its third and fourth pleas in law the appellant claims that the Court infringed its duty to give reasons and thus also Article 82 EC by its finding that the mark 'Der Grüne Punkt' could not benefit from the '*exclusivity claimed*', which, it is argued, is inadequate, misleading and wrong as regards German packaging and trade mark law. With that finding it even infringed the fundamental principle of Community trade mark law under which a registered mark grants its proprietor an exclusive right, in particular, in relation to the use of the mark for goods and services which are identical or similar to those for which the mark was registered.

By its seventh and eighth pleas in law the appellant alleges two procedural errors. First, the Court introduced new findings or made findings of its own motion even though the subject-matter of those findings was not part of the contested decisions or introduced by the parties in the proceedings before the Court. Second, the Court committed a procedural error to the detriment of the appellant in that it infringed the basic right of the Union that a case is to be dealt with within a reasonable period of time.

(1) OJ 2001 L 166, p. 1.

Reference for a preliminary ruling from the Finanzgericht Hamburg lodged on 20 August 2007 — Glencore Grain Rotterdam BV v Hauptzollamt Hamburg-Jonas

(Case C-391/07)

(2007/C 269/52)

Language of the case: German

Referring court

Finanzgericht Hamburg

Parties to the main proceedings

Applicant: Glencore Grain Rotterdam BV

Defendant: Hauptzollamt Hamburg-Jonas

Questions referred:

Must Article 13 of Regulation (EC) No 1501/95 be interpreted as meaning that production of the proof described in the second paragraph thereof results in waiver of the need not only for proof of completion of customs formalities for release for consumption but also for production of the transport documents (Article 18(3) of Regulation (EEC) No 3665/87, now Article 16(3) of Regulation (EC) No 800/99)?

Reference for a preliminary ruling from the Korkein oikeus (Finland) lodged on 27 August 2007 — Mirja Juuri v Fazer Amica Oy

(Case C-396/07)

(2007/C 269/53)

Language of the case: Finnish

Referring court

Korkein oikeus

Parties to the main proceedings

Applicant: Mirja Juuri

Defendant: Fazer Amica Oy

Questions referred

1. Is Article 4(2) of Council Directive 2001/23/EC [1] to be interpreted as meaning that a Member State must, in a situation in which an employee has himself given notice to terminate his contract of employment after his working conditions have become substantially worse following the transfer of a business, in its law guarantee the employee the right to obtain financial compensation from the employer in the same way as in the case where the employer has unlawfully terminated the employment contract, having regard to the fact that the employer has, as permitted by Article 3(3) of the directive, observed a collective agreement, binding on the transferor and guaranteeing the employee better working conditions, only until its expiry and the worsening of the working conditions arises from that?

2. If the employer's responsibility in accordance with the directive is not as extensive as described in Question 1, must the responsibility of the employer nevertheless be implemented by providing compensation, for example, for pay and other benefits for the notice period to be observed by the employer?

[1] Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses OJ L 82, 22 March 2001, p. 16.

Action brought on 27 August 2007 — Commission of the European Communities v Kingdom of Spain

(Case C-397/07)

(2007/C 269/54)

Language of the case: Spanish

Parties

Applicant: Commission of the European Communities (represented by E. Gippini Fournier and M. Afonso, acting as Agents)

Defendant: The Kingdom of Spain

Forms of order sought by the applicant

— Declare that:

  — by subjecting the application of obligatory exemptions from capital duty to certain conditions;

  — by imposing an indirect tax on the transfer of the effective centre of management or the registered office of a company to Spain, for those companies which have not been subject to a similar tax in their country of origin;

  — by subjecting, to an indirect tax, capital used to carry out business transactions through a subsidiary or fixed place of business for companies established in a Member State which does not apply a similar tax similar to the Spanish tax,

  The Kingdom of Spain has failed to fulfil its obligations under Directive 69/335/EEC [1], of 17 July 1969.

— Order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

— Directive 69/335 maintains the status quo regarding the freedom of Member States to re-introduce a capital duty or once again to subject transactions, currently exempt, to that tax. Consequently, Spain cannot abolish its exemptions and tax all transactions to which the special scheme of Royal Decree No 4/2004 is applicable, but which are excluded from the scope of former Article 7(1)(b) and (b)a. Spain must apply the exemption of Article 45(1)(B)10 to all transactions within the scope of the special scheme of Royal Decree No 4/2004, whether in fact that scheme applies or not.

— Article 4 of Directive 69/335 lays down an exhaustive list of transactions subject to capital duty. In accordance with Article 4(1)(g) the transfer of the effective centre of management of a company, firm, association or legal person which is considered in the host Member State, for the purposes of charging capital duty, as a capital company, although it is not so considered in the Member State of origin, is subject to capital duty. Consequently Spain cannot tax the transfer of the effective centre of management or the registered office of a capital company which is not subject to a similar tax in its country of origin. The transfer, by a capital company, of its seat to another Member State is not such as to generate capital duty, even where the Member State in which the company was formed did not claim that tax. In addition, nothing in the Spanish legislation indicates that it applies solely in cases of tax evasion or fraud.

— Spain cannot subject to capital duty that part of the capital used to carry out business transactions in Spain through subsidiaries or fixed places of business. As is clear from Article 2(1) of Directive 69/335 Spain cannot subject to capital tax companies whose effective centre of management is situated in another Member State, and not in Spain. Article 2(3) of Directive 69/335 reserves measures, such as that to be applied by Spain, to the specific case of a company whose registered office and effective centre of

management is in a third country. As regards the issue of fraud or tax evasion, the Commission emphasises that the Spanish provisions apply without any limitation or distinction according to whether there is tax evasion or fraud. Consequently Spain cannot validly claim such a justification.

(1) Council Directive 69/335/EEC, of 17 July 1969, concerning indirect taxes on the raising of capital OJ, English Special Edition 1969 (II), p. 412.

Reference for a preliminary ruling from the Tribunale Amministrativo Regionale del Lazio (Italy) lodged on 29 August 2007 — S.A.L.F. Spa v Agenzia Italiana del Farmaco (AIFA) and Ministero della Salute

(Case C-400/07)

(2007/C 269/55)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale del Lazio

Parties to the main proceedings

Applicant: S.A.L.F. Spa

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

Question 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).

Action brought on 29 August 2007 — Commission of the European Communities v Kingdom of the Netherlands

(Case C-401/07)

(2007/C 269/56)

Language of the case: Dutch

Parties

Applicant: Commission of the European Communities (represented by: H. van Vliet, acting as Agent)

Defendant: Kingdom of the Netherlands

Form of order sought

— Declare that, by failing to implement, with regard to Fleuren Compost BV, Commission Decision 2001/521/EC of 13 December 2000 on the aid scheme implemented by the Kingdom of the Netherlands for six manure-processing companies [1] within the period laid down therein, the Kingdom of the Netherlands has failed to fulfil its obligations under the fourth paragraph of Article 249 EC and Articles 2 and 3 of that decision;

— order Kingdom of the Netherlands to pay the costs.

Pleas in law and main arguments

In Decision 2001/521 the Commission decided that the Netherlands should recover from Fleuren Compost BV ('Fleuren') unlawful aid in the amount of EUR 487 328,13, plus interest. At the time when the application was lodged in this case, the resultant sum had not yet been repaid. So far, Fleuren has merely provided a bank guarantee for the sum. The applicant submits that this is contrary to Article 13(3) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty [2], which provides for immediate and effective execution of the Commission's decision. Moreover, by judgment of 14 January 2004 the Court of First Instance dismissed Fleuren's action against the decision (Case T-109/01) and Fleuren has not appealed against that judgment.

The applicant submits, *inter alia*, that the Netherlands legislation in question, as interpreted by the Netherlands Raad van State, makes execution unnecessarily complicated and time consuming. According to that interpretation, the principal sum is to be recovered in an administrative proceedings but interest is to be recovered in civil proceedings. The applicant submits also that the provision of a bank guarantee cannot be compared to the actual repayment of the amount of aid. A bank guarantee does not undo the financial advantage that Fleuren has enjoyed for years as a result of the fact that the defendant has paid aid to Fleuren without the Commission's approval, contrary to Article 88(3) EC.

[1] OJ 2001 L 189, p. 13.
[2] OJ 1999 L 83, p. 1.

Appeal brought on 3 September 2007 by the Kingdom of the Netherlands against the judgment delivered by the Court of First Instance (Fourth Chamber) on 27 June 2007 in Case T-182/06 Kingdom of the Netherlands v Commission of the European Communities

(Case C-405/07 P)

(2007/C 269/57)

Language of the case: Dutch

Parties

Appellant: Kingdom of the Netherlands (represented by: D.J.M. de Grave and C.M. Wissels, Agents)

Other party to the proceedings: Commission of the European Communities

Form of order sought

— Set aside the judgment under appeal;

— Refer the case back to the Court of First Instance in order that it may rule on the other pleas in law;

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

Pleas in law and main arguments

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

By its first plea, the appellant submits that the Court of First Instance misconstrued the duty of care and the duty to give reasons pursuant to Article 253 EC in ruling that the Commission had not breached those duties in the case where relevant information supplied by the Member State concerned prior to the contested decision [1] was, without specific reasons, left out of account in that decision.

By its second plea, the appellant submits that the Court of First Instance applied incorrect legal criteria when it ruled, in the context of the examination into whether there was a specific problem within the terms of Article 95(5) EC, that:

(i) the existence of a specific problem with regard to air quality must be examined solely on the basis of the criteria in Directive 1999/30/EC [2], without the impossibility for a Member State to adopt measures designed to prevent cross-border pollution and criteria such as high demographic density, vehicle traffic intensity in many areas and the location of residential areas along traffic routes being capable of having relevance in that regard; and

(ii) there can be no question of a specific problem in the aforementioned sense if a very small number of Member States also are experiencing a problem in connection with air quality.

[1] Commission Decision 2006/372/EC of 3 May 2006 concerning draft national provisions notified by the Kingdom of the Netherlands under Article 95(5) of the EC Treaty laying down limits on the emissions of particulate matter by diesel-powered vehicles (OJ 2006 L 142, p. 16).

[2] Council Directive of 22 April 1999 relating to limit values for sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter and lead in ambient air (OJ 1999 L 163, p. 41).

Action brought on 4 September 2007 — Commission of the European Communities v Hellenic Republic

(Case C-406/07)

(2007/C 269/58)

Language of the case: Greek

Parties

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

Defendant: Hellenic Republic

Form of order sought

The Court is asked to

— declare that the Hellenic Republic is in breach of

(a) its obligations under Articles 56 and 43 of the Treaty establishing the European Community and Articles 40 and 31 of the EEA Agreement, in applying a tax regime for dividends from abroad that is less favourable than the regime for domestic dividends;

(b) its obligations under Article 43 of the Treaty establishing the European Community and Article 31 of the EEA Agreement in maintaining in force the provisions of the Kodika Forologias Eisodimatos (Income Tax Code) (Law 2238/1994, as last amended by Law 3296/2004), by which foreign partnerships in Greece are taxed more heavily than domestic partnerships;

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

The Commission considers that the Member States may not tax dividends from abroad at a higher rate than that applicable to domestic dividends.

The tax exemption provided for by Greek tax legislation is aimed at avoiding the double taxation of company profits distributed to shareholders, but is applied only to domestic dividends.

The Greek tax legislation accordingly results in discouraging persons subject to full tax obligations in Greece from investing their capital in companies established in another Member State.

The provisions of the Greek legislation also have a restrictive effect in relation to companies established in another Member State, since it constitutes an obstacle to the centralising of capital in Greece by such companies.

Since income from capital of non-Greek origin receives less favourable tax treatment than dividends distributed by companies established in Greece, the shares of companies established in other Member States are less attractive to investors resident in Greece than the shares of companies whose seat is in Greece.

It follows from the above that legislative provisions such as that under scrutiny constitute a restriction on the free movement of capital which, in principle, is prohibited by Article 56 EC.

In the case of persons who are subject to full tax obligations in Greece and who hold foreign shares which afford them the possibility of exercising a manifest influence on the decisions of the undertaking and determining its activities, it is similarly a restriction on freedom of establishment which is prohibited by Article 43 EC.

Reference for a preliminary ruling from the Wojewódzki Sąd Administracyjny, Cracow (Republic of Poland), lodged on 10 September 2007 — MAGOORA Sp. z.o.o. v Dyrektor Izby Skarbowej w Krakowie

(Case C-414/07)

(2007/C 269/59)

Language of the case: Polish

Referring court

Wojewódzki Sąd Administracyjny, Cracow

Parties to the main proceedings

Applicant: MAGOORA Sp. z.o.o.

Defendant: Dyrektor Izby Skarbowej w Krakowie

Questions referred

1. Does Article 17(2) and (6) of the Sixth Directive ([1]) preclude the Republic of Poland from repealing completely, as of 1 May 2004, national provisions in force up to that date concerning restrictions on the deduction of input tax on purchases of fuel for vehicles used for a taxable activity and also introducing in their place restrictions on the deduction of input tax on purchases of fuel for vehicles used for a taxable activity but which are defined in national law on the basis of different criteria to those used prior to 1 May 2004, and from subsequently amending those criteria again with effect from 22 August 2005?

2. If the answer to Question 1 is in the affirmative: does Article 17(6) of the Sixth Directive preclude the Republic of Poland from amending the above criteria so as *de facto* to restrict the scope of deductions of input tax in comparison with the national provisions in force on 30 April 2004 or with the national provisions in force before the amendment made on 22 August 2005? If it should be found that this action by the Republic of Poland constitutes a breach of Article 17(6) of the Sixth Directive, would it be necessary to find that a taxable person would be entitled to make deductions but only in so far as the amendments to the national provisions went beyond the scope of the restrictions on deducting input tax provided for in the national provisions in force on 30 April 2004 and repealed on that same date?

3. Does Article 17(6) of the Sixth Directive preclude the Republic of Poland, invoking the possibility, provided for in that provision, for Member States to restrict the deduction of input tax attaching to expenditure which is not strictly business expenditure, such as that on luxuries, amusements or entertainment, from restricting the deduction of input tax in comparison with the position in law as it stood on 30 April 2004 so as to exclude the deduction of input tax on the purchase of fuel for passenger cars or other motor vehicles with a maximum authorised mass not exceeding 3,5 tonnes, with the exception of vehicles referred to in Article 86(4) of the Ustawa o podatku od towarów i usług (Polish Law on the tax on goods and services) of 11 March 2004, in the version in force since 22 August 2005?

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

Reference for a preliminary ruling from the Vestre Landsret (Denmark) lodged on 13 September 2007 — Criminal proceedings against Frede Damgaard

(Case C-421/07)

(2007/C 269/60)

Language of the case: Danish

Referring court

Vestre Landsret

Party to the main proceedings

Frede Damgaard

Question referred

Is Article 86 of Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use ([1]), as subsequently amended, to be interpreted as meaning that dissemination by a third party of information about a medicinal product, including in particular information about the medicinal product's therapeutic or prophylactic properties, is to be understood as constituting advertising, even though the third party in question is acting on his own initiative and completely independently, de jure and de facto, of the manufacturer and the seller?

([1]) OJ 2001 L 311, p. 67.

Appeal brought on 14 September 2007 by AEPI A.E. Elliniki Etairia pros Prostasian tis Pnevmatikis Idioktisias against the judgment delivered on 12 July 2007 in Case T-229/05 *AEPI A.E.* v *Commission of the European Communities*

(Case C-425/07 P)

(2007/C 269/61)

Language of the case: Greek

Parties

Appellant: AEPI AE Elliniki Etairia pros Prostasian tis Pnevmatikis Idioktisias (represented by: T. Asproyerakas-Trivas, lawyer)

Other party to the proceedings: Commission of the European Communities

Form of order sought

The Court is asked to:

— allow this appeal;

— set aside the contested judgment of 12 July 2007 of the Court of First Instance of the European Communities (Fourth Chamber), under No 328208, in Case T-229/05 *AEPI A.E.* v *Commission of the European Communities* in its entirety;

— hear and give judgment itself on our application of 14 June 2005 (under Article 230 EC), No 001/4372, 56(2001) A/3603/2, which was brought before the Court of First Instance of the European Communities against Commission Decision SG-Greffe (2005) D/201832 of 18 April 2005 rejecting our complaint of 22 March 2001 (2001/4372, 56) (2001 A/3603/2), or refer the case back to the Court which delivered the judgment under appeal so that the claims set out therein be allowed

— order the respondent to pay our costs.

