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IV

*(Notices)*

# NOTICES FROM EUROPEAN UNION INSTITUTIONS AND BODIES

# COURT OF JUSTICE

(2007/C 297/01)

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

OJ C 283, 24.11.2007

**Past publications**

OJ C 269, 10.11.2007

OJ C 247, 20.10.2007

OJ C 235, 6.10.2007

OJ C 223, 22.9.2007

OJ C 211, 8.9.2007

OJ C 183, 4.8.2007

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

V

*(Announcements)*

# COURT PROCEEDINGS

# COURT OF JUSTICE

**Judgment of the Court (First Chamber) of 27 September 2007 (Reference for a preliminary ruling from the High Court of Justice (England and Wales), Queen's Bench Division (Administrative Court) — United Kingdom) — Teleos PLC, Unique Distribution Ltd, Synectiv Ltd, New Communications Ltd, Quest Trading Company Ltd, Phones International Ltd, AGM Associates Ltd, DVD Components Ltd, Fonecomp Ltd, Bulk GSM Ltd, Libratech Ltd, Rapid Marketing Services Ltd, Earthshine Ltd, Stardex (UK) Ltd v Commissioners of Customs & Excise**

**(Case C-409/04)** ([1])

***(Sixth VAT Directive — First subparagraph of Article 28a(3) and first subparagraph of Article 28c(A)(a) — Intra-Community acquisition — Intra-Community supply — Exemption — Goods dispatched or transported to another Member State — Evidence — National measures to combat fraud)***

(2007/C 297/02)

*Language of the case: English*

## Referring court

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

## Parties to the main proceedings

*Applicants:* Teleos PLC, Unique Distribution Ltd, Synectiv Ltd, New Communications Ltd, Quest Trading Company Ltd, Phones International Ltd, AGM Associates Ltd, DVD Components Ltd, Fonecomp Ltd, Bulk GSM Ltd, Libratech Ltd, Rapid Marketing Services Ltd, Earthshine Ltd, Stardex (UK) Ltd

*Defendants:* Commissioners of Customs & Excise

## Re:

Reference for a preliminary ruling from the High Court of Justice (England and Wales), Queen's Bench Division (Administrative Court) — Interpretation of Article 28a(3) and Article 28c(A)(a) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) — Contract between a supplier and a purchaser of goods containing a clause providing that the purchaser will be responsible for transporting the goods from a warehouse in the Member State of supply to another Member State

## Operative part of the judgment

1. *The first subparagraph of Article 28a(3) and the first subparagraph of Article 28c(A)(a) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, as amended by Council Directive 2000/65/EC of 17 October 2000, are, having regard to the term 'dispatched' in those two provisions, to be interpreted as meaning that the intra-Community acquisition of goods is effected and the exemption of the intra-Community supply of goods becomes applicable only when the right to dispose of the goods as owner has been transferred to the purchaser and the supplier establishes that those goods have been dispatched or transported to another Member State and that, as a result of that dispatch or that transport, they have physically left the territory of the Member State of supply.*

2. *The first subparagraph of Article 28c(A)(a) of Sixth Directive 77/388, as amended by Directive 2000/65, is to be interpreted as precluding the competent authorities of the Member State of supply from requiring a supplier, who acted in good faith and submitted evidence establishing, at first sight, his right to the exemption of an intra-Community supply of goods, subsequently to account for value added tax on those goods where that evidence is found to be false, without, however, the supplier's involvement in the tax evasion being established, provided that the supplier took every reasonable measure in his power to ensure that the intra-Community supply he was effecting did not lead to his participation in such evasion.*

3. *The fact that the purchaser made a declaration concerning intra-Community acquisition, such as that in question in the main proceedings, to the tax authorities of the Member State of destination may constitute additional evidence tending to establish that the goods have actually left the territory of the Member State of supply, but it does not constitute conclusive proof for the purposes of the exemption from value added tax of an intra-Community supply.*

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([1]) OJ C 300, 4.12.2004.

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**Judgment of the Court (Third Chamber) of 27 September 2007 (reference for a preliminary ruling from the Bundesfinanzhof — Germany) — Albert Collée, as full legal successor to Collée KG v Finanzamt Limburg an der Lahn**

**(Case C-146/05)** ([1])

***(Sixth VAT Directive — First subparagraph of Article 28c(A)(a) — Intra-Community supply — Refusal of exemption — Belated production of evidence of the supply)***

(2007/C 297/03)

*Language of the case: German*

**Referring court**

Bundesfinanzhof

**Parties to the main proceedings**

*Applicant:* Albert Collée, as full legal successor to Collée KG

*Defendant:* Finanzamt Limburg an der Lahn

**Re:**

Preliminary ruling — Bundesfinanzhof — Interpretation of Article 28c(A)(a) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1), as amended — Refusal of tax exemption in respect of the turnover of an intra-Community supply of goods — Delayed production of the invoice proving the intra-Community nature of the transaction.

**Operative part of the judgment**

*The first subparagraph of Article 28c(A)(a) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, as amended by Council Directive 91/680/EEC of 16 December 1991, must be interpreted as precluding the refusal by the tax authority of a Member State to allow an intra-Community supply — which actually took place — to be exempt from value added tax solely on the ground that the evidence of such a supply was not produced in good time.*

*When examining the right of exemption from value added tax in relation to such a supply, the referring court should take into account the fact that the taxable person initially knowingly concealed the fact that an intra-Community supply had occurred only if there is a risk of a loss in tax revenues and that risk has not been wholly eliminated by the taxable person in question.*

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([1]) OJ C 143, 11.6.2005.

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**Judgment of the Court (Third Chamber) of 27 September 2007 (reference for a preliminary ruling from the Hoge Raad der Nederlanden — The Netherlands) — Twoh International BV v Staatssekretaris van Finaciën**

**(Case C-184/05)** ([1])

***(Sixth VAT Directive — Article 28c(A)(a), first subparagraph — Intra-Community supplies — Exemption — No obligation on the tax authorities to gather evidence — Directive 77/799/EEC — Mutual assistance between the competent authorities of the Member States in the area of direct and indirect taxation — Regulation (EEC) No 218/92 — Administrative cooperation in the area of indirect taxation)***

(2007/C 297/04)

*Language of the case: Dutch*

**Referring court**

Hoge Raad der Nederlanden

**Parties to the main proceedings**

*Applicant:* Twoh International B.V.

*Defendant:* Staatssekretaris van Finaciën

**Re:**

Reference for a preliminary ruling — Hoge Raad der Nederlanden — Interpretation of Article 28c A (a) of Directive 77/388/EEC: Sixth Council Directive 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 262, p. 1) in conjunction with Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct and indirect taxation (OJ 1977 L 336, p. 15), as amended by Directive 92/12/EEC (OJ 1992 L 76, p. 1), and with Council Regulation (EEC) No 218/92 of 27 January 1992 on administrative cooperation in the field of indirect taxation (VAT) (OJ 1992 L 24, p. 1) — Sale and transport of goods to another Member State on behalf of the buyer — No communication of relevant information by the competent authority of the Member State of arrival — Whether or not the authorities of the Member State of dispatch are under an obligation to request information from the competent authorities of the Member State of arrival and to take it into account.

**Operative part of the judgment**

*The first subparagraph of Article 28c(A)(a) of the 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, as amended by Council Directive 95/7/EC of 10 April 1995, read in conjunction with Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct and indirect taxation, as amended by Council Directive 92/12 EEC of 25 February 1992, and with Council Regulation (EEC) No 218/92 of 27 January 1992 on administrative cooperation in the field of indirect taxation, does not require the tax authorities of the Member State of dispatch or transport on an intra-Community supply of goods to request information from the authorities of the destination Member State alleged by the supplier.*

([1]) OJ C 217, 3.9.2005.