Pleas in law and main arguments

The judgment under appeal misinterpreted Articles 81 and 82 EC inasmuch as the Court did not examine whether the contested Commission decision exceeded the limits of its discretion, did not take account of the case-law of the Court of Justice on the matter and did not take into consideration the facts set out in the application which show potential prejudice to intra-Community trade. Lastly, in misinterpreting and misapplying Articles 81 and 82 EC, it was considered that the competition provisions of Community law necessarily require the existence of actual prejudice to intra-Community trade, whereas in fact, on a correct interpretation and application of the above provisions, potential prejudice suffices to found the infringement.

Action brought on 14 September 2007 — Commission of the European Communities v Ireland

(Case C-427/07)

(2007/C 269/62)

Language of the case: English

Parties

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

Defendant: Ireland

The applicant claims that the Court should:

— declare that by failing to adopt, in conformity with Article 2(1) and Article 4 paragraphs (2), (3) and (4) of Council Directive 85/337/EEC [1] on the assessment of the effects of certain public and private projects on the environment as amended by Council Directive 97/11/EC, all measures to ensure that, before consent is given, projects likely to have significant effects on the environment in the road construction category covered by Class 10(e) of Annex II to Directive 85/337/EEC are made subject to a requirement for development consent and to an assessment with regard to their effects in accordance with Articles 5 to 10 of the Directive, has failed to fulfil its obligations under Council Directive 85/337/EEC

— declare that by failing to adopt the laws, regulations or administrative provisions necessary to comply with Articles 3(1), (3), (4), (5), (6) and (7) and 4(1), (2), (3), (4), (5) and (6) of Directive 2003/35/EC [2] of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directive 85/337/EEC and 96/61/EC or, in any event, by failing to adequately notify such provisions to the Commission, Ireland has failed to fulfil its obligations under Article 6 of that Directive.

— order Ireland to pay the costs.

Pleas in law and main arguments

Transposition of directive 85/337/EEC

The Commission considers that Ireland has failed to fully transpose directive 85/337/EEC because it fails to make provision for measures to achieve the results of Articles 2(1) and 4 in respect of private road projects. The Commission considers that private road projects (proposed by private developers) fall within the scope of directive 85/337/EEC. Moreover, there is no basis for a presumption that such projects will not have significant effects upon the environment. The failure to include road projects proposed by private developers amounts to a breach of Ireland's obligations under the aforementioned Articles of the directive.

Transposition of directive 2003/35/EC

The Commission contends that there has been a failure on the part of Ireland, in accordance with Article 6 of directive 2003/35/EC, to adopt and inform the Commission of all the national measures necessary to comply with Articles 3 and 4 of the directive. More specifically, Article 3, paras. 1, 3, 4, 5 and 6 of the directive set out specific amendments to several Articles of directive 85/337/EEC. Ireland does not dispute that transposition needs to be effected by changes to both Irish planning legislation and legislation governing other consent systems. Ireland did not communicate any amendments to its planning legislation within the time-frame set by the additional reasoned opinion, and, in any case it has not yet communicated legislation governing all other consent systems. Articles 3(7) and 4(4) of the directive require not only systems of review of decision-making, but systems that provide specific guarantees. To the extent that Ireland claims that its existing system of judicial review meets the requirements of Articles 3(7) and 4(4), it has failed to provide enough information to satisfy the requirements of the second sentence of the first paragraph of Article 6 of the directive.

(1) OJ L 175, p. 40.
(2) OJ L 156, p. 17.

Appeal brought on 18 September 2007 by Bouygues SA and Bouygues Télécom SA against the judgment of the Court of First Instance (Fourth Chamber) delivered on 4 July 2007 in Case T-475/04 Bouygues and Bouygues Télécom v Commission

(Case C-431/07 P)

(2007/C 269/63)

Language of the case: French

Parties

Appellants: Bouygues SA and Bouygues Télécom SA (represented by: F. Sureau, D. Théophile, A. Bénabent, J. Vogel and L. Vogel, lawyers)

Other party to the proceedings: Commission of the European Communities, French Republic, Société française de radiotéléphonie — SFR, Orange France SA

Form of order sought

— Annul the judgment delivered on 4 July 2007 by the Court of First Instance of the European Communities in Case T-475/04 *Bouygues SA and Bouygues Télécom SA* v *Commission*;

— in the alternative, refer the case back to the Court of First Instance for reconsideration in the light of the legal views expressed by the Court of Justice;

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

Pleas in law and main arguments

The applicants raise four pleas in law in support of their appeal:

By their first plea, the applicants submit that the Court of First Instance failed in its duty to state reasons in holding that the debt waiver at issue in the present case was inevitable due to the 'the logic of the system'. Since the latter in fact constitutes a rule derogating from the principle that differential treatment of a number of companies necessarily constitutes a selective advantage, the Court should have given clear reasons both for the content of the logic of the system to which it refers and the causal link between the logic of the system and the established waiver of State resources.

By their second plea, the applicants then claim that the Court erred in law in considering that the Commission was not under an obligation to initiate the formal investigation procedure on the sole ground that the examination of the substance of the case showed, in its view, that an advantage for Orange and SFR had not been proven. Initiation of the formal investigation procedure under Article 88(2) EC is in fact justified each time the Commission is unable to ascertain, in the light of the evidence in its possession during the preliminary examination phase, whether or not a measure is compatible with the rules of the Treaty.

By their third plea, the applicants criticise three errors made by the Court relating to the legal assessment of the facts, as regards, first, the alleged unicity of the procedures for awarding UMTS licences, secondly, the so-called uncertain nature of the debts waived by the State, and thirdly, the wording of the ministerial letter of 22 February 2001, which contained the assurance that the economic operators would be treated fairly but not equally.

By their fourth plea, the applicants maintain that the Court committed several errors of law in applying Article 87(1) EC. Those errors relate, respectively, to the application of the exception based on the logic of the scheme, the appraisal of the (in) existence of a competitive advantage and the application of the principle of non-discrimination.

Action brought on 18 September 2007 — Commission of the European Communities v Portuguese Republic

(Case C-433/07)

(2007/C 269/64)

Language of the case: Portuguese

Parties

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

Defendant: Portuguese Republic

Form of order sought

— declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Commission Directive 2005/30/EC [1] of 22 April 2005 amending, for the purposes of their adaptation to technical progress, Directives 97/24/EC and 2002/24/EC of the European Parliament and of the Council, relating to the type-approval of two or three-wheel motor vehicles 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 that the Portuguese Republic should pay the costs.

Pleas in law and main arguments

The period allowed for transposition of the directive into domestic law expired on 17 May 2006.

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[1] OJ 2005 L 106, p. 17.

Action brought on 18 September 2007 — Commission of the European Communities v Portuguese Republic

(Case C-434/07)

(2007/C 269/65)

Language of the case: Portuguese

Parties

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

Defendant: Portuguese Republic

Form of order sought

— declaration that, by failing to bring into force the laws, regulations and administrative provisions necessary to comply with Directive 2005/41/EC [1] of the European Parliament and of the Council of 7 September 2005 amending Council Directive 76/115/EEC on the approximation of the laws of the Member States relating to anchorages for motor-vehicle safety belts or, in any case, by failing to communicate them to the Commission, the Portuguese Republic has failed to fulfil its obligations under that directive;

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

Pleas in law and main arguments

The period prescribed for transposition of the Directive into domestic law expired on 19 April 2006.

([1]) OJ 2005 L 255, p. 149.

Action brought on 18 September 2007 — Commission of the European Communities v Portuguese Republic

(Case C-435/07)

(2007/C 269/66)

Language of the case: Portuguese

Parties

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

Defendant: Portuguese Republic

Form of order sought

— a declaration that, by failing to bring into force the laws, regulations and administrative provisions necessary to comply with Directive 2005/39/EC ([1]) of the European Parliament and of the Council of 7 September 2005 amending Council Directive 74/408/EEC relating to motor vehicles with regard to the seats, their anchorages and head restraints or, in any case, by failing to communicate them to the Commission, the Portuguese Republic has failed to fulfil its obligations under that directive;

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

Pleas in law and main arguments

The period prescribed for transposition of the Directive into domestic law expired on 19 April 2006.

([1]) OJ 2005 L 255, p. 143.

Appeal brought on 14 September 2007 by the Commission of the European Communities against the judgment delivered on 12 July 2007 in Case T-312/05 *Commission of the European Communities* v *Efrosini Alexiadou*

(Case C-436/07 P)

(2007/C 269/67)

Language of the case: Greek

Parties

Appellant: Commission of the European Communities (represented by: D. Triandafillou)

Other party to the proceedings: Evfrosini Alexiadou

Form of order sought

The appellant asks the Court to:

— set aside the judgment of the Court of First Instance of 12 July 2007 in Case T-312/05 *Commission of the European Communities* v *Alexiadou* which was notified to the Commission on 18 July 2007;

— uphold the Commission's claims in its action;

— order the respondent to pay the costs of the appeal and of the proceedings before the Court of First Instance.

Pleas in law and main arguments

The Court of First Instance misinterpreted the general conditions of the contract (law of the parties) and in particular the provision concerning financial audit which refers to audit in a loose way as a mere possibility. Another provision which was relied upon of its own motion by the Court of First Instance does not even refer to audit, although it concerns defective performance of a contract. The requirement to carry out an audit thus proves to be independent of the contractual provision relied upon.

In any event, financial audit could not be required if there was nothing to audit, since nobody is bound to do the impossible and contractual provisions must be construed in such a way as to ensure practical effectiveness.

The principle of sound budgetary management requires that the Commission should not carry out audits without reason. The Court of First Instance excluded at the outset application of the principles of good faith and commercial usage which could have offered guidance in its interpretation.

Since it gave judgment by default, the Court of First Instance cannot blame the Commission for not explaining some of its arguments (in particular the preceding argument above), without infringing the principle of judicial protection.

COURT OF FIRST INSTANCE

Election of the President of the Court of First Instance of the European Communities

(2007/C 269/68)

At a meeting on 17 September 2007, the Judges of the Court of First Instance, in accordance with Article 7 of the Rules of Procedure, elected Judge Marc Jaeger as President of the Court of First Instance for the period from 17 September 2007 to 31 August 2010.

Election of Presidents of the Chambers

(2007/C 269/69)

On 20 September 2007, the Court of First Instance, in accordance with Article 15 of the Rules of Procedure, elected Ms Tiili, Mr Azizi, Mr Meij, Mr Vilaras, Mr Forwood, Ms Martins Ribeiro, Mr Czúcz and Ms Pelikánová as Presidents of the Chambers composed of five Judges and of the Chambers composed of three Judges for the period from 20 September 2007 to 31 August 2010.

Assignment of Judges to the Chambers

(2007/C 269/70)

On 19 and 25 September 2007, the Court of First Instance decided to establish eight Chambers of five Judges and eight Chambers of three Judges for the period from 25 September 2007 to 31 August 2010, and to assign the Judges to them as follows:

First Chamber, Extended Composition, sitting with five Judges:

Ms Tiili, President of the Chamber, Mr Dehousse, Ms Wiszniewska-Białecka, Ms Jürimäe and Mr Soldevila Fragoso, Judges.

First Chamber, sitting with three Judges:

Ms Tiili, President of the Chamber;

Mr Dehousse, Judge;

Ms Wiszniewska-Białecka, Judge.

Second Chamber, Extended Composition, sitting with five Judges:

Ms Pelikánová, President of the Chamber, Mr Dehousse, Ms Wiszniewska-Białecka, Ms Jürimäe and Mr Soldevila Fragoso, Judges.

Second Chamber, sitting with three Judges:

Ms Pelikánová, President of the Chamber;

Ms Jürimäe, Judge;

Mr Soldevila Fragoso, Judge.

Third Chamber, Extended Composition, sitting with five Judges:

Mr Azizi, President of the Chamber, Mr Cooke, Ms Cremona, Ms Labucka and Mr Frimodt Nielsen, Judges.

Third Chamber, sitting with three Judges:

Mr Azizi, President of the Chamber;

Ms Cremona, Judge;

Mr Frimodt Nielsen, Judge.

Fourth Chamber, Extended Composition, sitting with five Judges:

Mr Czúcz, President of the Chamber, Mr Cooke, Ms Cremona, Ms Labucka and Mr Frimodt Nielsen, Judges.

Fourth Chamber, sitting with three Judges:

Mr Czúcz, President of the Chamber;

Mr Cooke, Judge;

Ms Labucka, Judge.

Fifth Chamber, Extended Composition, sitting with five Judges:

Mr Vilaras, President of the Chamber, Mr Vadapalas, Mr Prek, Mr Tchipev and Mr Ciucă, Judges.

Fifth Chamber, sitting with three Judges:

Mr Vilaras, President of the Chamber;

Mr Prek, Judge;

Mr Ciucă, Judge.

Sixth Chamber, Extended Composition, sitting with five Judges:

Mr Meij, President of the Chamber, Mr Vadapalas, Mr Prek, Mr Tchipev and Mr Ciucă, Judges.

Sixth Chamber, sitting with three Judges:

Mr Meij, President of the Chamber;

Mr Vadapalas, Judge;

Mr Tchipev, Judge.

Seventh Chamber, Extended Composition, sitting with five Judges:

Mr Forwood, President of the Chamber, Mr Šváby, Mr Papasavvas, Mr Moavero Milanesi, Mr Wahl, Mr Dittrich and Mr Truchot, Judges.

Seventh Chamber, sitting with three Judges:

Mr Forwood, President of the Chamber;

(a) Mr Šváby and Mr Moavero Milanesi, Judges.

(b) Mr Šváby and Mr Truchot, Judges.

(c) Mr Moavero Milanesi and Mr Truchot, Judges.

Eighth Chamber, Extended Composition, sitting with five Judges:

Ms Martins Ribeiro, President of the Chamber, Mr Šváby, Mr Papasavvas, Mr Moavero Milanesi, Mr Wahl, Mr Dittrich and Mr Truchot, Judges.

Eighth Chamber, sitting with three Judges:

Ms Martins Ribeiro, President of the Chamber;

(a) Mr Papasavvas and Mr Wahl, Judges.

(b) Mr Papasavvas and Mr Dittrich, Judges.

(c) Mr Wahl and Mr Dittrich, Judges.

In the Seventh and Eighth Chambers, Extended Composition, sitting with five Judges, the Judges who will sit with the President of the Chamber to make up the formation of five Judges will be the three Judges of the Chamber initially hearing the case, the fourth Judge of that Chamber and a Judge of the other Chamber composed of four Judges. The latter, who will not be the President of the Chamber, will be designated in turn for one year, in the order provided for by Article 6 of the Rules of Procedure of the Court of First Instance.

In the Seventh and Eighth Chambers sitting with three Judges, the President of the Chamber will sit with the Judges referred to at (a), (b) or (c) above in turn, depending on which of those formations the Judge-Rapporteur belongs to. For cases in which the President of the Chamber is the Judge-Rapporteur, the President of the Chamber will sit with the Judges of each of those formations alternately in accordance with the order in which the cases are registered, subject to the presence of connected cases.

Composition of the Grand Chamber

(2007/C 269/71)

On 19 September 2007, the Court of First Instance decided, in accordance with Article 10(1) of the Rules of Procedure, that for the period from 25 September 2007 to 31 August 2010 the 13 Judges of whom the Grand Chamber is composed shall be the President of the Court, the seven Presidents of those Chambers not entrusted with the case, and the Judges of the Chamber, Extended Composition, which would have had to sit in the case in question if it had been assigned to a Chamber composed of five Judges.

Plenary session

(2007/C 269/72)

On 2 October 2007, the Court of First Instance decided, in accordance with the second subparagraph of Article 32(1) of the Rules of Procedure, that where, following the designation of an Advocate General pursuant to Article 17 of the Rules of Procedure, there is an even number of Judges in the Court of First Instance sitting in plenary session, the rota established in advance, applied during the period of three years for which the Presidents of the Chambers composed of five Judges are elected, in accordance with which the President of the Court is to designate the Judge who will not take part in the judgment of the case, shall be in reverse order to the order in which the Judges rank according to their seniority in office under Article 6 of the Rules of Procedure, unless the Judge who would thus be designated is the Judge-Rapporteur. In that event, it is the Judge ranking immediately above him who shall be designated.

Appeal Chamber

(2007/C 269/73)

On 19 September 2007, the Court of First Instance decided that, for the period from 25 September 2007 to 30 September 2008, the Appeal Chamber will be composed of the President of the Court and, in rotation, four Presidents of Chambers.

Criteria for assigning cases to Chambers

(2007/C 269/74)

On 25 September 2007, the Court of First Instance laid down the following criteria for the assignment of cases to the Chambers for the period from 25 September 2007 to 30 September 2008, in accordance with Article 12 of the Rules of Procedure:

1. Appeals against the decisions of the Civil Service Tribunal shall be assigned to the Appeal Chamber as soon as the application has been lodged and without prejudice to any subsequent application of Articles 14 and 51 of the Rules of Procedure.

2. Cases other than those referred to in paragraph 1 above shall be assigned to Chambers of three Judges as soon as the application has been lodged and without prejudice to any subsequent application of Articles 14 and 51 of the Rules of Procedure.

   Cases referred to in this paragraph shall be allocated to the Chambers in turn, in accordance with the date on which they are registered at the Registry, following three separate rotas:

   — for cases concerning application of the competition rules applicable to undertakings, the rules on State aid and the rules on trade protection measures;

   — for cases concerning the intellectual property rights referred to in Article 130(1) of the Rules of Procedure;

   — for all other cases.

   In applying those rotas, the two Chambers sitting with three Judges which are composed of four Judges shall be taken into consideration twice at each third turn.

   The President of the Court of First Instance may derogate from the rotas on the ground that cases are related or with a view to ensuring an even spread of the workload.

Designation of the Judge replacing the President as the Judge hearing applications for interim measures

(2007/C 269/75)

On 19 September 2007, the Court of First Instance decided, in accordance with Article 106 of the Rules of Procedure, to designate Judge Cooke to replace the President of the Court for the purpose of deciding applications for interim measures where the latter is absent or prevented from dealing with them, in respect of the period from 18 September 2007 to 30 September 2008.

However, as regards applications for interim measures in respect of which a hearing was held and/or inquiry completed before 17 September 2007, the Judge designated to hear applications for interim measures during the period from 1 October 2006 to 17 September 2007 (OJ 2006 C 190, p. 15, and OJ 2007 C 155, p. 19) shall remain empowered to sign orders in those cases after 17 September 2007.

Judgment of the Court of First Instance of 27 September 2007 — Pelle and Konrad v Council of the European Union and the Commission of the European Communities

(Case T-8/95 and T-9/95) [1]

(Non-contractual liability — Milk — Additional levy — Reference quantity — Regulation (EEC) No 2187/93 — Compensation of producers — Suspension of limitation)

(2007/C 269/76)

Language of the case: German

Parties

Applicants: Wilhelm Pelle (Kluse-Ahlen, Germany) and Ernst-Reinhard Konrad (Löllbach, Germany) (represented by: B. Meisterernst, M. Düsing, D. Manstetten, F. Schulze and W. Haneklaus, lawyers)

Defendants: Council of the European Union (represented initially by A. Brautigam and A.-M. Colaert, and subsequently by A.-M. Colaert, agents) and the Commission of the European Communities (represented by B. Booß and M. Niejahr, agents, and subsequently by T. van Rijn and M. Niejahr, assisted initially by H.-J. Rabe, G. Berrisch and M. Núñez-Müller, lawyers)

Re:

Applications for compensation under Article 178 of the EC Treaty (now Article 235 EC) and under the second paragraph of Article 215 of the EC Treaty (now the second paragraph of Article 288 EC) for damage allegedly suffered by the applicants as a result of the application of Council Regulation (EEC) No 857/84 of 31 March 1984 adopting general rules for the application of the levy referred to in Article 5c of Council Regulation (EEC) No 804/68 in the milk and milk products sector (OJ 1984 L 90, p. 13), as supplemented by Commission Regulation (EEC) No 1371/84 of 16 May 1984 laying down detailed rules for the application of the additional levy referred to in Article 5c of Regulation No 804/68 (OJ 1984 L 132, p. 11).

Operative part of the judgment

The Court:

1. *Orders the Council and the Commission to make good the damage suffered by Wilhelm Pelle and Ernst-Reinhard Konrad as a result of the application of Council Regulation (EEC) No 857/84 of 31 March 1984 adopting general rules for the application of the levy referred to in Article 5c of Regulation (EEC) No 804/68 in the milk and milk products sector, as supplemented by Commission Regulation (EEC) No 1371/84 of 16 May 1984 laying down detailed rules for the application of the additional levy referred to in Article 5c of Regulation (EEC) No 804/68, in so far as those regulations did not provide for the allocation of a reference quantity to producers who, pursuant to an undertaking given under Council Regulation (EEC) No 1078/77 of 17 May 1977, introducing a system of premiums for the non-marketing of milk and milk products and for the conversion of dairy herds, did not deliver any milk during the reference year adopted by the Member State concerned;*

2. *Orders that Wilhelm Pelle, applicant in Case T-8/95, be compensated for losses suffered as a result of the application of Regulation No 857/84 for the period commencing 5 December 1987 and ending 28 March 1989;*

3. *Orders that Ernst-Reinhard Konrad, applicant in Case T-9/95, be compensated for losses suffered as a result of the application of Regulation No 857/84 for the period commencing 27 November 1986 and ending on 28 March 1989;*

4. *Requests the parties to inform the Court within six months from the date of delivery of this judgment of the amounts of damages agreed to be payable;*

5. *Orders that, in the absence of agreement, the parties shall transmit to the Court within the same period a statement of their views with supporting figures;*

6. *Reserves the costs.*

(1) OJ C 132, 28.5.2005.

Judgment of the Court of First Instance (First Chamber) of 17 September 2007 — Akzo Nobel Chemicals Ltd and Akcros Chemicals Ltd v Commission

(Joined Cases T-125/03 and T-253/03) (1)

(Competition — Administrative procedure — Commission's powers of investigation — Documents seized in the course of an investigation — Legal professional privilege protecting communications between lawyers and their clients — Admissibility)

(2007/C 269/77)

Language of the case: English

Parties

Applicants: Akzo Nobel Chemicals Ltd (Hersham, Walton on Thames, Surrey, United Kingdom), Akcros Chemicals Ltd (Hersham) (represented by C. Swaak, M. Mollica and M. van der Woude, lawyers)

Defendants: Commission of the European Communities (represented initially by R Wainwright and C. Ingen-Housz, and subsequently by F. Castillo de la Torre and X. Lewis, Agents),

Interveners in support of the defendants: The Council of the Bars and Law Societies of the European Union (CCBE) (Brussels, Belgium), (represented by J. Flynn QC); Algemene Raad van de Nederlandse Orde van Advocaten (The Hague, Netherlands) (represented by O. Brouwer and C. Schillemans, lawyers); European Company Lawyers Association (ECLA) (Brussels) (represented by M. Dolmans, K. Nordlander, lawyers, and J. Temple Lang, solicitor); American Corporate Counsel Association (ACCA) — European Chapter (Paris, France) (represented by G. Berrisch, lawyer, and D. Hull, solicitor); International Bar Association (IBA) (London, United Kingdom) (represented by J. Buhart, lawyer)

Re:

Application, first, for the annulment of Commission decision C(2003) 559/4 of 10 February 2003 and, so far as necessary, of Commission decision C(2003) 85/4 of 30 January 2003 ordering Akzo Nobel Chemicals Ltd, Akcros Chemicals Ltd and Akcros Chemicals and their respective subsidiaries to submit to an investigation on the basis of Article 14(3) of Regulation No 17 of 6 February 1962, First Council Regulation implementing Articles [81 EC] and [82 EC] (OJ, English Special Edition 1959-1962, p. 87) (Case COMP/E-1/38.589) and for an order requiring the Commission to return certain documents seized in the course of the investigation in question and not to use their contents (Case T-125/03) and, second, for the annulment of Commission decision C(2003) 1533 final of 8 May 2003 rejecting a request for the protection of those documents on grounds of legal professional privilege protecting communications between lawyers and their clients (Case T-253/03).

Operative part of the judgment

1. *Dismisses the action in Case T-125/03 as inadmissible;*

2. *Dismisses the action in Case T-253/03 as unfounded;*

3. *Orders Akzo Nobel Chemicals Ltd and Akcros Chemicals Ltd to bear three fifths of their own costs relating to the main proceedings and to the proceedings for interim relief, and to pay three fifths of the costs incurred by the Commission relating to the main proceedings and to the proceedings for interim relief;*

4. *Orders the Commission to bear two fifths of its own costs relating to the main proceedings and to the proceedings for interim relief, and to pay two fifths of the costs incurred by Akzo Nobel Chemicals and Akcros Chemicals relating to the main proceedings and to the proceedings for interim relief;*

5. *Orders the interveners to bear their own costs relating to the main proceedings and to the proceedings for interim relief.*

([1]) OJ C 146, 21.6.2003.

Judgment of the Court of First Instance of 20 September 2007 — Fachvereinigung Mineralfaserindustrie v Commission

(Case T-375/03) ([1])

(State aid — Measures to promote the use of insulating materials produced from renewable raw materials — Decision declaring the aid compatible with the common market — Preliminary investigation procedure — Action for annulment — Admissibility — Notion of party concerned within the meaning of Article 88(2) EC — Commission's duty to initiate the inter partes procedure)

(2007/C 269/78)

Language of the case: German

Parties

Applicant: Fachvereinigung Mineralfaserindustrie eV Deutsche Gruppe der Eurima — European Insulation Manufacturers Association (Frankfurt am Main, Germany) (represented by: T. Schmidt-Kötters, D. Uwer and K. Najork, lawyers)

Defendant: Commission of the European Communities (represented by: V. Kreuschitz and M. Niejahr, acting as Agents)

Intervener in support of the defendant: Federal Republic of Germany (represented by: initially, W.-D. Plessing, M. Lumma and C. Schulze-Bahr, and subsequently W.-D. Plessing and C. Schulze-Bahr, acting as Agents)

Re:

Application for annulment of Commission Decision C(2003) 1473 final of 9 July 2003 declaring the measures which the German authorities propose to take to promote the use of insulating materials produced from renewable raw materials compatible with the common market (State aid No 694/2002).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *orders Fachvereinigung Mineralfaserindustrie eV Deutsche Gruppe der Eurima — European Insulation Manufacturers Association to bear its own costs as well as those incurred by the Commission;*

3. *orders the Federal Republic of Germany to bear its own costs.*

([1]) OJ C 35, 7.2.2004.

Judgment of the Court of First Instance of 27 September 2007 — La Mer Technology v OHIM — Laboratoires Goëmar (LA MER)

(Case T-418/03) ([1])

(Community trade mark — Opposition proceedings — Application for Community word mark LA MER — Earlier national word mark LABORATOIRE DE LA MER — Relative ground of refusal — Genuine use of the mark — Article 43(1) and (2) of Regulation (EC) No 40/94 — No likelihood of confusion — Article 8(1)(b) of Regulation No 40/94))

(2007/C 269/79)

Language of the case: English

Parties

Applicant: La Mer Technology, Inc. (New York, New York, United States) (represented by: initially, V. von Bomhard, A. Renck and A. Pohlmann, and subsequently, V. von Bomhard and A. Renck, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the Court of First Instance: Laboratoires Goëmar (Saint-Malo, France) (represented by: E. Baud and S. Strittmatter, lawyers)

Re:

Action for annulment of the decision of the Second Board of Appeal of OHIM of 23 October 2003 (Case R 814/2000-2) relating to opposition proceedings between Laboratoires Goëmar and La Mer Technology, Inc.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders La Mer Technology, Inc., to pay its own costs and those of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) and Laboratoires Goëmar.*

([1]) OJ C 47, 21.2.2004.

Judgment of the Court of First Instance (Grand Chamber) of 17 September 2007 — Microsoft v Commission

(Case T-201/04) ([1])

(Competition — Abuse of dominant position — Client PC operating systems — Work group server operating systems — Streaming media players — Decision finding infringements of Article 82 EC — Refusal of the dominant undertaking to supply and authorise the use of interoperability information — Supply by the dominant undertaking of its client PC operating system conditional on the simultaneous acquisition of its media player — Remedies — Appointment of an independent monitoring trustee — Fine — Determination of the amount — Proportionality)

(2007/C 269/80)

Language of the case: English

Parties

Applicant: Microsoft Corp. (Redmond, Washington, United States) (represented by: J.-F. Bellis, lawyer, and I. Forrester QC)

Defendants: Commission of the European Communities (represented initially by: R. Wainwright, F. Castillo de la Torre, P. Hellström and A. Whelan, Agents, and subsequently by F. Castillo de la Torre, P. Hellström and A. Whelan)

Interveners in support of the applicant: The Computing Technology Industry Association, Inc. (Oakbrook Terrace, Illinois, United States) (represented by: G. van Gerven and T. Franchoo, lawyers, and B. Kilpatrick, Solicitor); DMDsecure.com BV (Amsterdam, Netherlands); MPS Broadband AB (Stockholm, Sweden); Pace Micro Technology plc (Shipley, West Yorkshire, United Kingdom); Quantel Ltd (Newbury, Berkshire, United Kingdom); Tandberg Television Ltd (Southampton, Hampshire, United Kingdom) (represented by: J. Bourgeois, lawyer); Association for Competitive Technology, Inc. (Washington, DC, United States) (represented by: L. Ruessmann and P. Hecker, lawyers, and K. Bacon, Barrister); TeamSystem SpA (Pesaro, Italy); Mamut ASA (Oslo, Norway) (represented by: G. Berrisch, lawyer); and Exor AB (Uppsala, Sweden) (represented by: S. Martínez Lage, H. Brokelmann and R. Allendesalazar Corcho, lawyers)

Interveners in support of the defendant: Software & Information Industry Association (Washington, DC) (represented by: J. Flynn QC, C. Simpson and T. Vinje, Solicitors, and D. Paemen, N. Dodoo and M. Dolmans, lawyers); Free Software Foundation Europe eV (Hamburg, Germany) (represented by: C. Piana, lawyer); Audiobanner.com (Los Angeles, California, United States) (represented by: L. Alvizar Ceballos, lawyer); and European Committee for Interoperable Systems (ECIS) (Brussels, Belgium) (represented by: D. Paemen, N. Dodoo and M. Dolmans, lawyers, and J. Flynn QC)

Re:

Application for annulment of Commission Decision 2007/53/EC of 24 March 2004 relating to a proceeding pursuant to Article 82 [EC] and Article 54 of the EEA Agreement against Microsoft Corp. (Case COMP/C-3/37.792 — Microsoft) (OJ 2007 L 32, p. 23) or, in the alternative, annulment or reduction of the fine imposed on the applicant in that decision.