## Judgment of the Court (Sixth Chamber) of 4 October 2007 — Commission of the European Communities v Kingdom of Sweden

**(Case C-186/05)** ([1])

***(Failure of a Member State to fulfil obligations — National monopoly on retail sales of alcoholic beverages — Importation by private individuals prohibited)***

(2007/C 297/05)

*Language of the case: Swedish*

**Parties**

*Applicant:* Commission of the European Communities (represented by: L. Ström van Lier and S. Pardo Quintillán, acting as Agents)

*Defendant:* Kingdom of Sweden (represented by: K. Wistrand, acting as Agent)

*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 — Infringement of Articles 28 EC and 30 EC — National legislation relating to a national monopoly on retail sales of alcoholic beverages prohibiting the direct importation of such beverages by private individuals

**Operative part of the judgment**

*The Court:*

1. *Declares that, by prohibiting the importation of alcoholic beverages by private individuals acting by their designated independent intermediaries or professional transporters, the Kingdom of Sweden has failed to fulfil its obligations under Article 28 EC and that prohibition cannot be regarded as being justified under Article 30 EC.*

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

([1]) OJ C 171 of 9.7.2005.

**Judgment of the Court (Second Chamber) of 11 October 2007 — Commission of the European Communities v Hellenic Republic**

**(Case C-237/05)** ([1])

***(Failure of a Member State to fulfil obligations — Directive 92/50/EEC — Public service contracts — Provision of assistance services to farmers for the year 2001 — Regulation (EEC) No 3508/92 — Implementation in Greek of the integrated administration and control system (IACS) — Absence of call for tenders — Application inadmissible)***

(2007/C 297/06)

*Language of the case: Greek*

**Parties**

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

*Defendant:* Hellenic Republic (represented by: G. Kanellopoulos and S. Charitaki, Agents)

**Re:**

Failure of a Member State to fulfil its obligations — Infringement of Articles 3(2), 7, 11(1) and 15(2) of Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts (OJ 1992 L 209, p. 1)

**Operative part of the judgment**

*The Court:*

1) *Dismisses the action as inadmissible;*

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

([1]) OJ C 193, 6.8.2005.

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**Judgment of the Court (Second Chamber) of 4 October 2007 — Naipes Heraclio Fournier, SA v Office for Harmonisation in the Internal Market (Trade Marks and Designs), France Cartes SAS**

**(Case C-311/05 P)** ([1])

***(Appeal — Regulation (EC) No 40/94 — Community trade mark — Figurative marks comprising the representation of a 'sword', a 'knight of clubs' and a 'king of swords' in a pack of cards — Declaration of invalidity of the mark)***

(2007/C 297/07)

*Language of the case: Spanish*

**Parties**

*Appellant:* Naipes Heraclio Fournier, SA (represented by: E. Armijo Chávarri and A. Castán Pérez-Gómez, abogados)

*Other parties to the proceedings:* Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: O. Montalto, I. de Medrano Caballero and O. Mondéjar, Agents), France Cartes SAS represented by: C. de Haas, avocat)

**Re:**

Appeal brought against the judgment of the Court of First Instance (Third Chamber) of 11 May 2005 in Joined Cases T-160/02 to T-162/02 *Naipes Heraclio Fournier* v *OHIM* (intervener: France Cartes SAS), by which the Court of First Instance dismissed the actions brought against three decisions of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (OHIM) of 28 February 2002, allowing the applications for declarations of invalidity brought by France Cartes SAS in respect of three figurative marks of which the applicant is proprietor

**Operative part of the judgment**

*The Court:*

1. *Dismisses the appeal;*

2. *Orders Naipes Heraclio Fournier, SA to pay the costs.*

([1]) OJ C 243 of 1.10.2005.

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**Judgment of the Court (First Chamber) of 4 October 2007 (reference for a preliminary ruling from the Bundesverwaltungsgericht — Germany) — Erhard Geuting v Direktor der Landwirtschaftskammer Nordrhein-Westfalen**

**(Case C-375/05)** ([1])

***(Beef and veal — Premium for maintaining suckler cows)***

(2007/C 297/08)

*Language of the case: German*

**Referring court**

Bundesverwaltungsgericht

**Parties to the main proceedings**

*Applicant:* Erhard Geuting

*Defendant:* Direktor der Landwirtschaftskammer Nordrhein-Westfalen

**Re:**

Reference for a preliminary ruling — Bundesverwaltungsgericht — Interpretation of Article 4a(ii) of Regulation (EEC) No 805/68 of the Council of 27 June 1968 on the common organisation of the market in beef and veal (OJ, English Special Edition 1968 (I), p. 187), as amended by Council Regulation (EEC) No 2066/92 of 30 June 1992 amending Regulation (EEC) No 805/68 on the common organisation of the market in beef and veal and repealing Regulation (EEC) No 468/87 laying down general rules applying to the special premium for beef producers and Regulation (EEC) No 1357/80 introducing a system of premiums for maintaining suckler cows (OJ 1992 L 215, p. 49) and Article 33(2) and (4) of Commission Regulation (EEC) No 3886/92 of 23 December 1992 laying down detailed rules for the application of the premium schemes provided for in Council Regulation (EEC) No 805/68 on the common organisation of the market in beef and repealing Regulations (EEC) No 1244/82 and (EEC) No 714/89 (OJ 1992 L 391, p. 20), as amended by Commission Regulation (EC) No 2311/96 of 2 December 1996 amending Regulation (EEC) No 3886/92 laying down detailed rules for the application of premium schemes in the beef and veal sector (OJ 1996 L 313, p. 9) — Premium for maintaining suckler cows — Meaning of 'suckler cow' and 'use of rights' — Repayment of advances received and reduction of individual ceiling following the refusal to take into account, for the grant of the premium, in-calf heifers, which did not replace suckler cows in respect of which a premium had been applied for.

**Operative part of the judgment**

1. *Point (ii) of the third indent of Article 4a of Regulation (EEC) No 805/68 of the Council of 27 June 1968 on the common organisation of the market in beef and veal, as amended by Council Regulation (EC) No 2222/96 of 18 November 1996, must be interpreted as meaning that an in-calf heifer may be regarded as a suckler cow within the meaning of Section 1 of that regulation only if it replaces, after the premium application for the marketing year has been lodged, a suckler cow included in that application;*

2. *An in-calf heifer which, for a marketing year, replaced a suckler cow in respect of which a premium application was made and which was accepted as being eligible for that premium may be regarded as a suckler cow within the meaning of point (ii) of the third indent of Article 4a of Regulation No 805/68, as amended by Regulation No 2222/96, where it fulfils, in the following year, the requirements for replacing a suckler cow again;*

3. *Point (ii) of the third indent of Article 4a of Regulation No 805/68, as amended by Council Regulation (EC) No 2222/96, is to be interpreted as meaning that an in-calf heifer in respect of which a premium application has been made is not eligible for the premium if it calves before the deadline for lodging that application;*

4. *Article 33(2) and (4) of Commission Regulation (EEC) No 3886/92 of 23 December 1992 laying down detailed rules for the application of the premium schemes provided for in Regulation No 805/68 and repealing Regulations (EEC) No 1244/82 and (EEC) No 714/89, as amended by Commission Regulation (EC) No 2311/96 of 2 December 1996, is to be interpreted as meaning that a producer must be considered as not having made use of his premium rights during a marketing year if he has applied for a premium but his application has been rejected because the animals concerned were not eligible, and this is also the case if there is no indication of an improper application having been made. Such an interpretation is not contrary to the principle of proportionality;*

5. *It is for the national court to decide whether, in the light of all the duly justified circumstances of the situation of the applicant in the main proceedings, that situation constitutes an exceptional case in which the derogation provided for in the final indent of Article 33(2) of Regulation No 3886/92, as amended by Regulation No 2311/96, falls to be applied, whilst taking account of the need to apply that provision restrictively;*

6. *Article 33(4) of Regulation No 3886/92, as amended by Regulation No 2311/96, read in conjunction with Article 4f(4) of Regulation No 805/68, as amended by Regulation No 2222/96, is to be interpreted as meaning that Member States may, on expiry of the two-year exclusion period, grant to a producer, on a preferential basis, the premium rights which were withdrawn from him because he had made use of more than 70 % but less than 90 % of his premium rights in the 1998 marketing year.*

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([1]) OJ C 330, 24.12.2005.

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**Judgment of the Court (Grand Chamber) of 16 October 2007 (reference for a preliminary ruling from the Juzgado de lo Social de Madrid — Spain) — Félix Palacios de la Villa v Cortefiel Servicios SA**

**(Case C-411/05)** ([1])

***(Directive 2000/78/EC — Equal treatment in employment and occupation — Scope — Collective agreement providing for automatic termination of employment relationship where a worker has reached 65 years of age and is entitled to a retirement pension — Age discrimination — Justification)***

(2007/C 297/09)

*Language of the case: Spanish*

**Referring court**

Juzgado de lo Social de Madrid

**Parties to the main proceedings**

*Applicant:* Félix Palacios de la Villa

*Defendant:* Cortefiel Servicios SA

**Re:**

Reference for a preliminary ruling — Juzgado de lo Social de Madrid — Interpretation of Art. 2(1) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16) — National rules transposing the directive which include a transitional provision whereby compulsory retirement clauses not justified by employment policy objectives but contained in collective agreements are deemed valid.

**Operative part of the judgment**

*The prohibition on any discrimination on grounds of age, as implemented by Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, must be interpreted as not precluding national legislation such as that at issue in the main proceedings, pursuant to which compulsory retirement clauses contained in collective agreements are lawful where such clauses provide as sole requirements that workers must have reached retirement age, set at 65 by national law, and must have fulfilled the conditions set out in the social security legislation for entitlement to a retirement pension under their contribution regime, where*

— *the measure, although based on age, is objectively and reasonably justified in the context of national law by a legitimate aim relating to employment policy and the labour market, and*

— *the means put in place to achieve that aim of public interest do not appear to be inappropriate and unnecessary for the purpose.*

(1) OJ C 36, 11.2.2006.

**Judgment of the Court (First Chamber) of 4 October 2007 (reference for a preliminary ruling from the Tribunal d'instance de Saintes, France) — Max Rampion, Marie-Jeanne Rampion, née Godard v Franfinance SA, K par K SAS**

**(Case C-429/05)** (1)

***(Directive 87/102/EEC — Consumer credit — Right of the consumer to pursue remedies against the grantor of credit for non-performance or performance not in accordance with the contract relating to the goods or services financed by the credit — Conditions — Indication in the offer of credit of the goods or service being financed — Credit facility enabling the credit granted to be used on a number of occasions — Possibility for the national court to raise of its own motion the right of the consumer to pursue remedies against the grantor of credit)***

(2007/C 297/10)

*Language of the case: French*

**Referring court**

Tribunal d'instance de Saintes

**Parties to the main proceedings**

*Applicants:* Max Rampion, Marie-Jeanne Rampion, née Godard

*Defendants:* Franfinance SA, K par K SAS

**Re:**

Reference for a preliminary ruling — Tribunal d'instance de Saintes — Interpretation of Articles 11 and 14 of Council Directive 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit (OJ 1987 L 42, p. 48) — National legislation making application of the rules on interdependence between a credit agreement and a sale contract conditional on an indication being made, in the credit offer, of the goods being financed — Credit facility arrangement which does not indicate the goods being financed but is clearly linked to the contract of sale — Whether possible for the national courts to raise of their own motion arguments relating to the regulation of consumer credit.

**Operative part of the judgment**

1. *Articles 11 and 14 of Council Directive 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit, as amended by Directive 98/7/EC of the European Parliament and of the Council of 16 February 1998, must be interpreted as meaning that the right to pursue remedies, provided for in Article 11(2) of Directive 87/102, as amended, which the consumer enjoys against the grantor of credit, may not be made subject to the condition that the prior offer of credit must indicate the goods or services being financed.*

2. *Directive 87/102, as amended by Directive 98/7, must be interpreted as allowing national courts to apply of their own motion the provisions transposing Article 11(2) of Directive 87/102 into national law.*

([1]) OJ C 36, 11.2.2006.

**Judgment of the Court (Fourth Chamber) of 11 October 2007 (reference for a preliminary ruling from the Court of Cassation — France) — Européenne et Luxembourgeoise d'investissements SA (ELISA) v Directeur général des impôts, Ministère public**

**(Case C-451/05)** ([1])

***(Direct taxation — Tax on the commercial value of immovable property in France owned by legal persons — Holding companies under Luxembourg law — Refusal of exemption — Directive 77/799/EEC — Non-exhaustive list of specified taxes and duties — Tax similar in nature — Limits to exchange of information — Bilateral convention — Article 73b of the EC Treaty (now Article 56 EC) — Free movement of capital — Combating tax evasion)***

(2007/C 297/11)

*Language of the case: French*

**Referring court**

Court of Cassation

**Parties to the main proceedings**

*Applicant:* Européenne et Luxembourgeoise d'investissements SA (ELISA)

*Defendant:* Directeur général des impôts, Ministère public

**Re:**

Reference for a preliminary ruling — Court of Cassation (France) — Interpretation of Article 43 EC *et seq.* and Article 56 EC *et seq.*, and Article 1 of Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation (OJ 1977 L 336, p. 15) — Tax on the commercial value of immoveable property situated in France — Exemption of legal persons having their effective centre of management in France, legal persons which, under a treaty, are not to be taxed more heavily and legal persons having their seat in a country or territory which has concluded with France a convention on administrative assistance to combat tax evasion and avoidance — Refusal to grant an exemption to a Luxembourg holding company.

**Operative part of the judgment**

1) *The tax on the commercial value of immovable property owned in France by legal persons is a tax which is similar in nature to those taxes referred to in Article 1(3) of Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct and indirect taxation, as amended by Council Directive 92/12/EEC of 25 February 1992, which is levied on elements of capital within the meaning of Article 1(2) of that directive;*

2) *Directive 77/799, as amended by Directive 92/12, and in particular Article 8(1) thereof, does not preclude two Member States from binding themselves by means of an international convention, with the intention of avoiding double taxation and establishing rules for reciprocal administrative assistance in the area of taxes on income and capital, which excludes from its scope, in respect of one Member State, one category of taxpayers subject to a tax covered by that directive, if the competent authority of the Member State which should furnish information is prevented by its laws or administrative practices from collecting or using such information for that State's own purposes, this being a matter which it is for the national court to verify;*

3) *Article 73b of the EC Treaty (now Article 56 EC) must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which exempts companies established in France from the tax on the commercial value of immovable property owned in France by legal persons, when, in respect of companies established in another Member State, it makes that exemption subject either to the existence of a convention on administrative assistance between the French Republic and that State for the purposes of combating tax avoidance and tax evasion or to the existence of a requirement in a treaty containing a clause prohibiting discrimination on grounds of nationality to the effect that those companies cannot be more heavily taxed than companies established in France, and which does not allow the company established in another Member State to supply evidence to establish the identity of the natural persons who are its shareholders.*

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([1]) OJ C 60, 11.3.2006.

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**Judgment of the Court (Third Chamber) of 11 October 2007 (reference for a preliminary ruling from the Högsta domstolen — Sweden) — Freeport plc v Olle Arnoldsson**

**(Case C-98/06)** ([1])

***(Regulation (EC) No 44/2001 — Article 6(1) — Special jurisdiction — More than one defendant — Legal bases of the actions — Abuse — Likelihood of success of an action brought in the courts for the place where one of the defendants is domiciled)***

(2007/C 297/12)

*Language of the case: Swedish*

**Referring court**

Högsta domstolen

**Parties to the main proceedings**

*Applicant:* Freeport plc

*Defendant:* Olle Arnoldsson

**Re:**

Interpretation of Article 6(1) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1 — Special jurisdiction — More than one defendant — Actions brought simultaneously concerning an obligation of payment against a legal person before the court in a country where that legal person is established and against the person, established in the territory of another Member State, who undertook that obligation without being the agent or representative of the person in question — Contractual nature of actions

**Operative part of the judgment**

1. *Article 6(1) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters is to be interpreted as meaning that the fact that claims brought against a number of defendants have different legal bases does not preclude application of that provision.*

2. *Article 6(1) of Regulation No 44/2001 applies where claims brought against different defendants are connected when the proceedings are instituted, that is to say, where it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings, without there being any further need to establish separately that the claims were not brought with the sole object of ousting the jurisdiction of the courts of the Member State where one of the defendants is domiciled.*

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([1]) OJ C 86, 8.4.2006.