Operative part of the judgment

The Court:

1. *Annuls Article 7 of Commission Decision 2007/53/EC of 24 March 2004 relating to a proceeding pursuant to Article 82 [EC] and Article 54 of the EEA Agreement against Microsoft Corp. (Case COMP/C-3/37.792 — Microsoft), in so far as:*

   — *it orders Microsoft to submit a proposal for the establishment of a mechanism which is to include a monitoring trustee with the power to have access, independently of the Commission, to Microsoft's assistance, information, documents, premises and employees and to the source code of the relevant Microsoft products;*

   — *it requires that the proposal for the establishment of that mechanism provide that all the costs associated with the appointment of the monitoring trustee, including his remuneration, be borne by Microsoft; and*

   — *it reserves to the Commission the right to impose by way of decision a mechanism such as that referred to in the first and second indents above;*

2. *Dismisses the remainder of the application;*

3. *Orders Microsoft to bear 80 % of its own costs and to pay 80 % of the Commission's costs, with the exception of the costs incurred by the Commission in connection with the intervention of The Computing Technology Industry Association, Inc., Association for Competitive Technology, Inc., TeamSystem SpA, Mamut ASA, DMDsecure.com BV, MPS Broadband AB, Pace Micro Technology plc, Quantel Ltd, Tandberg Television Ltd and Exor AB;*

4. *Orders Microsoft to bear its own costs and to pay the Commission's costs relating to the interim measures proceedings in Case T-201/04 R, with the exception of the costs incurred by the Commission in connection with the intervention of The Computing Technology Industry Association, Association for Competitive Technology, TeamSystem, Mamut, DMDsecure.com, MPS Broadband, Pace Micro Technology, Quantel, Tandberg Television and Exor;*

5. *Orders Microsoft to pay the costs of Software & Information Industry Association, Free Software Foundation Europe, Audiobanner.com and European Committee for Interoperable Systems (ECIS), including those relating to the interim measures proceedings;*

6. *Orders the Commission to bear 20 % of its own costs and to pay 20 % of Microsoft's costs, with the exception of the costs incurred by Microsoft in connection with the intervention of Software & Information Industry Association, Free Software Foundation Europe, Audiobanner.com and ECIS;*

7. *Orders The Computing Technology Industry Association, Association for Competitive Technology, TeamSystem, Mamut, DMDsecure.com, MPS Broadband, Pace Micro Technology, Quantel, Tandberg Television and Exor to bear their own costs, including those relating to the interim measures proceedings.*

([1]) OJ C 179 of 10.7.2004.

Judgment of the Court of First Instance (First Chamber, Extended Composition) of 17 September 2007 — France v Commission

(Case T-240/04) ([1])

(European Atomic Energy Community — Investments — Communication to Commission of investment projects — Procedures — Regulation (Euratom) No 1352/2003 — Commission's lack of competence — Articles 41 EA to 44 EA — Principle of legal certainty)

(2007/C 269/81)

Language of the case: French

Parties

Applicant: French Republic (represented initially by: F. Alabrune, G. de Bergues, C. Lemaire and E. Puisais, then by G. De Bergues and S. Gasri, agents)

Defendant: Commission of the European Communities (represented by: M. Patakia)

Interveners in support of the applicant: Federal Republic of Germany (represented by C.-D Quassowski and A. Tiemann, agents) and Kingdom of Belgium (represented initially by D. Haven, then by M. Wimmer, and then by A Hubert, agents, assisted by J.-F. De Bock, lawyer)

Re:

Annulment of Commission Regulation (Euratom) No 1352/2003 of 23 July 2003 amending Regulation (EC) No 1209/2000 determining procedures for effecting the communications prescribed under Article 41 of the Treaty establishing the European Atomic Energy Community (OJ 2003 L 192, p. 15).

Operative part of the judgment

The Court:

1. *Annuls Commission Regulation (Euratom) No 1352/2003 of 23 July 2003 amending Regulation (EC) No 1209/2000 determining procedures for effecting the communications prescribed under Article 41 of the Treaty establishing the European Atomic Energy Community;*

2. *Orders the Commission to pay the costs of the French Republic;*

3. *Orders the Federal Republic of Germany and the Kingdom of Belgium to bear their own costs.*

([1]) OJ C 304 of 13.12.2003 (formerly Case C-455/03).

Judgment of the Court of First Instance of 20 September 2007 — Imagination Technologies v OHIM (PURE DIGITAL)

(Case T-461/04) ([1])

(Community trade mark — Application for the Community word mark PURE DIGITAL — Absolute grounds for refusal — 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 269/82)

Language of the case: English

Parties

Applicant: Imagination Technologies (Kings Langley, Hertfordshire, United Kingdom) (represented by: M. Edenborough, Barrister, and P. Brownlow and N. Jenkins, Solicitors)

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

Re:

Application for annulment of the decision of the Second Board of Appeal of OHIM of 16 September 2004 (Case R 108/2004-2), concerning an application for the registration of the word mark PURE DIGITAL as a Community trade mark

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

([1]) OJ C 57, 5.3.2005.

Judgment of the Court of First Instance (Fifth Chamber) of 20 September 2007 — EARL Salvat père & fils and others v Commission

(Case T-136/05) ([1])

(State aid — Wine-production conversion measures — Decision declaring aid partly compatible and partly incompatible with the common market — Action for annulment — Admissibility — Obligation to State reasons — Assessment in light of Article 87(1) EC)

(2007/C 269/83)

Language of the case: French

Parties

Applicants: EARL Salvat père & fils (Saint-Paul-de-Fenouillet, France); Comité interprofessionnel des vins doux naturels and vins de liqueur à appellations contrôlées (CIVDN) (Perpignan, France); and Comité national des interprofessions des vins à appellation d'origine (CNIV) (Paris, France) (represented by: H. Calvet and O.Billard, lawyers)

Defendant: Commission of the European Communities (represented by: C. Giolito and A. Stobiecka-Kuik, agents)

Intervener in support of the applicants: French Republic (represented by G. de Bergues, agent)

Re:

Action for annulment of Article 1(1) and (3) of Decision 2007/253/EC of the Commission of 19 January 2005 on the Rivesaltes plan and CIVDN parafiscal charges operated by France (OJ 2007 L 112, p. 1).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the applicants to pay the costs;*

3. *Orders the French Republic to bear its own costs.*

([1]) OJ C 132 of 28.5.2005.

Judgment of the Court of First Instance (Third Chamber) of 20 September 2007 — Fachvereinigung Mineralfaserindustrie v Commission

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

(State Aid — Measures to promote the use of insulation material from renewable raw materials — Decision declaring aid compatible with the common market — Preliminary examination — Action for annulment — Professional association — Meaning of 'party concerned' in Article 88(2) EC — Pleas in law on validity of decision — Inadmissibility)

(2007/C 269/84)

Language of the case: German

Parties

Applicant: Fachvereinigung Mineralfaserindustrie eV Deutsche Gruppe der Eurima — European Insulation Manufacturers Association (Frankfurt am Main, Germany) (represented by: T. Schmidt -Kötters, D. Uwer and K. Najork)

Defendant: Commission of the European Communities (represented by: V. Kreuschitz)

Intervener in support of the defendant: Federal Republic of Germany (represented by M. Lumma and C. Schulze-Bahr, agents)

Re:

Action for annulment of Commission Decision C(2005) 379 of 11 February 2005 relating to State Aid N 260b/2004 (Germany — Prolongation of the scheme to promote the use of insulation material from renewable raw materials)

Operative part of the judgment

The Court:

1. *Dismisses the action as inadmissible;*

2. *Orders Fachvereinigung Mineralfaserindustrie eV Deutsche Gruppe der Eurima — European Insulation Manufacturers Association to bear its own costs and to pay the costs of the Commission;*

3. *Orders the Federal Republic of Germany to bear its own costs.*

([1]) OJ C 229 of 17.9.2005.

Order of the Court of First Instance of 5 September 2007 — Document Security Systems v ECB

(Case T-295/05) ([1])

(Monetary Union — Issue of euro banknotes — Alleged use of a patented invention designed to prevent counterfeiting — Action for infringement of a European patent — Lack of jurisdiction of the Court of First Instance — Inadmissibility — Action for damages)

(2007/C 269/85)

Language of the case: English

Parties

Applicant: Document Security Systems, Inc. (Rochester, New York, United States) (represented by: L. Cohen, H. Sheraton, B. Uphoff, solicitors, and C. Stanbrook, QC)

Defendant: European Central Bank (ECB) (represented by: C. Zilioli and P. Machado, agents, assisted by E. Garayar Gutiérrez and G. de Ulloa y Suelves, lawyers)

Re:

Action for a declaration that the ECB infringed the applicant's rights conferred by a European patent and for compensation for the resulting loss and damage that the applicant claims to have suffered.

Operative part of the order

1. *The action for patent infringement is dismissed as inadmissible.*

2. *The action for damages is dismissed.*

3. *Document Security Systems, Inc. is ordered to pay its own costs and to pay those of the European Central Bank.*

([1]) OJ C 229, 17.9.2005.

Order of the Court of First Instance of 7 September 2007 — González Sánchez v OHIM — Bankinter (ENCUENTA)

(Case T-49/06) ([1])

(Community trade mark — Opposition proceedings — Article 63(4) of Regulation (EC) No 40/94 — Lack of standing to bring proceedings — Inadmissibility)

(2007/C 269/86)

Language of the case: Spanish

Parties

Applicant: Francisco Javier González Sánchez (Madrid, Spain) (represented by: G. Justicia González, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: S. Palmero Cabezas, agent)

Other party to the proceedings before the Board of Appeal of OHIM: Bankinter SA (Madrid, Spain)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 16 December 2005 (Case R 1116/2005-2) concerning opposition proceedings between Bankinter SA and the Confederación Española de Cajas de Ahorros.

Operative part of the order

The Court:

1. *dismisses the action as inadmissible;*

2. *orders Francisco Javier González Sánchez to pay all of the costs.*

([1]) OJ C 310, 16.12.2006.

Action brought on 9 August 2007 — Offshore Legends v OHIM — Acteon (OFFSHORE LEGENDS (in black and white))

(Case T-305/07)

(2007/C 269/87)

Language in which the application was lodged: French

Parties

Applicant: Offshore Legends NV (Nevele, Belgium) (represented by: P. Maeyaert and N. Clarembeaux, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Acteon SARL (Saint-Tropez, France)

Form of order sought

— Annul, in part, the decision of the Second Board of Appeal of 29 May 2007 (Case R 1031/2006-2);

— Order OHMI to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Offshore Legends

Community trade mark concerned: The figurative mark 'Offshore Legends', in black and white, for goods in classes 3, 9, 14, 18, 20, 24, 25, 28 and 35 — Application No 3 160 231

Proprietor of the mark or sign cited in the opposition proceedings: Acteon SARL

Mark or sign cited in opposition: National and international figurative mark 'Offshore One' for products in classes 16, 18 and 25

Decision of the Opposition Division: The opposition is rejected in respect of the entirety of the contested goods

Decision of the Board of Appeal: Partial annulment of the decision of the opposition division, to the extent that it rejected the opposition in respect of the products in classes 18 and 25

Pleas in law: Infringement of Article 8(1)(b) of Regulation (EC) No 40/94 [1], to the extent that the Board of Appeal erred in its assessment of the risk of confusion and, in particular, erred with regard to the assessment of the similarity of the trade marks in question.

[1] Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1).

Action brought on 9 August 2007 — Offshore Legends v OHIM — Acteon (OFFSHORE LEGENDS (in blue, black, green))

(Case T-306/07)

(2007/C 269/88)

Language in which the application was lodged: French

Parties

Applicant: Offshore Legends NV (Nevele, Belgium) (represented by: P. Mayaert and N. Clarembeaux, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Acteon SARL (Saint-Tropez, France)

Form of order sought

— Annul, in part, the decision of the Second Board of Appeal of 29 May 2007 (Case R 1038/2006-2);

— Order OHMI to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Offshore Legends

Community trade mark concerned: The figurative mark 'Offshore Legends' in blue, black and green, for goods in classes 3, 9, 14, 18, 20, 24, 25, 28 and 35 — Application No 2 997 021

Proprietor of the mark or sign cited in the opposition proceedings: Acteon SARL

Mark or sign cited in opposition: National and international figurative mark 'Offshore One' for goods in classes 16, 18 and 25

Decision of the Opposition Division: The opposition is rejected in respect of the entirety of the contested goods

Decision of the Board of Appeal: Partial annulment of the decision of the opposition division, to the extent that it rejected the opposition in respect of the goods in classes 18 and 25

Pleas in law: Infringement of Article 8(1)(b) of Regulation (EC) No 40/94 [1], to the extent that the Board of Appeal erred in its assessment of the risk of confusion and, in particular, erred with regard to the assessment of the similarity of the trade marks in question.

[1] Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1).

Action brought on 16 August 2007 — Tegebauer v Parliament

(Case T-308/07)

(2007/C 269/89)

Language of the case: German

Parties

Applicant: Ingo-Jens Tegebauer (Trier, Germany) (represented by: R. Nieporte, lawyer)

Defendant: European Parliament

Form of order sought

— Declare null and void the Decision of the Committee on Petitions of 20 June 2007 on Petition No 0095/2007;

— Order the defendant to pay the costs.

Pleas in law and main arguments

The applicant contests the Decision of the Committee on Petitions of the European Parliament of 20 June 2007, by which the petition submitted by the applicant in accordance with Article 191(6) of the Rules of Procedure of the European Parliament was put on the file without further action being taken. The applicant's petition relates to the partial recovery of the candidate's remuneration paid during his pre-service training for the career of senior general administrator with the municipality of Brunswick.

In support of his application, the applicant submits that the contested decision is not sufficiently well founded. In addition, he points out that the requirements for submission of a petition under Article 194 EC are met, in particular that it relates to a matter which comes within the Community's fields of activity and which affects him directly.

Action brought on 27 August 2007 — Commission v B2Test

(Case T-317/07)

(2007/C 269/90)

Language of the case: French

Parties

Applicant: Commission of the European Communities (Brussels, Belgium) (represented by: L. Escobar Guerrero, agent, and E. Bouttier, lawyer)

Defendant: B2Test (Gardanne, France)

Form of order sought

— order B2Test to pay to the applicant the sum of EUR 50 110,72, corresponding to the principal sum owed of EUR 43 437,94 and the sum of EUR 6 672,78 owed by way of default interest, due as of 23 December 2004;

— order B2Test to pay interest amounting to EUR 8,03 per day at the same rate with effect from 24 December 2004 until the entire amount due has been paid in full;

— order B2Test to pay the costs.

Pleas in law and main arguments

By the present action based on an arbitration clause, the applicant requests that the defendant be ordered to repay the advance paid by the Community, together with default interest, as a result of the non-performance of Contract No BRST-CT-98-5452, concluded in the context of a specific programme for research and technological development, including demonstration, in the field of industrial and materials technologies (1994-1998) ([1]) and concerning the project 'Research and development of a new safety flooring based on recycled plastic and rubber materials for an environmental and economic added value'.

Under the contract, the defendant was required regularly to submit to the Commission the scientific and financial documents referred to in the contract. According to the applicant, only part of the documents required under the contract were forwarded by the defendant almost three years after the dates laid down in the contract. The final report on the project was never forwarded. The applicant therefore submits that the defendant failed to fulfil its contractual obligations and is required to repay to the Commission the advances which it initially paid to the defendant.

([1]) OJ 1994 L 222, p. 19.

Action brought on 28 August 2007 — Lufthansa AirPlus Servicekarten v OHMI — Applus Servicios Tecnológicos (A+)

(Case T-321/07)

(2007/C 269/91)

Language in which the application was lodged: English

Parties

Applicant: Lufthansa AirPlus Servicekarten GbmH (Neu Isenburg, Germany) (represented by: G. Würtenberger, T. Wittmann, lawyers)

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

Other party to the proceedings before the Board of Appeal: Applus Servicios Technologicos, S.L. (formerly Agbar Automotive, S.L.) (Barcelona, Spain)

Form of order sought

— That the decision of the Second Board of Appeal dated 7 June 2007 in Case R 310/2006-2, pertaining to the opposition based on Community trademark registration No 2 335 693 'Airplus International' against Community trademark application No 2 933 356 'A+' be annulled;

— that the opposition against Community trademark application No 2 933 356 'A+' be granted and application for registration of Community trademark registration No 2 933 356 'A+' be rejected;

— that the defendant pays the costs of the proceedings.

Pleas in law and main arguments

Applicant for the Community trade mark: Applus Servicios Technologicos, S.L. (formerly Agbar Automotive, S.L.)

Community trade mark concerned: The figurative trade mark 'A+' for goods and services in Classes 9, 35, 36, 37, 40, 41 and 42 — application No 2 933 356

Proprietor of the mark or sign cited in the opposition proceedings: Lufthansa AirPlus Servicekarten GbmH

Mark or sign cited: The Community word mark 'Airplus International' for goods and services in Classes 9, 35, 36 and 42

Decision of the Opposition Division: Rejected the opposition

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Articles 8(1) and 8(5) as well as Articles 73, 74 and 79 of Council Regulation (EC) No 40/94.

The applicant claims that the Board failed to evaluate the criteria of identity of goods and services as well as the similarity of the marks and disregarded the reputation enjoyed by the earlier mark. Moreover, the applicant submits that the Board has breached its duty to state the reasons on which its decision was based. Also, according to the applicant, the Board did not restrict itself to the examination of uncontested facts, evidence and arguments put forward by the parties. Furthermore, the applicant contends that its rights of due process were severely impaired by the Office's failure to inform the applicant about the replacement of the trademark's proprietor by another company. Finally, it is submitted that the Board exceeded its powers when taking into account the submissions filed by the trademark proprietor, without justification, beyond the time-limit set by the Office.

Action brought on 27 August 2007 — Kenitex Química v OHIM

(Case T-322/07)

(2007/C 269/92)

Language in which the application was lodged: Portuguese

Parties

Applicant: Kenitex Química, S.A. (Manique, Estoril (Portugal)) (represented by: M. Pardete Reis, lawyer)

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

Other party to the proceedings before the Board of Appeal of the Office: Chemicals International Establishment

Form of order sought

— annulment of the decision of the Fourth Board of Appeal of the Office of 19 June 2007, notified by fax to the applicant on 25 June 2007 in the proceedings for invalidity No 879 C 001553742/1 (Community Trade Mark Register No 1553742), to which corresponds case No R 330/2006-4 and, in consequence, declare valid Community trade mark No 1553742 'KENITEX TINTAS A QUALIDADE DA COR', applied for on 13 March 2000 and registered on 22 May 2001;

— order the defendant to pay the costs.

Pleas in law and main arguments

On 22 May 2001 the figurative Community trade mark 'KENITEX TINTAS A QUALIDADE DA COR' was registered for goods in Classes 1, 2 and 19 of the Nice Classification (chemicals used in industry, artificial resins, paints, varnishes, lacquers, mordants, natural resins, metals for painters; building materials (non-metallic), asphalt paving, cladding, road safety devices, glass (building)).

Chemicals International Establishment sought cancellation of the Community mark on the basis that there existed in previous registers graphic national marks 'Kenitex' for goods in Classes 2 (decorating paints) in Portugal, 'Kenitex' for goods in Classes 2 and 19 (cladding of various colours for buildings) in France and 'Kenitex' for goods in Classes 1, 2, 17 and 19 (non-inflammable and waterproof goods, paints and cladding) in the Benelux countries.

The Cancellation Division upheld the application for a declaration of invalidity and the Board of Appeal dismissed the appeal brought by the applicant against that decision, considering that there was some likelihood of confusion, given the similarity of the goods and signs.

The applicant alleges contravention of Article 8(1)(b) of Council Regulation No 40/94 ([1]), taking the view that there is no likelihood of confusion between the two signs and the applicant's sign corresponds to its business name (that of the company) and name of the establishment registered in Portugal with the National Institute of Industrial Property.

([1]) Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1).

Action brought on 30 August 2007 — El Morabit v Council of the European Union

(Case T-323/07)

(2007/C 269/93)

Language of the case: Dutch

Parties

Applicant: Mohamed El Morabit (Amsterdam, Netherlands) (represented by: U. Sarikaya, lawyer)

Defendant: Council of the European Union

Form of order sought

— Annul the Council's decision of 28 June 2007.

Pleas in law and main arguments

The applicant contests the decision [1] whereby the Council decided that a decision had been taken with respect to the applicant by a competent authority within the meaning of Article 1(4) of the common position and that the applicant should continue to be subject to the specific restrictive measures provided for in Regulation (EC) No 2580/2001.

The applicant submits that, although he has been found guilty by a court of participating in a criminal organisation with terrorist aims, he has appealed against that judgment. The Council's decision is also premature and conflicts with Article 6 of the ECHR and Articles 47 and 48 of the Charter of Fundamental Rights of the European Union.

[1] 2007/445/EC: Council Decision of 28 June 2007 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Decisions 2006/379/EC and 2006/1008/EC (OJ 2007 L 169, p. 58).

Action brought on 3 September 2007 — Caisse Fédérale du Crédit Mutuel Centre Est Europe v OHIM (SURFCARD)

(Case T-325/07)

(2007/C 269/94)

Language in which the application was lodged: French

Parties

Applicant: Caisse Fédérale du Crédit Mutuel Centre Est Europe (Strasbourg, France) (represented by: P. Greffe and J. Schoumann, lawyers)

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

Form of order sought

— Annulment of the decision of the First Board of Appeal of OHIM of 14 June 2007, Case R 1130/2006-1 refusing application for registration of Community trade mark 'SURFCARD', application No 3 837 564, for goods and services sought in classes 9, 36 and 38;

— Registration of Community trade mark 'SURFCARD' No 3 837 564 for all of the goods and services sought.

Pleas in law and main arguments

Community trade mark concerned: Word mark 'SURFCARD' for goods and services in classes 9, 36 and 38 (application No 3 837 564)

Decision of examiner: Application for registration partially refused

Decision of the Board of Appeal: Action dismissed

Pleas in law: Infringement of Article 7(1)(b)of Regulation No 40/94 of the Council [1] in that, according to the applicant and contrary to observations in the contested decision, the expression 'SURFCARD' is arbitrary and distinctive in relation to the goods and services sought.

[1] Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1)

Action brought on 30 August 2007 — Kuiburi Fruit Canning v Council

(Case T-330/07)

(2007/C 269/95)

Language of the case: English

Parties

Applicant: Kuiburi Fruit Canning Co., Ltd (Bangkok, Thailand) (represented by: F. Graafsma, J. Cornelis, lawyers)

Defendant: Council of the European Union

Form of order sought

— Annulment of Council Regulation (EC) No 682/2007 of 18 June 2007 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain prepared or preserved sweet corn in kernels originating in Thailand;

— order that the Council of the European Communities pays the applicant's costs.

Pleas in law and main arguments

This application seeks annulment of Council Regulation (EC) No 682/2007 ([1]) of 18 June 2007 in that it allegedly infringes Article 17(3) of Regulation (EC) No 384/1996 ([2]) and Article 6(10)(2) of the WTO Agreement ([3]), by rejecting the applicant's request for an individual margin of dumping despite the fact that the applicant claims to be the only exporting producer having submitted the necessary information for the calculation of the individual margin.

First, according to the applicant, the Council committed a manifest error of assessment in concluding that there was more than one request for the calculation of an individual margin.

Second, the applicant claims that, as there was only one exporting producer that requested the calculation of an individual margin, the Council did not have the discretion to determine whether an individual examination for the applicant would be unduly burdensome and would prevent completion of the investigation in good time.

Third, should the Council have such discretion, the applicant contends that the Council committed a manifest error of appraisal in finding that additional examination of one exporter would have been unduly burdensome, preventing the completion of the investigation in time.

Finally, the applicant submits that the Council has committed a manifest error of assessment by concluding that the calculation of an individual margin for the applicant would have been discriminatory towards other non-sampled exporters.

([1]) Council Regulation (EC) No 682/2007 of 18 June 2007 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain prepared or preserved sweet corn in kernels originating in Thailand (OJ L 159, p. 14).
([2]) Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (OJ L 56, p. 1).
([3]) Uruguay Round of Multilateral Trade Negotiations (1986-1994) — Annex 1 — Annex 1A — Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (WTO-GATT 1994) — Anti-dumping agreement (OJ L 336, p. 103).

Action brought on 4 September 2007 — Germany v Commission

(Case T-332/07)

(2007/C 269/96)

Language of the case: German

Parties

Applicant: Federal Republic of Germany (represented by: M. Lumma, Agent, and C. von Donat, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— Annul Commission Decision C(2007) 2619 final of 25 July 2007 reducing the European Regional Development Fund assistance granted by Decision C/1994/3379 for the single programming document for Community structural assistance in the Objective 2 regions of the Land North Rhine-Westphalia in the Federal Republic of Germany (EFRE No 94.02.13.012);

— Order the Commission to pay the costs.

Pleas in law and main arguments

By the contested decision, the Commission reduced the assistance of the European Regional Development Fund (ERDF) for the programming for Community structural assistance in the Objective 2 regions of the Land North Rhine-Westphalia.

In support of its claim, the applicant submits that the defendant wrongly assessed the facts in the contested decision.

In addition, it has submitted that the conditions for a reduction pursuant to Article 24(2) of Regulation No 4253/88 ([1]) were not satisfied. In that regard, the applicant submits that the reallocation made would cause no significant change to the programme. In addition, it takes the view that the mere reference to the 'guidelines for the financial closure of operational assistance (1994-1999) from the Structural Funds' (SEC(1999) 1316) is not sufficient to show the significance of the change.

Even if there were a significant change to the programme, the applicant submits that the Commission should have used its discretion under Article 24(2) of Regulation No 4253/88 with regard to the actual implementation of the programme. The applicant submits that the defendant should have assessed whether a reduction in the ERDF assistance was proportionate.

([1]) Council Regulation (EEC) No 4253/88 of 19 December 1988, laying down provisions for implementing Regulation (EEC) No 2052/88 as regards coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments (OJ L 374, 31.12.1988, p. 1).

Action brought on 7 September 2007 — Entrance Services v Parliament

(Case T-333/07)

(2007/C 269/97)

Language of the case: French

Parties

Applicant: Entrance Services NV (Vilvoorde, Belgium) (represented by: A. Delvaux and V. Bertrand, lawyers)

Defendant: European Parliament

Form of order sought

— Declare the action for annulment admissible;

— Annul the decision by which the Parliament rejected the applicant's tender and granted the contract to another tenderer, a decision notified to the applicant on 14 August 2007;

— Order the Parliament to pay the costs.

Pleas in law and main arguments

By this action the applicant seeks the annulment of the decision of the Parliament of 14 August 2007 rejecting its tender submitted in the framework of the tender procedure for the conclusion of a contract for repair and maintenance of automatic equipment, joinery and similar equipment in European Parliament buildings in Brussels [(contract for the provision of services 2007-2010) (call for tender No IFIN-BATIBRU-JLD-S0765-00)] ([1]).

In support of its action the applicant claims, first, an infringement of Article 10 of the schedule of administrative clauses and of Article 93(1) of the Financial Regulation ([2]), in that the Parliament accepted a tender submitted by a tenderer which, according to the applicant, was excluded under Article 10 of the schedule of administrative clauses as a result of a finding by the Commission that it had participated in a cartel.

Second, the applicant maintains that the Parliament infringed Articles 97 and 98 of the Financial Regulation and Article 137 of the Implementing Regulation ([3]) by requiring tenderers to establish their technical capacity to carry out the contract by means of evidence other than that referred to by those provisions.

Third, the applicant relies on a plea alleging the infringement of Articles 97 and 98 of the Financial Regulation and of Article 135(5) of the Implementing Regulation, in that the Parliament required tenderers to demonstrate their economic and financial capacity to carry out the contract by means of evidence not provided for in those provisions, and in that it rejected the applicant's tender on the ground that it had failed to provide the evidence required.

Finally, the applicant submits that the contested decision should be annulled because it infringes the equality principle laid down in Article 89(1) of the Financial Regulation, in that the Parliament rejected its tender and awarded the contract to another tenderer even though it was in the same situation as the applicant with regard to the non-production of the certifications required by Article 11 of the schedule of administrative clauses.

([1]) Contract notice published in OJ 2006/S 148-159062.
([2]) Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 248, p. 1).
([3]) Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities, as amended (OJ 2002 L 357, p. 1).

Action brought on 31 August 2007 — Denka International v Commission

(Case T-334/07)

(2007/C 269/98)

Language of the case: English

Parties

Applicant: Denka International BV (Barneveld, Netherlands) (represented by: C. Mereu and K. Van Maldegem, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Order the annulment of Decision 2007/387/EC of 6 June 2007 concerning the non-inclusion of dichlorvos in Annex I to Council Directive 91/414/EEC and the withdrawal of authorisations for plant protection products containing that substance; and

— order the defendant to pay all costs and expenses in these proceedings, as well as compensatory and moratory interests of 8 %.

Pleas in law and main arguments

The pleas in law and main arguments relied on by the applicant are identical or similar to those relied on in Case T-326/07 *Cheminova and Others* v *Commission*.

Action brought on 4 September 2007 — Mergel and Others v OHIM (Patentconsult)

(Case T-335/07)

(2007/C 269/99)

Language of the case: German

Parties

Applicants: Volker Mergel (Wiesbaden, Germany), Klaus Kampfenkel (Hofheim, Germany), Burkart Bill (Darmstadt, Germany) and Andreas Herden (Wiesbaden) (represented by G. Friderichs, lawyer)

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

Form of order sought

— Annul the Decision of the Fourth Board of Appeal of the defendant of 25 June 2007 (Case R 299/2007-4);

— Order the defendant to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: The word mark 'Patentconsult' for services in Classes 35, 41 and 42 (application No 4 439 774).

Decision of the Examiner: Refusal of the application.

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

Pleas in law: Infringement of Article 7(1)(b) and (c) of Regulation (EC) No 40/94 ([1]), since the trade mark applied for is not descriptive and does not lacks the necessary distinctive character.

([1]) Council Regulation (EC) No 40/1994 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1).

Action brought on 10 September 2007 — Telefónica and Telefónica de España v Commission

(Case T-336/07)

(2007/C 269/100)

Language of the case: Spanish

Parties

Applicants: Telefónica, S.A. and Telefónica de España, S.A. (Madrid) (represented by: F.-E. González Díaz and S. Sorinas Jimeno, lawyers)

Defendants: Commission of the European Communities

Form of order sought

— annul under Article 230 of the EC Treaty the Decision of the Commission of the European Communities of 4 July 2007 in Case COMP/38.784 — *Wanadoo España* vs. *Telefónica*;

— in the alternative, annul or reduce under Article 229 of the EC Treaty the amount of the fine imposed on it under that decision;

— in any event, order the Commission of the European Communities to pay the costs.

Pleas in law and main arguments

The present action is directed against the Decision of 4 July 2007 relating to proceedings under Article 82 of the EC Treaty (Case COMP/38.784 — *Wanadoo España* vs. *Telefónica*) under which the Commission imposed a fine of EUR 151 875 000 on Telefónica, S.A., jointly and severally with Telefónica de España, in respect of alleged margin squeeze.

In support of their claims, the applicants submit:

— infringement of the rights of defence, by basing the decision on various matters of fact which were not communicated during the administrative procedure and on which the applicants were not given the opportunity to comment;

— that the Commission committed a number of manifest errors of assessment relating to:

  — the definition of three separate wholesale markets and not a single market for access to wholesale ADSL including both the local loop and national and regional access, or in the alternative, at least the latter two;

  — the presumption that the applicants were dominant both on the relevant wholesale broadband product markets and on the retail market;

  — the application of Article 82 EC in relation to its alleged abusive conduct. First, the Commission applies that article to the *de facto* refusal to contract when the wholesale products in question do not constitute 'essential infrastructure', thereby contradicting the case-law in *Oscar Bronner*. Secondly, even if Article 82 could be applied to the applicants' conduct, *quod non*, the decision disregards the requirements laid down in the case of *Industrie des Poudres Sphériques* according to which, in order to make a finding of illegal margin squeeze, it is necessary to show past evidence of both excessive pricing of the upstream product and predatory pricing of the final product;

  — the alleged abusive conduct and its impact on the market; first, because it incorrectly selects the wholesale inputs for comparison, and secondly, because it commits, *inter alia*, major errors of calculation and omissions both in the application of the 'period-by-period' test and the 'discounted cash flow' test. These errors, both individually and collectively, invalidate the methodology and calculations set out in the decision. The decision also fails to probe sufficiently the alleged negative impact of the conduct on competition;

  — the *ultra vires* acts of the Commission, which, in any event, infringe the principles of subsidiarity, proportionality, legal certainty, loyal cooperation and sound administration by intervening where the national telecommunications regulator had already acted, which was set up under European legislation and which acted in accordance with the powers and competences conferred on it by that legislation and under a set of rules based on the Community competition rules;

As regards the annulment or reduction of the fine, the applicants submit that the Commission infringed Articles 15(2) of Regulation No 17 First Regulation implementing Articles 85 and 86 of the Treaty (now Articles 81 and 82) and 23(2) of of Council Regulation (EC) No 1/2003 on the implementation of the competition rules laid down in Articles 81 an 82 of the Treaty, by considering that the infringement was committed in a deliberate or seriously negligent manner and by classifying the infringement as 'characteristic abuse'.