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**Judgment of the Court (Second Chamber) of 11 October 2007 (reference for a preliminary ruling from the Kammergericht Berlin — Germany) — Proceedings brought by Gerda Möllendorf and Christiane Möllendorf-Niehuus**

**(Case C-117/06)** ([1])

***(Common foreign and security policy — Specific restrictive measures directed against persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban — Freezing of funds and economic resources — Regulation (EC) No 881/2002 — Articles 2(3) and 4(1) — Prohibition on making economic resources available to persons listed in Annex I to that Regulation — Scope of prohibition — Sale of immovable property — Contract concluded before inclusion of a buyer in the list in Annex I — Application for registration of the transfer of ownership in the Land Register subsequent to that inclusion)***

(2007/C 297/13)

*Language of the case: German*

**Referring court**

Kammergericht Berlin

**Party in the main proceedings**

Gerda Möllendorf, Christiane Möllendorf-Niehuus

**Re:**

Reference for a preliminary ruling — Kammergericht Berlin — Interpretation of Articles 2(3) and 4(1) of Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, and repealing Council Regulation (EC) No 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan (OJ 2002 L 139, p. 9) — Prohibition on making economic resources available to persons listed in Annex I — Refusal of the registration in the Land Register necessary for the transfer of ownership of a property following a contract of sale concluded prior to listing of the buyer in Annex I.

**Operative part of the judgment**

*In a situation where both the contract for the sale of immovable property and the agreement on transfer of ownership of that property have been concluded before the date on which the buyer is included in the list in Annex I to Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, and repealing Council Regulation (EC) No 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan, as amended by Council Regulation (EC) No 561/2003 of 27 March 2003, and where the sale price has also been paid before that date, Article 2(3) of Regulation No 881/02, as amended by Regulation No 561/2003, must be interpreted as prohibiting the final registration, in performance of that contract, of the transfer of ownership in the Land Register subsequent to that date.*

([1]) OJ C 108, 6.5.2006.

**Judgment of the Court (Eighth Chamber) of 4 October 2007 — Henkel KGaA v Office for Harmonisation in the Internal Market (Trade Marks and Designs)**

**(Case C-144/06 P)** ([1])

***(Appeal — Community trade mark — Regulation (EC) No 40/94 — Article 7(1)(b) — Refusal to register — Figurative mark — Representation of a red and white rectangular tablet with an oval blue centre — Distinctive character)***

(2007/C 297/14)

*Language of the case: German*

**Parties**

*Appellant:* Henkel KGaA (represented by: C. Osterrieth, Rechtsanwalt)

*Other party to the proceedings:* Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: G. Schneider, Agent)

**Re:**

Appeal brought against the judgment of the Court of First Instance (Second Chamber) of 17 January 2006 in Case T-398/04 *Henkel KGaA* v *OHIM*, in which the Court of First Instance rejected the application for annulment of the decision to refuse the registration of a three-dimensional mark for detergent products in the form of a red and white rectangular tablet with an oval blue centre — Three-dimensional mark consisting of the shape of the product — Distinctive character of the mark

**Operative part of the judgment**

*The Court:*

1) *Dismisses the appeal;*

2) *Orders Henkel KGaA to pay the costs.*

([1]) OJ C 121, 20.5.2006.

## Judgment of the Court (Fourth Chamber) of 4 October 2007 — Commission of the European Communities v Italian Republic

**(Case C-179/06)** ([1])

***(Failure of a Member State to fulfil obligations — Directive 92/43/EEC — Conservation of natural habitats and of wild fauna and flora — Environmental impact assessment)***

(2007/C 297/15)

*Language of the case: Italian*

### Parties

*Applicant:* Commission of the European Communities (represented by: D. Recchia, Agent)

*Defendant:* Italian Republic (represented by: I. Braguglia and G. Fiengo, Agent)

### Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 6(3) and 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) — Failure to carry out an assessment of the impact of a series of industrial construction operations on special protection area IT 9120007 Murgia Alta.

### Operative part of the judgment

*The Court:*

1) *Dismisses the action;*

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

([1]) OJ C 143, 17.6.2006.

## Judgment of the Court (Second Chamber) of 4 October 2007 (reference for a preliminary ruling from the Bundesverwaltungsgericht — Germany) — Matthias Kruck v Landkreis Potsdam-Mittelmark

**(Case C-192/06)** ([1])

***(Agricultural structures — Community aid schemes — Article 7(6) of Regulation (EEC) No 1765/92 — Article 9(2) of Regulation (EEC) No 3887/92 — Set-aside of land — Reduction of compensatory payments)***

(2007/C 297/16)

*Language of the case: German*

### Referring court

Bundesverwaltungsgericht

### Parties to the main proceedings

*Applicant:* Matthias Kruck

*Defendant:* Landkreis Potsdam-Mittelmark

### Re:

Reference for a preliminary ruling — Bundesverwaltungsgericht — Interpretation of Article 9(2) to (4) of Commission Regulation (EEC) No 3887/92 of 23 December 1992 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes (OJ 1992 L 391, p. 36), as amended by Commission Regulation (EC) No 1648/95 of 6 July 1995 amending Regulation (EEC) No 3887/92 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes (OJ 1995 L 156, p. 27), and Article 7(6), second and fourth sentences, of Council Regulation (EEC) No 1765/92 of 30 June 1992 establishing a support system for producers of certain arable crops (OJ 1992 L 181, p. 12), as amended by Council Regulation (EC) No 2989/95 of 19 December 1995 amending Regulation (EEC) No 1765/92 establishing a support system for producers of certain arable crops (OJ 1995 L 312, p. 5) — Determination of maximum area giving rise to compensatory payments for set-aside on the basis of the area actually determined rather than the area applied for in the application for compensatory payment.

### Operative part of the judgment

*On a proper construction of Article 9 of Commission Regulation (EEC) No 3887/92 of 23 December 1992 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes, as amended by Commission Regulation (EC) No 1648/95 of 6 July 1995, is to be interpreted as meaning that the maximum area to be considered for compensatory payments for set-aside in accordance with the second and fourth sentences of Article 7(6) of Council Regulation (EEC) No 1765/92 of 30 June 1992 establishing a support system for producers of certain arable crops, as amended by Council Regulation (EC) No 2989/95 of 19 December 1995, should be calculated on the basis of the area applied for provided that that area is actually under arable crops and does not contain land excluded from compensatory payments by Article 9 of Regulation No 1765/92, as amended by Regulation No 2989/95.*

([1]) OJ C 154, 1.7.2006.

## Judgment of the Court (Second Chamber) of 4 October 2007 — Commission of the European Communities v Italian Republic

**(Case C-217/06)** ([1])

***(Failure of Member State to fulfil obligations — Public works contracts — Directive 71/305/EEC — Meaning and definition of a public works contract — Failure which has produced all its effects)***

(2007/C 297/17)

*Language of the case: Italian*

### Parties

*Applicant:* Commission of the European Communities (represented by: X. Lewis, agent and M. Mollica, avocat,)

*Defendant:* Italian Republic (represented by: I. Braguglia and S. Fiorentino, agents.)