Action brought on 6 September 2007 — Brilliant Hotelsoftware v OHIM (BRILLIANT)

(Case T-337/07)

(2007/C 269/101)

Language of the case: German

Parties

Applicant: Brilliant Hotelsoftware Limited (London, United Kingdom) (represented by J. Croll and C. Pappas, lawyers)

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

Form of order sought

— Annul the Decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (OHIM) of 14 June 2007 and register the trade mark 'BRILLIANT' in the Register of trade marks;

— Order OHIM to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: The word mark 'BRILLIANT' for goods and services in Classes 9 and 42 (application No 4 345 849).

Decision of the Examiner: Refusal of the application.

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

Pleas in law: Infringement of Article 7(1)(b) and (c) of Regulation (EC) No 40/94 [1], since the trade mark applied for is not descriptive and does not lack the necessary distinctive character.

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[1] Council Regulation (EC) No 40/1994 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1).

Appeal brought on 4 September 2007 by Irène Bianchi against the judgment of the Civil Service Tribunal delivered on 28 June 2007 in Case F-38/06, Bianchi v European Training Foundation

(Case T-338/07 P)

(2007/C 269/102)

Language of the case: French

Parties

Appellant: Irène Bianchi (Turin, Italy) (represented by M.-A Lucas, lawyer)

Other party to the proceedings: European Training Foundation

Form of order sought by the appellant

— Annul the judgment of the Second Chamber of the Civil Service Tribunal of 28 June 2007 in Case F-38/06;

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

— Order the European Training Foundation to pay the costs of both sets of proceedings.

Pleas in law and main arguments

In support of her appeal, the appellant claims that the Tribunal failed to take into account or misunderstood certain facts and that that led to an erroneous assessment of the facts contrary to the second paragraph of Article 25 and Article 26 of the Staff Regulations. She also claims that the Tribunal infringed Community law and, in particular, procedural rules, by distorting evidence submitted by the applicant. Finally, she relies on a plea alleging a failure to provide an adequate statement of reasons and an error of law resulting from an alleged failure to take into account, or distortion of, the facts or the evidence adduced in support thereof, and an erroneous finding of fact.

Action brought on 11 September 2007 — Juwel Aquarium v OHIM — Potschak — Bavaria Aquaristik (Panorama)

(Case T-339/07)

(2007/C 269/103)

Language in which the application was lodged: German

Parties

Applicant: Juwel Aquarium GmbH & Co. KG (Rotenburg, Germany) (represented by: D. Jestaedt and G. Rother, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Christian Potschak — Bavaria Aquaristik

Form of order sought

— Annul the Decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 28 June 2007 (R 214/2006-1);

— Reject the application for a declaration of invalidity of the other party to the proceedings before the Board of Appeal in respect of the Community trade mark 'Panorama' (Community trade mark 2 771 087);

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

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: The word mark 'Panorama' for goods in Classes 11, 16 and 20 (Community trade mark 2 771 087).

Proprietor of the Community trade mark: The applicant.

Applicant for the declaration of invalidity: Christian Potschak — Bavaria Aquaristik.

Decision of the Cancellation Division: Rejection of the application for a declaration of invalidity.

Decision of the Board of Appeal: Annulment of the decision of the Cancellation Division and in part of the declaration of invalidity of the Community trade mark.

Pleas in law: Infringement of Article 7(1)(c) of Regulation (EC) No 40/94 ([1]), since the Community trade mark 'Panorama' is not purely descriptive. In addition, pursuant to Article 7(1)(d) of Regulation (EC) No 40/94, the indication 'Panorama' has not become customary and a mere generic term.

([1]) Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1).

Action brought on 4 September 2007 — Evropaïki Dynamiki v Commission

(Case T-340/07)

(2007/C 269/104)

Language of the case: English

Parties

Applicant: Evropaïki Dynamiki (Athens, Greece) (represented by: N. Korogiannakis, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— Order the Commission to pay the applicant the amount of EUR 172 588,62 which constitute unpaid eligible costs incurred by the applicant in the framework of contract No EDC-53007 EEBO/27873;

— order the Commission to pay the symbolic amount of EUR 1 000 corresponding to the damage suffered at its fame and goodwill;

— order the Commission to pay the applicant's legal and other costs and expenses incurred in connection with this application.

Pleas in law and main arguments

This application, pursuant to Articles 238 EC and 235 EC, seeks compensation for damages caused by the decision of the Commission of 16 May 2003 to terminate the contract No EDC-53007 EEBO/27873 signed with the Commission, concerning the project 'e-Content Exposure and Business Opportunities' ('EEBO') to be carried out in the framework of the multi-annual Community programme to stimulate the development and use of European digital content on the global networks and to promote linguistic diversity in the information society (2001-2005) and involving M. Fischer and M. Marthinsen in the implementation of the project as external consultants.

In support of its claims the applicant argues that the contracting authority (DG INFSO) decision to terminate the contract contains evident errors of assessment resulting in failure to fulfil its contractual obligations. Moreover, it is submitted that the contested decision was taken in violation of the principles of good administration and transparency and that on several occasions, specific Commission agents failed to eliminate alleged conflicts of interest. In light of the above, the applicant claims to be entitled to compensation for the services rendered as well as to eligible costs incurred in the framework of the execution of the contract including interest from the date these amounts became due.

Action brought on 10 September 2007 — Sison v Council

(Case T-341/07)

(2007/C 269/105)

Language of the case: English

Parties

Applicant: J. M. Sison (Utrecht, The Netherlands) (represented by: J. Fermon, A. Comte, H. Schultz, D.Gürses, W. Kaleck, lawyers)

Defendant: Council of the European Union

Form of order sought

— Partially annul as specified hereafter, on the basis of Article 230 EC, Council Decision 2007/445/EC of 28 June 2007 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Decisions 2006/379/EC and 2006/1008/EC and more specifically:

— annul Article 1 point 1.33 of the said decision which reads: *'Sison, Jose Maria (a.k.a. Armando Liwanag, a.k.a. Joma, in charge of the Communist Party of the Philippines including NPA) born 8.2.1939 in Cabugao, Phippines'*;

— annul partially Article 1 point 2.7 of said decision insofar as it mentions the name of the applicant: Communist Party of the Philippines, including New Peoples Army (NPA), Philippines, linked to Sison Jose Maria C. (a.k.a. Armando Liwanag, a.k.a. Joma, in charge of the Communist Party of the Philippines including NPA);

— declare illegal, on the basis of Article 241 EC, Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (OJ, L 344, p. 70);

— order the Community to compensate the applicant on the basis of Article 235 and 288 EC in an amount to be fixed at EUR 291 427,97 plus EUR 200,87 every month until pronouncement of the judgment of the Court, including interests from October 2002 until the payment in full;

— require the Council to bear the costs of suit.

Pleas in law and main arguments

By means of its application, the applicant seeks partial annulment, pursuant to Article 230 EC, of Council Decision 2007/445/EC [1], of 28 June 2007, implementing Article 2(3) of Regulation (EC) No 2580/2001 [2] on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Decisions 2006/379/EC and 2006/1008/EC, insofar as this decision includes Professor Jose Maria Sison. In addition, the applicant seeks a declaration on the basis of Article 241 EC that Council Regulation No 2580/2001 is illegal, as well as a request for compensation, pursuant to Article 235 EC and 288 EC, for the damages allegedly incurred.

In support of its claims, the applicant puts forward the following grounds:

The applicant claims that the Council allegedly infringed Article 253 EC with regards to its statement of reasons motivating its decision. In this regard, the applicant submits that the Council committed a manifest error of assessment when

reaching the contested decision, since the later was based on unsubstantiated facts and allegations. In addition, according to the applicant, the decision at stake violates the principle of sound administration. Moreover, the applicant submits that the decision violates Article 2(3) of Regulation 2580/2001 EC and Article 1(4) of Common Position 2001/931/CFSP and contravenes the principle of proportionality. Furthermore, the applicant contends that the decision is contrary to the freedom of circulation of capital, enshrined in Article 56 EC. Finally, the applicant alleges that the decision was taken in violation of the general principles of Community law deriving from the principle of due process, the right to an impartial Court, the principle of presumption of innocence, the rights of defense and the right to be heard, the principle of legality, the right to the freedom of expression, the right of association as well as the right of ownership, provided in the European Convention of Human Rights. Lastly, the applicant contends that the Council misused its power by including the applicant on the list annexed to the contested decision.

(1) OJ L 169, p. 58.
(2) OJ L 344, 28.12.2001, p. 70.

Action brought on 10 September 2007 — Ryanair v Commission

(Case T-342/07)

(2007/C 269/106)

Language of the case: English

Parties

Applicant: Ryanair Holdings Plc (County Dublin, Ireland) (represented by: J. Swift, QC, V. Power, Solicitor, A. McCarthy, Solicitor, G. Berrish, lawyer, D. Hull, Solicitor)

Defendant: Commission of the European Communities

Form of order sought

— Annul the decision;

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

Pleas in law and main arguments

By means of this application, the applicant seeks annulment of Commission Decision C(2007) 3104, of 27 June 2007, declaring a concentration to be incompatible with the common market and the functioning of the EEA Agreement (Case COMP/M.4439 — Ryanair/Aer Lingus).

The applicant's main contention is that the Commission allegedly erred in finding, and failed to demonstrate to the requisite legal standard, that the merger would lead to a significant impediment to effective competition in the common market. In the alternative, the applicant submits that the Commission erred in finding, and failed to show to the requisite legal standard, that the merger as modified by the various commitments offered by the applicant during the investigation would lead to a significant impediment to effective competition.

In support of its claims, the applicant pleads that the Commission made manifest errors of assessment with regards to (a) the competitive relationship between the two carriers; (b) the barriers to entry/expansion; (c) its route-by-route analysis, as well as fundamental and manifest errors in its appreciation of the efficiencies which would flow from the merger and the treatment of the commitments offered by the applicant.

Action brought on 12 September 2007 — allsafe Jungfalk v OHIM (ALLSAFE)

(Case T-343/07)

(2007/C 269/107)

Language of the case: German

Parties

Applicant: allsafe Jungfalk GmbH & Co. KG (Engen, Germany) (represented by D. Jestaedt and J. Bühling, lawyers)

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

Form of order sought

— Annul the Decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 11 July 2007 (R 454/2006-4);

— Order the defendant to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: The word mark 'ALLSAFE' for goods and services in Classes 6, 12, 22, 35, 39 and 42 (application No 2 940 534).

Decision of the Examiner: Refusal of the application.

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

Pleas in law: Infringement of Article 7(1)(b) and (c) of Regulation (EC) No 40/94 [1], since the trade mark applied for does not lack the necessary distinctive character and is not descriptive.

[1] Council Regulation (EC) No 40/1994 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1).

Action brought on 10 September 2007 — O2 (Germany) v OHIM (Homezone)

(Case T-344/07)

(2007/C 269/108)

Language of the case: German

Parties

Applicant: O2 (Germany) GmbH & Co. OHG (Munich, Germany) (represented by A. Fottner and M. Müller, lawyers)

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

Form of order sought

— Annul the Decision of the Fourth Board of Appeal of OHIM of 5 July 2007 in Case R 1583/2006-4 in so far as it rejects the application;

— Order OHIM to pay the costs of the present proceedings and those of the proceedings before OHIM.

Pleas in law and main arguments

Community trade mark concerned: The word mark 'Homezone' for goods and services in Classes 9, 38 and 42 (application No 4 677 506).

Decision of the Examiner: In part, rejection of the application.

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

Pleas in law: Breach of Article 7(1)(b) and (c) and of Article 7(3) of Regulation (EC) No 40/94 [1].

[1] Council Regulation (EC) No 40/1994 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1).

Action brought on 13 September 2007 — La Banque Postale v Commission

(Case T-345/07)

(2007/C 269/109)

Language of the case: French

Parties

Applicant: La Banque Postale (represented by: S. Hautbourg and J.-E. Skovron, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Annul in its entirety the contested decision on the basis of the fourth paragraph of Article 230 EC;

— Order the Commission to pay the entire costs.

Pleas in law and main arguments

By the present action, the applicant requests the annulment of Commission Decision C(2007) 2110 final of 10 May 2007 declaring incompatible with Article 86(1) EC, in conjunction with Article 43 EC and Article 49 EC, the provisions of the French Code Monétaire et Financier (Monetary and Financial Code) which reserve for three credit institutions — the applicant, the *Caisses d'Epargne et de Prévoyance* and the *Crédit Mutuel* — special rights for the distribution of the savings account books known as *'livret A'* and *'livret bleu'*.

In support of its action, the applicant relies on four pleas in law.

First, the applicant submits that the Commission infringed its right to a fair hearing during the procedure which led to the contested decision in that the applicant was not given the opportunity to comment on two reports provided to the Commission by the complainants and which, according to the applicant, transpired to form a fundamental part of the Commission's case.

Second, it claims that the Commission made numerous errors of law and of appraisal in holding that the distribution arrangements for the *livret A* constituted a restriction on the freedom of establishment and on the freedom to provide services. According to the applicant, the Commission erred in law by giving a very broad interpretation to the notion of 'restrictions' in the sense of Articles 43 EC and 49 EC and to the circumstances in which those two principles may be relied upon. The applicant also submits that the Commission concluded, wrongly, that the special right makes establishment on the French market for bank savings more difficult and more costly.

Third, the applicant claims that the contested decision is tainted by errors of law and of appraisal in so far as the Commission held that the current arrangements for distribution of the *livret A* could not be justified under Article 86(2) EC. According to the applicant, the Commission made an error of law and several errors of appraisal in its definition of accessibility to banking services connected with the *livret A* as a service of general economic interest and in its analysis of whether the special right was necessary and proportionate in order to carry out the service of general economic interest of accessibility to banking services and of that relating to social housing.

According to its fourth plea in law, the applicant contends that the reasons given for the contested decision are contradictory and inadequate.

Action brought on 13 September 2007 — Duro Sweden v OHIM (EASYCOVER)

(Case T-346/07)

(2007/C 269/110)

Language of the case: English

Parties

Applicant: Duro Sweden AB (Gävle, Sweden) (represented by: R. Bird, Solicitor)

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

Form of order sought

— Annul the decision of the Fourth Board of Appeal dated 3 July 2007 in Case No R 1065/2005-4;

— order the defendant to pay the costs of this appeal, and

— order the grant of the application as a Community trade mark in accordance with the regulation.

Pleas in law and main arguments

Community trade mark concerned: The word mark 'EASYCOVER' for goods in classes 19, 24 and 27 — application No 4 114 567

Decision of the examiner: Refusal of the application

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 7(1)(b) of Council Regulation No 40/94 as the Board of Appeal held that the trade mark application infringed Article 7(1)(b) on the basis that the trade mark application infringed Article 7(1)(c) without asserting any independent grounds for infringement of Article 7(1)(b)

Infringement of Article 7(1)(c) of the regulation as the Board of Appeal did not take all aspects of the trade mark applied for into account.

Action brought on 12 September 2007 — Al-Aqsa v Council of the European Union

(Case T-348/07)

(2007/C 269/111)

Language of the case: Dutch

Parties

Applicant: Stichting Al-Aqsa (Amsterdam, Netherlands) (represented by: J. Pauw, lawyer)

Defendant: Council of the European Union

Form of order sought

— Annul Council Decision 2007/445/EC in so far as it applies to the applicant, and declare that Regulation (EC) No 2580/2001 does not apply to the applicant;

— order the Council to pay the costs.

Pleas in law and main arguments

The applicant submits that Council Decision 2007/445/EC of 28 June 2007 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism is void in so far as it relates to it.

In support of its application, the applicant submits, first, that the Council Common Position of 27 December 2001 on the application of specific measures to combat terrorism [1] does not apply to it.

Second, the applicant submits that no competent authority has taken a decision with respect to the applicant within the meaning of Article 1(4) of the Council Common Position of 27 December 2001.

Third, the applicant states that it has had no intention, culpability or knowledge with regard to the support of terrorist activities.

Fourth, according to the applicant, it is apparent from neither the statement of grounds in the contested decision nor the underlying national decision that it can still be regarded as facilitating terrorist acts.

Finally, the applicant complains of breach of the principle of proportionality, of essential procedural requirements inasmuch as the Council has not investigated the desirability of maintaining the applicant on the list, of the right to unfettered enjoyment of property, and of the requirement for a proper statement of reasons.

(1) 2001/931/CFSP (OJ 2001 L 344, p. 93).

Action brought on 7 September 2007 — FMC Chemical and Others v Commission

(Case T-349/07)

(2007/C 269/112)

Language of the case: English

Parties

Applicants: FMC Chemical SPRL (Brussels, Belgium), Satec Handelsgesellschaft mbH (Elmshorn, Germany), Belchim Crop Protection NV (Londerzeel, Belgium), FMC Foret SA (Sant Cugat del Valles, Spain), F&N Agro Slovensko s.r.o. (Bratislava, Slovakia), F&N Agro Ceská republika s.r.o. (Prague, Czech Republic), F&N Agro Polska sp. z.o.o. (Warsaw, Poland) and FMC Corp. (Philadelphia, United States of America) (represented by: C. Mereu and K. Van Maldegem, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Order the annulment of Decision 2007/415/EC;

— declare the illegality and inapplicability *vis-à-vis* the first applicants and the review of its carbosulfan dossier of Article 20 of Commission Regulation (EC) No 1490/2002;

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

Pleas in law and main arguments

The pleas in law and main arguments relied on by the applicants are identical or similar to those relied on in Case T-326/07 *Cheminova and Others* v *Commission*.

Action brought on 14 September 2007 — Commission v Rednap

(Case T-352/07)

(2007/C 269/113)

Language of the case: Swedish

Parties

Applicant: Commission of the European Communities (represented by: D. Triantafyllou and J. Enegren, acting as Agents)

Defendant: Rednap (Malmö, Sweden)

Form of order sought

— Order the defendant to

  — pay the claimant the sum of EUR 516 329,63 (five hundred and sixteen thousand three hundred and twenty-nine euros and sixty-three cents), broken down into EUR 334 375,49 in capital and EUR 181 954,14 in late payment interest for the period from the last payment date for the capital sum in accordance with the relevant debit note to 31 July 2007 inclusive;

  — pay late payment interest, from 1 August 2007 to the date on which the debt is paid in its entirety, with regard to the debt under contract DE 3010 (DE) 'RISE', in the daily amount of EUR 72,04 (seventy-two euros and four cents) and, with regard to the debt under contract HC 4007 (HC) 'HEALTHLINE', in the daily amount of EUR 37,89 (thirty-seven euros and eighty-nine cents);

— pay the costs of these proceedings.

Pleas in law and main arguments

The applicant claims in the present case, which is based on an arbitration clause, that the defendant is obliged to reimburse an excess payment made by the Commission in connection with the performance of contracts No DE 3010 (DE) 'RISE' and No HC 4007 (HC) 'HEALTHLINE' concerning the information technology project in which the Commission was involved with the defendant in the latter's capacity as a member of a consortium.

After audits of the defendant's accounts for the contracts, the Commission reached the conclusion that the defendant had not used the entire amount paid for implementation of the project. The applicant has frequently requested repayment of the outstanding amount which gives rise to this action.

Action brought on 13 September 2007 — Ester v OHIM — Coloris Global Coloring Concept (COLORIS)

(Case T-353/07)

(2007/C 269/114)

Language in which the application has been drafted: Spanish

Parties

Applicant: Esber, S.A. (Vizcaya, Spain) (Represented by: J.A. Calderón Chavero and T. Villate Consonni and A. Yañez Manglano, lawyers)

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

Other party to the proceedings before the Board of Appeal: Coloris Global Coloring Concept, S.A.S.

Forms of order sought

— Annul the Decision of the First Board of Appeal of OHIM issued on 28 June 2007 in Case R-1060/2006-1;

— Consequently, upholding the decision of the Board of Appeal, dismiss the opposition filed and proceed to grant the contested trade mark;

— Order OHIM to pay the costs of the present proceedings if it contests them and reject its claims.

Pleas in law and main arguments

Applicant for the Community Trade Mark: The applicant.

Community trade mark concerned: figurative mark containing the word 'COLORIS' (application no 2.817.732) for goods in Class 2.

Proprietor of the mark or sign cited in opposition proceedings: COLORIS GLOBAL COLORING CONCEPT, S.A.S.

Mark or sign cited in the opposition proceedings: French national word mark 'COLORIS' for goods in Class 2 (no 98/717642).

Decision of the Opposition Division: Upheld the opposition.

Decision of the Board of Appeal: Rejected the appeal.

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

Action brought on 18 September 2007 — Pfizer v OHIM — Isdin (FOTOPROTECTOR ISDIN)

(Case T-354/07)

(2007/C 269/115)

Language in which the application was lodged: English

Parties

Applicant: Pfizer Ltd (Sandwich, United Kingdom) (represented by: V. von Bomhard, A. Renck, T. Dolde, lawyers, and M. Hawkins, Solicitor)

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

Other party to the proceedings before the Board of Appeal: Isdin, SA (Barcelona, Spain)

Form of order sought

— Annul the Decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 28 June 2007 in Case R 567/2006-1; and

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

Pleas in law and main arguments

Registered Community trade mark subject of the application for a declaration of invalidity: The word mark 'FOTOPROTECTOR ISDIN' for products in among others class 5 — Community trade mark No 1 075 597

Proprietor of the Community trade mark: Isdin, SA

Party requesting the declaration of invalidity of the Community trade mark: The applicant

Trade mark right of the party requesting the declaration of invalidity: The national word mark 'ISTIN' for goods in class 5

Decision of the Cancellation Division: Partial declaration of invalidity of the Community trade mark

Decision of the Board of Appeal: Annulment of the Cancellation Division's decision insofar as it declared the invalidity of the Community trade mark

Pleas in law: Violation of the applicant's right to be heard pursuant to Article 73 of Council Regulation No 40/94 and violation of Article 52 read in conjunction with Article 8(1)(b) of the regulation.

Action brought on 18 September 2007 — Pfizer v OHIM — Isdin (ISDIN Pediatrícs)

(Case T-355/07)

(2007/C 269/116)

Language in which the application was lodged: English

Parties

Applicant: Pfizer Ltd (Sandwich, United Kingdom) (represented by: V. von Bomhard, A. Renck, T. Dolde, lawyers, and M. Hawkins, Solicitor)

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

Other party to the proceedings before the Board of Appeal: Isdin, SA (Barcelona, Spain)

Form of order sought

— Annul the Decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 28 June 2007 in Case R 566/2006-1; and

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

Pleas in law and main arguments

Registered Community trade mark subject of the application for a declaration of invalidity: The figurative mark 'ISDIN Pediatrícs' for products in among others class 5 — Community trade mark No 1 243 807

Proprietor of the Community trade mark: Isdin, SA

Party requesting the declaration of invalidity of the Community trade mark: The applicant

Trade mark right of the party requesting the declaration of invalidity: The national word mark 'ISTIN' for goods in class 5

Decision of the Cancellation Division: Partial declaration of invalidity of the Community trade mark

Decision of the Board of Appeal: Annulment of the Cancellation Division's decision insofar as it declared the invalidity of the Community trade mark

Pleas in law: Violation of the applicant's right to be heard pursuant to Article 73 of Council Regulation No 40/94 and violation of Article 52 read in conjunction with Article 8(1)(b) of the regulation.

Action brought on 19 September 2007 — Pfizer v OHIM — Isdin (ISDIN 14-8.000)

(Case T-356/07)

(2007/C 269/117)

Language in which the application was lodged: English

Parties

Applicant: Pfizer Ltd (Sandwich, United Kingdom) (represented by: V. von Bomhard, A. Renck, T. Dolde, lawyers, and M. Hawkins, Solicitor)

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

Other party to the proceedings before the Board of Appeal: Isdin, SA (Barcelona, Spain)

Form of order sought

— Annul the Decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 28 June 2007 in Case R 565/2006-1; and

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

Pleas in law and main arguments

Registered Community trade mark subject of the application for a declaration of invalidity: The word mark 'ISDIN 14-8.000' for products in among others class 5 — Community trade mark No 1 243 633

Proprietor of the Community trade mark: Isdin, SA

Party requesting the declaration of invalidity of the Community trade mark: The applicant

Trade mark right of the party requesting the declaration of invalidity: The national word mark 'ISTIN' for goods in class 5

Decision of the Cancellation Division: Partial declaration of invalidity of the Community trade mark

Decision of the Board of Appeal: Annulment of the Cancellation Division's decision insofar as it declared the invalidity of the Community trade mark

Pleas in law: Violation of the applicant's right to be heard pursuant to Article 73 of Council Regulation No 40/94 and violation of Article 52 read in conjunction with Article 8(1)(b) of the regulation.

Action brought on 19 September 2007 — Focus Magazin Verlag v OHIM — Editorial Planeta (FOCUS Radio)

(Case T-357/07)

(2007/C 269/118)

Language in which the application was lodged: English

Parties

Applicant: Focus Magazin Verlag GmbH (Munich, Germany) (represented by: B. C. Müller, lawyer)

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

Other party to the proceedings before the Board of Appeal: Editorial Planeta, SA (Barcelona, Spain)

Form of order sought

— Annul No 1, No 3 and No 4 of the decision of the Fourth Board of Appeal of the Office for Harmonisation for the Internal Market, dated 30 July 2007, in the opposition proceeding No B 516 742 (Community trade mark application No 2 340 289);

— alter the contested decision mentioned in No 1 in order to register the contested Community trade mark application for the following goods and services:

  — Class 9 — Computers and data-processing apparatus; memories for data processing equipment; machine-readable data carriers of all types containing information, and sound and image recording carriers, in particular floppy discs, CD-ROMs, DVDs, chip cards, magnetic cards, video cassettes, compact discs and video discs; collections of information recorded on data carriers;

  — Class 16 — Printed matter, printed materials, periodicals, newspapers, books, stickers, calendars, office requisites (except furniture), instructional and teaching material (except apparatus), included in class 16;

  — Class 41 — Entertainment among other radio entertainment; conducting entertainment events, live events, cultural and sporting events, included in class 41.

— order the opponent to bear costs for the whole opposition proceeding including this application.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The word mark 'FOCUS Radio' for goods and services in classes 9, 16, 35, 38, 41 and 42 — application No 2 340 289

Proprietor of the mark or sign cited in the opposition proceedings: Editorial Planeta, SA

Mark or sign cited: The national word and figurative marks 'FOCUS MILENIUM', 'PLANETA FOCUS' and 'PLANETA FOCUS 99' for goods and services in classes 9, 16 and 41

Decision of the Opposition Division: Opposition partially upheld

Decision of the Board of Appeal: Partial annulment of the Opposition Division's decision and partial rejection of the Community trade mark application

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

Action brought on 14 September 2007 — El Fatmi v Council

(Case T-362/07)

(2007/C 269/119)

Language of the case: Dutch

Parties

Applicant: Nouriddin El Fatmi (Amsterdam, Netherlands) (represented by: J. Pauw, lawyer)

Defendant: Council of the European Union

Form of order sought

— Declare Regulation (EC) No 2580/2001 inapplicable and/or annul Decision 2007/445 in so far as those measures relate to the applicant;

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

Pleas in law and main arguments

In support of his application, the applicant first of all submits that Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (OJ 2001 L 344, p. 70) is not applicable to him inasmuch as there is no connection whatsoever between the common foreign and security policy and the applicant.

Second, the applicant submits that Regulation No 2580/2001 is not applicable to him inasmuch as he is not committing, or attempting to commit, participating in or facilitating the commission of any act of terrorism.

In conclusion, the applicant contends that the contested decision is at variance with the principle of proportionality and is inadequately reasoned.

Action brought on 14 September 2007 — Hamdi v Council

(Case T-363/07)

(2007/C 269/120)

Language of the case: Dutch

Parties

Applicant: Ahmed Hamdi (Amsterdam, Netherlands) (represented by: J. Pauw, lawyer)

Defendant: Council of the European Union

Form of order sought

— Declare Regulation (EC) No 2580/2001 inapplicable and/or annul Decision 2007/445 in so far as those measures relate to the applicant;

— Order the Council to pay the costs of the present proceedings.

Pleas in law and main arguments

In support of his application, the applicant first of all submits that Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (OJ 2001 L 344, p. 70) is not applicable to him inasmuch as there is no connection whatsoever between the common foreign and security policy and the applicant.

Second, the applicant submits that Regulation No 2580/2001 is not applicable to him inasmuch as he is not committing, or attempting to commit, participating in or facilitating the commission of any act of terrorism.

In conclusion, the applicant contends that the contested decision is at variance with the principle of proportionality, is inadequately reasoned and is contrary to his fundamental rights, in particular the right to undisturbed enjoyment of his property and the right to respect for his private life.

Action brought on 26 September 2007 — Republic of Latvia v Commission of the European Communities

(Case T-369/07)

(2007/C 269/121)

Language of the case: Latvian

Parties

Applicant: Republic of Latvia (represented by: E. Balode-Buraka, K. Bārdiņa)

Defendant: Commission of the European Communities

Form of order sought

— Annul Commission Decision C(2007) 3409, of 13 July 2007, on the amendment of the national plan for the allocation of greenhouse gas emission allowances notified by Latvia under Article 3(3) of Commission Decision C/2006/5612 (final), of 29 November 2006, on the national plan for the allocation of greenhouse gas emission allowances notified by Latvia under European Parliament and Council Directive 2003/87/EC [1].

— Order the Commission to pay the costs.

— Adjudicate under an expedited procedure.

Pleas in law and main arguments

The applicant submits that, by interpreting very widely the rights conferred by Article 9(3) of Commission Directive 2003/87/EC, the Commission has significantly restricted the sovereign rights of the Republic of Latvia in relation to energy, in particular, as regards its choice of energy sources and as regards the supply of electrical energy, thus disregarding the powers set out in Article 175(2)(c) of the EC Treaty.

Similarly, the applicant submits that the Commission has infringed the principle of non-discrimination, in that the application of the method of calculation devised by it to determine the total volume of greenhouse gas emissions allowed disadvantages the Member States with low total emissions.

The applicant also submits that the first criterion of Annex III of Directive 2003/87 has been infringed in that the Commission, when adopting the decision, did not take account of the international obligations of the Republic of Latvia under the Kyoto Agreement.

Finally, it submits that the Decision was adopted in breach of essential procedural requirements in that the time limit for rejection of the plan set by Article 9(3) of Directive 2003/87 was not respected.

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

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Judgment of the Civil Service Tribunal (Second Chamber) of 4 October 2007 — De la Cruz. v European Agency for Safety and Health at Work

(Case F-32/06) ([1])

(Staff cases — Contract staff — Reform of the Staff Regulations of Officials — Former local staff — Fixing of classification and remuneration on recruitment — Equivalence of posts — Consultation of the Staff Committee)

(2007/C 269/122)

Language of the case: English

Parties

Applicant: María del Carmen de la Cruz (Galdakao, Spain) (represented by: G. Vandersanden and L. Levi, lawyers)

Defendant: European Agency for Safety and Health at Work (OHSA) (represented by: E. Ortega, C. Georges and J. G. Blanch, Agents, and S. Orlandi, A. Coolen, J.-N. Louis and E. Marchal, lawyers)

Re:

First, annulment of the appointing authority's decisions refusing to re-classify the applicants, who are members of the contract staff classified in function group II, in function group III, and secondly, a claim for damages.

Operative part of the judgment

The Tribunal:

1. *Annuls the decisions of the European Agency for Safety and Health at Work (OSHA) classifying the applicants in function group II by virtue of their contracts as members of the contract staff, signed on 28 and 29 April 2005;*

2. *Dismisses the remainder of the heads of claim;*

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

([1]) OJ C 131, 3.6.2006, p. 51.