### Re:

Failure of Member State to fulfil obligations — Infringement of Articles 3 and 12 of Council Directive 71/305/EEC of 26 July 1971 concerning the co-ordination of procedures for the award of public works contracts (OJ 1971 L 185, p. 5) — Award, after private negotiation and without publication of a notice of invitation to tender, of a works contract for the performance of works specified in resolution No 48 of the Municipal Council of Stintino of 14 December 1989, in particular: 'the design and execution of works relating to the technical and structural modernisation, maintenance and completion of the water supply and drainage networks, the road network, and structures and facilities serving the centre of population, the external villages and the tourist zones of the territory of the commune of Stintino, and including the cleaning and decontamination of the coast and tourist centres of that commune'

### Operative part of the judgment

*The Court:*

1. *declares that by allowing execution of at least one of the operations entrusted by the commune of Stintino to the company Maresar Soc. Cons arl under the Agreement No 7/91 signed on 2 October 1991 and additional measures subsequently agreed by the same parties, the Italian Republic has failed to fulfil its obligations under Council Directive 71/305/EEC of 26 July 1971 concerning the co-ordination of procedures for the award of public works contracts, and in particular Articles 3 and 12 thereof;*

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

([1]) OJ C 178 of 29.7.2006.

## Judgment of the Court (Third Chamber) of 11 October 2007 (reference for a preliminary ruling from the Hanseatisches Oberlandesgericht — Germany) — Lämmerzahl GmbH v Freie Hansestadt Bremen

**(Case C-241/06)** ([1])

***(Public contracts — Directive 89/665/EEC — Review procedures concerning the award of public contracts — Limitation period — Principle of effectiveness)***

(2007/C 297/18)

*Language of the case: German*

### Referring court

Hanseatisches Oberlandesgericht

### Parties to the main proceedings

*Applicant:* Lämmerzahl GmbH

*Defendant:* Freie Hansestadt Bremen

### Re:

Reference for a preliminary ruling — Hanseatisches Oberlandesgericht — Interpretation of Article 1(1) and (3) of Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (OJ 1989 L 395, p. 33), as amended by Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts (OJ 1992 L 209, p. 1) — No right to review of a decision of the contracting authority awarding a contract the estimated value of which does not exceed EUR 200 000 — All objections time-barred as a result of a wrong estimate of the contract price at the time of publication of the notice of invitation to tender.

### Operative part of the judgment

1) *In accordance with Article 9(4) of and Annex IV to Council Directive 93/36/EEC of 14 June 1993 coordinating procedures for the award of public supply contracts, as amended by Commission Directive 2001/78/EC of 13 September 2001, the contract notice concerning a contract within the scope of that directive must state the total quantity or scope of that contract. The absence of such an indication must be capable of being reviewed under Article 1(1) of Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts, as amended by Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts;*

2) *Directive 89/665, as amended by Directive 92/50, particularly Article 1(1) and (3), precludes a limitation period laid down by national law from being applied in such a way that a tenderer is refused access to a review concerning the choice of procedure for awarding a public contract or the estimate of the value of that contract, where the contracting authority has not clearly stated the total quantity or scope of the contract to the person concerned. Those provisions of the directive also preclude such a rule from being extended generally to cover the review of decisions of the contracting authority, including those occurring in stages of an award procedure after the end of that limitation period.*

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([1]) OJ C 212, 2.9.2006.

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**Judgment of the Court (Fourth Chamber) of 11 October 2007 (references for a preliminary ruling from the Zala Megyei Bíróság, Legfelsőbb Bíróság — Republic of Hungary) — KÖGÁZ rt, E-ON IS Hungary kft, E-ON DÉDÁSZ rt, Schneider Electric Hungária rt, TESCO Áruházak rt, OTP Garancia Biztosító rt, OTP Bank rt, ERSTE Bank Hungary rt, Vodafone Magyarország Mobil Távközlési rt (C-283/06) v Zala Megyei Közigazgatási Hivatal Vezetője, and OTP Garancia Biztosító rt v Vas Megyei Közigazgatási Hivatal (C-312/06)**

**(Joined Cases C-283/06 and C-312/06)** ([1])

***(Sixth VAT Directive — Article 33(1) — Definition of 'turnover taxes' — Local business tax)***

(2007/C 297/19)

*Language of the case: Hungarian*

**Referring courts**

Zala Megyei Bíróság, Legfelsőbb Bíróság

**Parties to the main proceedings**

*Applicants:* KÖGÁZ rt, E-ON IS Hungary kft, E-ON DÉDÁSZ rt, Schneider Electric Hungária rt, TESCO Áruházak rt, OTP Garancia Biztosító rt, OTP Bank rt, ERSTE Bank Hungary rt, Vodafone Magyarország Mobil Távközlési rt (C-283/06), OTP Garancia Biztosító rt (C-312/06)

*Defendants:* Zala Megyei Közigazgatási Hivatal Vezetője (C-283/06), Vas Megyei Közigazgatási Hivatal (C-312/06)

**Re:**

References for a preliminary ruling — Zala Megyei Bíróság, Legfelsőbb Bíróság — Intepretation of Annex X (list referred to in Article 24 of the Act of Accession: Hungary), Chapter 4 (Competition policy), point 3(a), to the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded (OJ 2003 L 236, p. 846) and of Article 33 of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) — Prohibition of taxes which can be characterised as turnover taxes — National legislation authorising local authorities to introduce a tax on economic operations — Possibility, granted by the Act of Accession, for the Member State to apply reductions for that tax during a transitional period.

**Operative part of the judgment**

*Article 33(1) of the 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, as amended by Council Directive 91/680/EEC of 16 December 1991 supplementing the common system of value added tax and amending Directive 77/388 with a view to the abolition of fiscal frontiers, must be interpreted as not precluding the maintenance of a charge to tax with characteristics such as those of the tax at issue in the main proceedings.*

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([1]) OJ C 212, 2.9.2006,
OJ C 237, 30.9.2006.

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**Judgment of the Court (Fifth Chamber) of 11 October 2007 — Hellenic Republic v Commission of the European Communities**

**(Case C-332/06 P)** ([1])

***(Appeal — EAGGF — Exclusion of expenditure from financing owing to failure to comply with Community rules)***

(2007/C 297/20)

*Language of the case: Greek*

**Parties**

*Appellant:* Hellenic Republic (represented by: V. Kontolaimos and I. Khalkias, Agents)

*Other party to the proceedings:* Commission of the European Communities (represented by: M. Condou-Durande and H. Tserepa-Lacombe, Agents)

**Re:**

Appeal brought against the judgment of the Court of First Instance (Second Chamber) of 20 June 2006 in Case T-251/04 *Greece* v *Commission* by which the Court dismissed an action seeking annulment of Commission Decision 2004/457/EC of 29 April 2004 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) (notified under document number C(2004) 1706) (OJ 2004 L 156, p. 47)

**Operative part of the judgment**

*The Court:*

1. *Dismisses the appeal;*

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

([1]) OJ C 224, 16.9.2006.

**Judgment of the Court (Seventh Chamber) of 4 October 2007 (reference for a preliminary ruling from the Verwaltungsgericht Darmstadt — Germany) — Murat Polat v Stadt Rüsselsheim**

**(Case C-349/06)** ([1])

***(EEC-Turkey Association Agreement — Article 59 of the Additional Protocol — First paragraph of Article 7 and Article 14 of Decision No 1/80 of the Association Council — Directive 2004/38/EC — Right of residence of a Turkish worker's child — Adult child who is no longer dependent on his parents — Numerous criminal convictions — Lawfulness of an expulsion order)***

(2007/C 297/21)

*Language of the case: German*

**Referring court**

Verwaltungsgericht Darmstadt

**Parties to the main proceedings**

*Applicant:* Murat Polat

*Defendant:* Stadt Rüsselsheim

**Re:**

Preliminary ruling — Verwaltungsgericht Darmstadt — Interpretation of the second indent of the first sentence of Article 7 of Decision No 1/80 of the EEC/Turkey Association Council, of Article 59 of the Additional Protocol relating to the transitional phase provided for in the Agreement establishing an Association between the European Economic Community and Turkey, signed on 23 November 1970 (OJ 1977 L 361, p. 60), and of Article 28 of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77) — Right of residence of a Turkish national who entered the national territory as a minor by way of family reunification and who was financially independent after his majority — Return to the national territory in a position of financial dependence *vis-à-vis* his parents — Acquisition of the right of residence for adults financially dependent on their parents — Conditions under which the right of residence is lost — Criminal convictions — Lawfulness of a decision to expel.