Judgment of the Civil Service Tribunal (Third Chamber) of 19 September 2007 — Tuomo Talvela v Commission

(Case F-43/06) ([1])

(Staff case — Officials — Assessment — Career Development Report — 2004 reporting period — Rights of the defence — Duty to state reasons in the report — Administrative investigation)

(2007/C 269/123)

Language of the case: French

Parties

Applicant: Tuomo Talvela (Oslo, Norway) (represented by: É. Boigelot, lawyer)

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

Re:

Staff case — First, annulment of the appellant's career development report for the year 2004 and, secondly, a claim for damages.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

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

([1]) OJ C 143, 17.6.6, p. 38.

Judgment of the Civil Service Tribunal (First Chamber) of 18 September 2007 — Botos v Commission

(Case F-10/07) ([1])

(Staff cases — Officials — Social Security — Sickness insurance — Repayment of medical expenses — Serious illness — Management committee — Medical expertise)

(2007/C 269/124)

Language of the case: French

Parties

Applicant: Patricia Botos (Meise, Belgium) (represented by: L. Vogel, lawyer)

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

Re:

Annulment of the appointing authority's decision of 30 October 2006 rejecting the complaint brought by the applicant against six administrative decisions concerning *inter alia* the recognition of her illness as a serious illness for the purposes of fixing the level of reimbursement of medical expenses under Article 72(1) of the Staff Regulations.

Operative part of the judgment

The Tribunal:

1. *Annuls the decisions of the Commission of the European Communities of 23 January 2006 and 30 October 2006, inasmuch as they refuse Mrs Botos repayment of the costs of the tests carried out by RED Laboratories and Ategis at the normal rate of the joint sickness insurance scheme;*

2. *Dismisses the remainder of the action;*

3. *Orders Mrs Botos to bear two thirds of her own costs;*

4. *Orders the Commission of the European Communities to bear its own costs and to pay one third of Mrs Botos's costs.*

([1]) OJ C 69, 24.3.2007, p. 31.

Order of the Civil Service Tribunal of 10 September 2007 — Speiser v European Parliament

(Case F-146/06) ([1])

(Public service — Temporary agents — Remuneration — Expatriation allowance — Complaint submitted out of time — Manifest inadmissibility)

(2007/C 269/125)

Language of the case: German

Parties

Applicant: Michael Alexander Speiser (Neu-Isenburg, Germany) (represented by: F. Theumer, lawyer)

Defendant: European Parliament (represented by: A. Lukosiute and N. Lorenz)

Re:

Annulment of the decision of the Secretariat of the European Parliament of 11 September 2006 rejecting the applicant's complaint regarding refusal to pay the expatriation allowance.

Operative part of the order

The Tribunal:

1. *Dismisses the action as manifestly inadmissible;*

2. *Orders the applicant to pay one-third of his own costs;*

3. *Orders the defendant to pay its own costs and two-thirds of the costs of the applicant.*

([1]) OJ C 56 of 10.3.2007, p. 42.

Order of the Civil Service Tribunal (First Chamber) of 11 September 2007 — O'Connor v Commission

(Case F-12/07 AJ)

(Legal aid)

(2007/C 269/126)

Language of the case: French

Parties

Applicant: Elizabeth O'Connor (Brussels, Belgium) (represented by: J. -N. Louis and E. Marchal, lawyers)

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

Re:

Application for legal aid.

Operative part of the order

The application for legal aid in Case F-12/07 AJ O'Connor v Commission is dismissed.

Action brought on 29 June 2007 — Aayhan and Others v European Parliament

(Case F-65/07)

(2007/C 269/127)

Language of the case: French

Parties

Applicants: Laleh Aayhan (Strasbourg. France) and Others (represented by: R. Blindauer, lawyer)

Defendant: European Parliament

Form of order sought

— annul the express decision of the European Parliament of 20 April 2007 rejecting the applicants' complaint of 19 December 2006;

— amend all the fixed-term contracts linking the applicants and the Parliament by converting them into a single contract for an indefinite period;

— rule that the Parliament is required to restore to all those members of staff the benefit of a contract for an indefinite period;

— rule that members of the auxiliary staff of the Parliament called 'session auxiliaries' are entitled to an allowance representing the right to paid leave which they acquired through working for all the work periods since their employment began;

— order the Parliament to pay to each applicant the sum of EUR 2 000 for their irrecoverable costs of bringing proceedings;

— order the Parliament to pay the costs.

Pleas in law and main arguments

The applicants are session auxiliary staff employed by the Parliament at the time of its plenary sessions at Strasbourg, for 12 plenary sessions a year.

In support of their action, the applicants plead, first, the unlawfulness of Article 78 of the Conditions of Employment of Other Servants, inasmuch as that provision excludes the category of session auxiliaries from the scope of any State or Community source of law.

The applicants rely, next, on the breach of the principle of non-discrimination as stated, in particular, in the European Social Charter and in Convention C 111 of the International Labour Organisation (ILO) concerning discrimination in respect of employment and occupation. They claim, further, that the Parliament infringed the principle requiring any employer to state reasons for a decision to terminate employment, a principle recognised, in particular, in Article 4 of Convention C 158 of the ILO concerning termination of employment at the initiative of the employer.

Finally, the applicants submit that, as provided, in particular, by Directive 1999/70 ([1]), the general form for the employment relationship between employers and workers is a contract of an indefinite duration.

([1]) Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p. 43).

Action brought on 16 July 2007 — Karatzoglou v EAR

(Case F-71/07)

(2007/C 269/128)

Language of the case: English

Parties

Applicant: Georgios Karatzoglou (Preveza, Greece) (represented by: S. A. Pappas, lawyer)

Defendant: European Agency for Reconstruction (EAR)

Form of order sought

— Order the EAR to pay the amount of EUR 348 965,96 in order to compensate the material damage suffered by the absence of compliance to judgement of the Fourth Chamber of the Court of First Instance of 23 February 2006 in Case T-471/04 (Georgios Karatzoglou v European Agency for Reconstruction) ([1]);

— Order the EAR to pay the amount of EUR 100 000 in order to compensate the non-material damage suffered by the absence of compliance to judgement T-471/04;

— Order the EAR to pay the amount of EUR 100 000 in order to compensate the non-material damage suffered by the service related fault committed by EAR as it refused to take any specific measure to comply with judgement T-471/04;

— Order the EAR to pay interest on the aforementioned amounts of 3 % since the publication of judgement T-471/04;

— Order the EAR to pay the costs.

Pleas in law and main arguments

The applicant mainly claims that The EAR infringed Article 233 EC in so far as it did not take the necessary measures to comply with the above-mentioned judgement of the Court of First Instance.

([1]) OJ C 96, of 22.4.2006, p. 13.

Action brought on 22 August 2007 — Anselmo and Others v Council

(Case F-85/07)

(2007/C 269/129)

Language of the case: French

Parties

Applicants: Ana Anselmo (Brussels, Belgium) and Others (represented by: S. Pappas, lawyer)

Defendant: Council of the European Union

Form of order sought

— annul, first, the decisions of the appointing authority of 11 May 2007, rejecting the complaints brought by the applicants concerning a difference in treatment between, on the one hand, the successful candidates in internal competition N/277 and, on the other hand, the officials who benefit from the attestation procedure as defined by the Council decision of 2 December 2004 concerning the detailed rules for implementing the attestation procedure and, secondly, the decisions contested by those complaints;

— find that there was an infringement of Article 5(2) of Annex XIII to the Staff Regulations of Officials of the European Communities by the non-recognition of seniority in grade in respect of the successful candidates in internal competition B/277;

— find that there was a breach of the principle of equal treatment and that of sound administration resulting both from the withdrawal of seniority in grade and the requirement of mobility which was imposed solely on successful candidates;

— consequently, accord the successful candidates the seniority in grade by annulling the contested acts;

— order the Council to pay the costs.

Pleas in law and main arguments

The applicants, successful candidates in internal competition B/277 published on 9 July 2007 by the General Secretariat of the Council, were first appointed in Category B maintaining the seniority of grade which they had acquired in Categories C and D. Later, their seniority in grade was limited to the date of taking up their new duties, although personnel who had reached Category B under the attestation procedure and not because of a competition were able to keep the seniority at issue. In those circumstances, the applicants rely on the infringement of the provisions and breach of the principles cited in the forms of order sought above.

Action brought on 6 September 2007 — Kuchta v European Central Bank

(Case F-89/07)

(2007/C 269/130)

Language of the case: German

Parties

Applicant: Jan Kuchta (Frankfurt am Main, Germany) (represented by: B. Karthaus, lawyer)

Defendant: European Central Bank

Form of order sought

— order the defendant to pay the applicant damages in the sum of EUR 1;

— declare that the decision addressed to the applicant concerning the annual salary and bonus review (ASBR) for 2006 of 31 December 2006 is invalid;

— order the defendant to pay the applicant's out-of-court costs.

Pleas in law and main arguments

The action concerns an infringement of provisions of data protection law inasmuch as the applicant's staff report for 2006 was forwarded in full to his new superior without his knowledge.

In addition, the applicant complains of a breach of the principle of equal treatment regarding the annual salary and bonus review (ASBR) procedure and failure to consult the defendant's staff representatives in accordance with the rules when conducting the applicant's ASBR in 2006.

Action brought on 17 September 2007 — Traore v Commission

(Case F-90/07)

(2007/C 269/131)

Language of the case: French

Parties

Applicant: Amadou Traore (Rhodes Saint Genèse, Belgium) (represented by: E. Boigelot, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— annul the decision rejecting the applicant's candidature for the post of chargé d'affaires ad interim at the Commission Delegation in Togo, to which Mr X was appointed;

— annul Mr X's appointment to the post;

— annul the decision rejecting the applicant's candidature for the post of Head of Operations at the Commission Delegation in Tanzania, to which Mr Y was appointed;

— annul Mr Y's appointment to the post;

— order the defendant to pay, by way of compensation for the non-material damage and the detriment to the applicant's career, in the sum of EUR 3 500;

— order the defendant to pay the costs.

Pleas in law and main arguments

In support of his action, the applicant relies, first, on breach of the recruitment procedure, inasmuch as (i) the level of the posts at issue was set at Grades AD 9 to AD 14, in breach of the principles laid down, principally in the judgment in *Economidis* v *Commission* [1], and (ii) the notice of vacancy for the first of the posts at issue and the order of priority laid down in Article 29(1) of the Staff Regulations of Official of the European Communities ('the Staff Regulations') were not complied with. He adds that the comparative examination of the merits was not carried out, demonstrating the existence of a misuse of powers and a breach of the principles of equal treatment and reasonable career prospects.

The applicant claims, in addition, that the Commission infringed Article 1d(1) of the Staff Regulations, inasmuch as it rejected his candidatures principally because of his African origin.

[1] Judgment of 14 December 2006 in Case F-122/05, OJ C 331, 30.12.2006, p. 47.

Action brought on 13 September 2007 — Torijano Montero v Council

(Case F-91/07)

(2007/C 269/132)

Language of the case: French

Parties

Applicant: Javier Torijano Montero (Brussels, Belgium) (represented by: S. Rodrigues, R. Albelice and C. Bernard-Glanz, lawyers)

Defendant: Council of the European Union

Form of order sought

— annul the notice of vacancy of 31 October 2006 issued by the General Secretariat of the Council, by Staff Note No 171/06, concerning the post of Head of Department 'External Security' in the Council Security Office;

— annul the decision of the appointing authority of 31 May 2007 rejecting the applicant's complaint;

— state to the appointing authorities the consequences of the annulment of the contested decision and, in particular, reconsider the grade requirements in the notice of vacancy in order to allow the applicant to submit his candidature;

— order the Council to pay the costs.

Pleas in law and main arguments

The applicant, an official in Grade AD 6, challenges the above-mentioned notice of vacancy for limiting the possibility of submitting candidatures for the post of Head of Department 'External Security' in the Council Security Office, a post to be filled in Grade AD 11, to officials in Grade AD 8 at least.

After drawing attention to his claim for classification in Grade AD 8 in Case F-76/05 ([1]), the applicant relies on breach of the principle of legitimate expectations, inasmuch as filling the post at issue would have the effect of causing him to lose his current position as head of the 'External Security/Protection of Missions' sector, to the benefit of the candidate selected.

The applicant claims, in addition, infringement of the interests of the service, inasmuch as the grade required in the notice of vacancy does not allow his candidature to be accepted, despite the fact that he is the best qualified person to carry out the functions stated in the notice of vacancy. Moreover, the administration has not explained how the interests of the service justify the derogation from Article 31(2) of the Staff Regulations of Officials of the European Communities, according to which officials are recruited in Grades AD 5 to AD 8.

The applicant maintains, finally, that the administration has breached the principle of equal treatment and has committed a manifest error of assessment.

([1]) OJ C 281, 12.11.2005, p. 23 (case initially registered before the Court of First Instance of the European Communities under number T-302/05 and transferred to the European Union Civil Service Tribunal by order of 15.12.2005).

Action brought on 1 October 2007 — Tsirimiagos v Committee of the Regions

(Case F-100/07)

(2007/C 269/133)

Language of the case: French

Parties

Applicant: Kyriakos Tsirimiagos (Kraainem, Belgium) (represented by: M.-A. Lucas, lawyer)

Defendant: Committee of the Regions of the European Union (CoR)

Form of order sought

— annul the decision of 21 November 2006 of the Administration Director of the CoR to recover the amounts paid to the applicant in application of the correction coefficient for that part of his remuneration transferred to France from April 2004 to May 2005, in the sum of EUR 2 120,16;

— annul, insofar as is necessary, the decision of 21 June 2007, rejecting his administrative complaint of 21 February 2007 against the decision of 21 November 2006, inasmuch as it confirms the repayment in the sum of EUR 2 038,61;

— order the CoR to pay to the applicant the sum of EUR 2 038,61 withheld from his remuneration, plus default interest at the rate of 8 % per annum from 1 December 2006, the date of the recovery, until payment in full;

— order the CoR to pay the costs.

Pleas in law and main arguments

In support of his action, the applicant relies on very similar pleas in law to those relied on in Case F-59/07 ([1]).

([1]) OJ C 199, 25.8.2007, p. 5.

Action brought on 3 October 2007 — Cova v Commission

(Case F-101/07)

(2007/C 269/134)

Language of the case: English

Parties

Applicant: Philippe Cova (Brussels, Belgium) (represented by: S. Pappas, lawyer)

Defendant: Commission of the European Communities

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the Appointing Authority dated 29 June 2007 to the extent that it does not award the management premium provided for in Article 7(2) of the staff regulation for a period longer than one year,

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

Pleas in law and main arguments

The Applicant invokes the following pleas in law:

1. Infringement of Article 7(2) of the SR by the Appointing Authority

— the objective of Article 7(2) of the staff regulation is to ensure smooth continuity of the service in cases of vacancy of a post; according to the right meaning of this provision, the temporary occupation of a post should be as short as possible and for that reason the Administration is urged by the law to proceed without delay to the termination of the temporary posting by the nomination of a Head of unit to the post.

— *'The duration of a temporary posting shall not exceed one year'* refers exclusively to the duration of the temporary posting and does not affect the remuneration corresponding to it if the temporary posting is prolonged beyond the duration of one year.

— The deadline of one year is not of absolute character all the more since it is not a deadline addressed to the civil servant but to the Administration without any further qualification that it is compulsory or binding or imperative; hence, it should be understood as a strong reminder to the Administration to fill in the vacancy as soon as possible.

2. Infringement of the duty to have regard for the welfare of the officials and the principle of good administration

— The aforementioned duty implies that when an authority takes a decision concerning the position of an official, it should take into consideration all the factors which may affect its decision and that when doing so it should take into account not only the interests of the service but also those of the official concerned.

— In this connection the principle of good administration is frequently linked to the duty to have regard for the welfare of officials.

— In the present case the Commission failed to comply with its duties as it was aware that the previous Head of Unit should be assigned to another post and tolerated Mr Cova's appointment ad interim for a period longer than one year. The interpretation of the Commission leads to the paradoxical situation that while the responsibilities assumed for the allotted period were higher, the plaintiff may only be granted a management premium which is limited to one year.