**Operative part of the judgment**

1) *A Turkish national, who was authorised while he was a child to enter the territory of a Member State in order to join his family and who has acquired the right of free access to any paid employment of his choice under the second indent of the first paragraph of Article 7 of Decision No 1/80 of 19 September 1980 on the development of the Association, adopted by the Association Council set up by the Association Agreement between the European Economic Community and Turkey, loses the right of residence in the host Member State which is a corollary of that right of free access only in two situations, that is:*

— *in the circumstances provided for in Article 14(1) of that decision, or*

— *if he leaves the territory of the Member State concerned for a significant length of time without legitimate reason,*

*even though he is over 21 years of age, is no longer dependent on his parents, but lives independently in the Member State concerned, and was not available to join the labour force for several years because he was during that period serving an unsuspended sentence of imprisonment.*

*Such an interpretation is not inconsistent with the requirements of Article 59 of the Additional Protocol signed at Brussels on 23 November 1970 and concluded, approved and confirmed on behalf of the Community by Council Regulation (EEC) No 2760/72 of 19 December 1972;*

2) *Article 14(1) of Decision No 1/80 must be interpreted as not precluding the taking of an expulsion measure against a Turkish national who has been the subject of several criminal convictions, provided that his behaviour constitutes a genuine and sufficiently serious threat to a fundamental interest of society. It is for the national court to determine whether that is the case in the main proceedings.*

(1) OJ C 281, 18.11.2006.

## Judgment of the Court (Fifth Chamber) of 27 September 2007 — Commission of the European Communities v Grand Duchy of Luxembourg

**(Case C-354/06)** (1)

***(Failure of Member State to fulfil obligations — Protection of the environment — Access to justice)***

(2007/C 297/22)

*Language of the case: French*

### Parties

*Applicant:* Commission of the European Communities (represented by: J. Hottiaux and F. Simonetti, agents, acting as Agent (s))

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

### Re:

Failure of Member State to fulfil obligations — Failure to take within the prescribed period the measures necessary to comply with Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC (OJ 2003 L 156, p. 17)

### Operative part of the judgment

*The Court:*

1. *Declares that by failing to take in the prescribed period all the legislative regulatory and administrative measures necessary to comply with Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC, the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive;*

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

(1) OJ C 249 of 14.10.2006.

## Judgment of the Court (Fourth Chamber) of 11 October 2007 (reference for a preliminary ruling from the Supremo Tribunal Administrativo — Portugal) — Erika Hollmann v Fazenda Pública

**(Case C-443/06)** (1)

***(Direct taxation — Taxation of capital gains on immovable property — Free movement of capital — Basis of assessment — Discrimination — Cohesion of the tax system)***

(2007/C 297/23)

*Language of the case: Portuguese*

### Referring court

Supremo Tribunal Administrativo

### Parties to the main proceedings

*Applicant:* Erika Hollmann

*Defendant:* Fazenda Pública

*Intervener:* Ministério Público

### Re:

Reference for a preliminary ruling — Supremo Tribunal Administrativo — Interpretation of Articles 12 EC, 18 EC, 39 EC, 43 EC and 56 EC — Taxation of capital gains realised on the transfer for valuable consideration of real property — Exclusion from the part exemption provided for for persons residing in Portugal of capital gains realised on such transfers made by persons residing in another Member State

### Operative part of the judgment

*Article 56 EC must be interpreted as precluding national legislation, such as that in dispute in the main proceedings, which subjects capital gains resulting from the transfer of immovable property situated in a Member State, in this case Portugal, where that transfer is made by a resident of another Member State, to a tax burden greater than that which would be applicable for the same type of transaction to capital gains realised by a resident of the State in which that immovable property is situated.*

(1) OJ C 326, 30.12.2006.

**Judgment of the Court (Third Chamber) of 11 October 2007 (reference for a preliminary ruling from the Tribunal du travail de Brussels, Belgium) — Nadine Paquay v Société d'architectes Hoet + Minne SPRL**

**(Case C-460/06)** ([1])

***(Social policy — Protection of pregnant women — Directive 92/85/EEC — Article 10 — Prohibition on dismissal from the beginning of pregnancy to the end of maternity leave — Period of protection — Decision to dismiss a female worker during that period of protection — Notification and implementation of the decision to dismiss after the expiry of that period — Equal treatment for male and female workers — Directive 76/207/EEC — Articles 2(1), 5(1) and 6 — Direct discrimination on grounds of sex — Sanctions)***

(2007/C 297/24)

*Language of the case: French*

**Referring court**

Tribunal du travail de Bruxelles

**Parties to the main proceedings**

*Applicant:* Nadine Paquay

*Defendant:* Société d'architectes Hoet + Minne SPRL

**Re:**

Reference for a preliminary ruling — Tribunal du travail de Bruxelles — Interpretation of Articles 2(1), 5(1) and 6 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), and Article 10 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 breast feeding (OJ 1992 L 348, p. 1) — Prohibition of dismissal — Dismissal of an employee decided on, because of her pregnancy or the birth of a child, during the period of protection provided for by the directive, but notified to that employee and implemented after the expiry of that period.

**Operative part of the judgment**

1. *Article 10 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 (tenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) must be interpreted as prohibiting not only the notification of a decision to dismiss on the grounds of pregnancy and/or of the birth of a child during the period of protection set down in paragraph 1 of that article but also the taking of preparatory steps for such a decision before the end of that period.*

2. *A decision to dismiss on the grounds of pregnancy and/or child birth is contrary to Articles 2(1) and 5(1) 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 irrespective of the moment when that decision to dismiss is notified and even if it is notified after the end of the period of protection set down in Article 10 of Directive 92/85. Since such a decision to dismiss is contrary to both Article 10 of Directive 92/85 and Articles 2(1) and 5(1) of Directive 76/207, the measure chosen by a Member State under Article 6 of that latter directive to sanction the infringement of those provisions must be at least equivalent to the sanction set down in national law implementing Articles 10 and 12 of Directive 92/85.*

([1]) OJ C 326, 30.12.2006.

**Judgment of the Court (Eighth Chamber) of 27 September 2007 — Commission of the European Communities v Kingdom of Spain**

**(Case C-465/06)** ([1])

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

(2007/C 297/25)

*Language of the case: Spanish*

**Parties**

*Applicant:* Commission of the European Communities (represented by: E. Montaguti and R. Vidal Puig, Agents)

*Defendant:* Kingdom of Spain (represented by: M. Muñoz Pérez, Agent)

**Re:**

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

**Operative part of the judgment**

*The Court:*

1. *Declares that, by failing to adopt the laws, regulations and administrative provisions necessary to comply fully with Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information, the Kingdom of Spain has failed to fulfil its obligations under that directive;*

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

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([1]) OJ C 326, 30.12.2006.

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## Judgment of the Court (Sixth Chamber) of 4 October 2007 — Commission of the European Communities v Republic of Finland

**(Case C-523/06)** ([1])

***(Failure of a Member State to fulfil obligations — Directive 2000/59/EC — Port reception facilities for ship-generated waste and cargo residues — Failure to have developed and implemented waste reception and handling plans for all ports)***

(2007/C 297/26)

*Language of the case: Finish*

**Parties**

*Applicant:* Commission of the European Communities (represented by: M. Huttunen and K. Simonsson, acting as Agents)

*Defendant:* Republic of Finland (represented by: J. Heliskoski, Agent)

**Re:**

Failure of a Member State to fulfil obligations — Articles 1 and 16(1) of Directive 2000/59/EC of the European Parliament and of the Council of 27 November 2000 on port reception facilities for ship-generated waste and cargo residues (OJ 2000 L 332, p. 81) — Failure to have developed and implemented waste reception and handling plans for all ports in Finland

**Operative part of the judgment**

*The Court:*

1. *Declares that, by failing to develop and implement waste reception and handling plans for all its ports, the Republic of Finland has failed to fulfil its obligations under Articles 5(1) and 16(1) of Directive 2000/59/EC of the European Parliament and of the Council of 27 November 2000 on port reception facilities for ship-generated waste and cargo residues;*

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

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([1]) OJ C 42, 24.2.2007.

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## Judgment of the Court (Seventh Chamber) of 27 September 2007 — Commission of the European Communities v Grand Duchy of Luxembourg

**(Case C-529/06)** ([1])

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

(2007/C 297/27)

*Language of the case: French*

**Parties**

*Applicant:* Commission of the European Communities (represented by: E. Montaguti, agent)

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

**Re:**

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

**Operative part of the judgment**

*The Court:*

1. *Declares that by not having adopted within the prescribed period the legislative, regulatory and administrative measures necessary to comply with Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information, the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive;*

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

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([1]) OJ C 42 of 24.2.2007.

## Judgment of the Court (Seventh Chamber) of 27 September 2007 — Commission of the European Communities v French Republic

**(Case C-9/07)** [1]

***(Failure of a Member State to fulfil obligations — Directive 2002/74/EC — Protection of employees in the event of the insolvency of their employer — Failure to transpose within the prescribed period)***

(2007/C 297/28)

*Language of the case: French*

### Parties

*Applicant:* Commission of the European Communities (represented by: J. Enegren and G. Rozet, acting as Agents)

*Defendant:* French Republic (represented by: G. de Bergues and O. Christmann, acting as Agents)

### Re:

Failure of a Member State to fulfil obligations — Failure to adopt within the prescribed period the provisions necessary to comply with Directive 2002/74/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 80/987/EEC on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer (OJ 2002 L 270, p. 10)

### Operative part of the judgment

*The Court:*

1. *Declares that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2002/74/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 80/987/EEC on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer, the French Republic has failed to fulfil its obligations under that directive.*

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

[1] OJ C 69 of 24.3.2007.

## Judgment of the Court (Eighth Chamber) of 27 September 2007 — Commission of the European Communities v Portuguese Republic

**(Case C-35/07)** [1]

***(Failure of Member State to fulfil obligations — Directive 2004/28/EC — Veterinary medicinal products — Non-transposition within the prescribed period)***

(2007/C 297/29)

*Language of the case: Portuguese*

### Parties

*Applicant:* Commission of the European Communities (represented by: A. Caeiros and B. Stromsky, agents)

*Defendant:* Portuguese Republic. (represented by: L. Fernandes and F. Fraústo de Azevedo, agents)

### Re:

Failure of Member State to fulfil obligations — Failure to take within the prescribed period all the measures necessary to comply with Directive 2004/28/EC of the European Parliament and of the Council of 31 March 2004 amending Directive 2001/82/EC on the Community code relating to veterinary medicinal products (OJ 2004 L 136, p. 58)

### Operative part of the judgment

*The Court:*

1. *Declares that by not having adopted the legislative, regulatory and administrative measures necessary to comply with Directive 2004/28/EC of the European Parliament and of the Council of 31 March 2004 amending Directive 2001/82/EC on the Community code relating to veterinary medicinal products, the Portuguese Republic has failed to fulfil its obligations under that directive;*

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

[1] OJ C 56 of 10.3.2007.

## Judgment of the Court (Seventh Chamber) of 27 September 2007 — Commission of the European Communities v Ireland

**(Case C-66/07)** ([1])

***(Failure of a Member State to fulfil obligations — Directive 2004/27/EC — Medicinal products for human use — Failure to transpose into national law within the prescribed period)***

(2007/C 297/30)

*Language of the case: English*

### Parties

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

*Defendant:* Ireland (represented by: D. O'Hagan, Agent)

### Re:

Failure of a Member State to fulfil obligations — Failure to adopt, within the period prescribed, the provisions necessary to comply with Directive 2004/27/EC of the European Parliament and of the Council of 31 March 2004 amending Directive 2001/83/EC on the Community code relating to medicinal products for human use (OJ 2004 L 136, p. 34)

### Operative part of the judgment

*The Court:*

1) *Declares that, by not adopting within the prescribed period the laws, regulations and administrative provisions necessary to comply with Directive 2004/27/EC of the European Parliament and of the Council of 31 March 2004 amending Directive 2001/83/EC on the Community code relating to medicinal products for human use, Ireland has failed to fulfil its obligations under that directive;*

2) *Orders Ireland to pay the costs.*

([1]) OJ C 69, 24.3.2007.

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## Order of the Court of 5 July 2007 — Yedaş Tarim ve Otomotiv Sanayi ve Ticaret AŞ v Council of the European Union, Commission of the European Communities

**(Case C-255/06 P)** ([1])

***(Appeal — International agreements — EEC-Turkey Association Agreement — Customs Union between the European Community and Turkey — Compensatory financial aid)***

(2007/C 297/31)

*Language of the case: English*

### Parties

*Applicant:* Yedaş Tarim ve Otomotiv Sanayi ve Ticaret AŞ (represented by: R. Sinner, Lawyer)

*Other parties to the proceedings:* Council of the European Union (represented by: M. Bishop and D. Canga Fano, Agents) and Commission of the European Communities (represented by: X. Lewis and J. Hottiaux, Agents)

### Re:

Appeal brought against the judgment of the Court of First Instance (Fifth Chamber) of 30 March 2006 in Case T-367/03 *Yedaş Tarim ve Otomotiv Sanayi ve Ticaret AŞ* v *Council of the European Union and Commission of the European Communities*, in which the Court of First Instance dismissed, as being unfounded, an action seeking to recover compensation in respect of damage allegedly suffered by the appellant as a result of the respondent institutions' failure to comply with the obligations laid down in the provisions governing the Customs Union between the European Union and Turkey, in particular the obligation to provide financial aid for the purpose of offsetting the negative effects of the Customs Union on the Turkish economy.

### Operative part of the order

1. *The appeal is dismissed.*

2. *Yedaş Tarim ve Otomotiv Sanayi ve Ticaret AŞ is ordered to pay the costs.*

([1]) OJ C 212, 2.9.2006.

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## Order of the Court of 10 July 2007 — AEPI Elliniki Etaireia pros Prostasian tis Pnevmatikis Idioktisias AE v Commission of the European Communities

**(Case C-461/06 P)** ([1])

***(Appeal — Action for annulment — Refusal by the Commission to initiate proceedings for failure to fulfil obligations — Inadmissibility)***

(2007/C 297/32)

*Language of the case: Greek*

### Parties

*Applicant(s):* AEPI Elliniki Etaireia pros Prostasian tis Pnevmatikis Idioktisias AE (represented by: T. Asprogerakas-Grivas, Δικηγόρος)

*Other party to the proceedings:* Commission of the European Communities (represented by: T. Christoforou and F. Castillo de la Torre, Agents)

**Re:**

Appeal against the order of the Court of First Instance (Fourth Chamber) of 5 September 2006 in Case T-242/05 *AEPI* v *Commission* — Inadmissibility of an application for annulment of a decision of the Commission not to initiate proceedings against the Hellenic Republic for a declaration of failure to fulfil obligations

**Operative part of the order**

1. *The appeal is dismissed.*

2. *AEPI Elliniki Etaireia pros Prostasian tis Pnevmatikis Idioktisias AE shall pay the costs.*

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([1]) OJ C 356 of 30.12.2006.

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**Order of the Court (Sixth Chamber) of 4 October 2007 (reference for a preliminary ruling from the Consiglio di Stato (Italy)) — Consorzio Elisoccorso San Raffaele v Elilombarda Srl, Azienda Ospedaliera Ospedale Niguarda Ca' Granda di Milano**

**(Case C-492/06)** ([1])

***(Public procurement — Directive 89/665/EEC — Review procedures concerning the award of public contracts — Persons to whom review procedures must be available — Tender by a consortium — Right of each member of a consortium to bring an action individually)***

(2007/C 297/33)

*Language of the case: Italian*

**Referring court**

Consiglio di Stato

**Parties**

*Applicant:* Consorzio Elisoccorso San Raffaele

*Defendants:* Elilombarda Srl, Azienda Ospedaliera Ospedale Niguarda Ca' Granda di Milano

**Re:**

Reference for a preliminary ruling — Consiglio di Stato — Interpretation of Article 1 of Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (OJ 1989 L 395, p. 33) — National case-law recognising that an individual member of a tendering consortium has the right to bring an action against the decision awarding the contract

**Operative part of the order**

*Article 1 of Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts, as amended by Council Directive 92/50/EEC of 18 June 1992 is to be interpreted as not precluding the possibility, under national law, for an individual member of a consortium without legal personality which has participated as such in a procedure for the award of a public contract and has not been awarded that contract to bring an action against the decision awarding that contract.*

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([1]) OJ C 20, 27.1.2007.

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**Reference for a preliminary ruling from Court of Appeal (Civil Division) (England and Wales) made on 13 September 2007 — Meletis Apostolides v David Charles Orams, Linda Elizabeth Orams**

**(Case C-420/07)**

(2007/C 297/34)

*Language of the case: English*

**Referring court**

Court of Appeal (Civil Division) (England and Wales)

**Parties to the main proceedings**

*Applicant:* Meletis Apostolides

*Defendants:* David Charles Orams, Linda Elizabeth Orams

**Questions referred**

1. In this question,

   — the term 'the Government-controlled area' refers to the area of the Republic of Cyprus over which the Government of the Republic of Cyprus exercises effective control; and

— the term 'the northern area' refers to the area of the Republic of Cyprus over which the Government of the Republic of Cyprus does not exercise effective control.

Does the suspension of the application of the *acquis communautaire* in the northern area by Article 1(1) of Protocol No 10 of the Act of Accession 2003 of Cyprus to the EU preclude a Member State Court from recognising and enforcing a judgment given by a Court of the Republic of Cyprus sitting in the Government-controlled area relating to land in the northern area, when such recognition and enforcement is sought under Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ([1]) ('Regulation 44/2001'), which is part of the *acquis communautaire*?

2. Does Article 35(1) of Regulation 44/2001 entitle or bind a Member State court to refuse recognition and enforcement of a judgment given by the Courts of another Member State concerning land in an area of the latter Member State over which the Government of that Member State does not exercise effective control? In particular, does such a judgment conflict with Article 22 of Regulation 44/2001?

3. Can a judgment of a Member State court, sitting in an area of that State over which the Government of that State does exercise effective control, in respect of land in that State in an area over which the Government of that State does not exercise effective control, be denied recognition or enforcement under Article 34(1) of Regulation 44/2001 on the grounds that as a practical matter the judgment cannot be enforced where the land is situated, although the judgment is enforceable in the Government-controlled area of the Member State?

4. Where

— a default judgment has been entered against a defendant;

— the defendant then commenced proceedings in the Court of origin to challenge the default judgment; but

— his application was unsuccessful following a full and fair hearing on the ground that he had failed to show any arguable defence (which is necessary under national law before such a judgment can be set aside),

can that defendant resist enforcement of the original default judgment or the judgment on the application to set aside under Article 34(2) of Regulation 44/2001, on the ground that he was not served with the document which instituted the proceedings in sufficient time and in such a way as to enable him to arrange for his defence prior to the entry of the original default judgment? Does it make a difference if the hearing entailed only consideration of the defendant's defence to the claim.

5. In applying the test in Article 34(2) of Regulation 44/2001 of whether the defendant was *'served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence'* what factors are relevant to the assessment? In particular:

(a) Where service in fact brought the document to the attention of the defendant, is it relevant to consider the actions (or inactions) of the defendant or his lawyers after service took place?

(b) What if any relevance would particular conduct of, or difficulties experienced by, the defendant or his lawyers have?

(c) Is it relevant that the defendant's lawyer could have entered an appearance before judgment in default was entered?

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

## Action brought on 13 September 2007 — Commission of the European Communities v Kingdom of Spain

**(Case C-423/07)**

(2007/C 297/35)

*Language of the case: Spanish*

### Parties

*Applicant:* Commission of the European Communities (represented by: D. Kukovec, agent and M. Canal Fontcuberta, abogada)

*Defendant:* Kingdom of Spain

**Form of order sought**

— declare that, by not including, in the works to be awarded by concession in the concession notice and in the tendering specifications relating to the award of a public concession for the construction, maintenance and operation of the motorway links to Segovia and Ávila, and for the maintenance and operation of the Villalba-Adanero section of the same motorway, works which were subsequently awarded, the Kingdom of Spain has failed to fulfil its obligations under Article 3 and Article 11(3), (6), (7), (11) and (12) of Directive 93/37/EEC ([1]), and under the principles of the EC Treaty, in particular the principle of equality of treatment and non-discrimination;

— order Kingdom of Spain to pay the costs.

**Pleas in law and main arguments**

Under Royal Decree 1724/99 of 5 November the Ministry for Infrastructure and Transport awarded a public works concession for the construction, maintenance and operation of the following sections of toll motorway: the A-6 toll motorway link to Segovia, and the A-6 toll motorway link to Ávila, and for the maintenance and operation from 2018 of the Villalba-Adanero section of the A-6 toll motorway. In the context of awarding that concession, there were awarded many other works of which notice had not been given, to a value greater than the total value of the published works, and which were in part outside the geographical area of the concession.

First, the Commission claims that the Kingdom of Spain has infringed Article 3 of Directive 93/37 and consequently Article 11(3), (6), (7), (11) and (12) of the same directive by awarding works without prior public notice. The Commission states that all the works awarded should have been published in the Official Journal in accordance with the provisions of Directive 93/37.

Secondly, the Commission considers that there is no information either in the notice or in the tendering specifications which would enable tenderers to bid for works on sections other than the A-6 toll motorway links to Ávila and Segovia such as those which were subsequently awarded. The Commission considers therefore that the Spanish authorities have infringed the principle of equality of treatment by accepting a tender which manifestly did not comply with the essential conditions set out in the published notice and tendering specifications.

([1]) Council Directive of 14 June 1993 concerning the coordination of procedures for the award of public works contracts (OJ 1993 L 199, p. 54).

**Reference for a preliminary ruling from High Court of Justice (England and Wales), Queen's Bench Division, Administrative Court made on 14 September 2007 — The Queen on the application of Mark Horvath v Secretary of State for Environment, Food and Rural Affairs**

**(Case C-428/07)**

(2007/C 297/36)

*Language of the case: English*

**Referring court**

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

**Parties to the main proceedings**

*Applicant:* Mark Horvath

*Defendant:* Secretary of State for Environment, Food and Rural Affairs

**Questions referred**

1. Where a Member State has provided for a system of devolved government, in relation to which powers are retained to the central state authorities to act for the whole of the territory of the Member State to ensure compliance with that Member State's obligations under Community law, in relation to Council Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71, and (EC) No 2529/2001 ([1]) ('the Council Regulation'):

   a) Can a Member State include requirements relating to the maintenance of visible public rights of way in its standards of good agricultural and environmental condition under Article 5 and Annex IV to Council Regulation 1782/2003?

b) Where a Member State's internal constitutional arrangements provide that different devolved administrations shall have legislative competence in relation to different constituent parts of that Member State, can it give rise to impermissible discrimination for constituent parts to have different standards of good agricultural and environmental condition under Article 5 of and Annex IV to the Council Regulation?

(1) OJ L 270, p. 1.

**Reference for a preliminary ruling from the Gerechtshof Amsterdam (The Netherlands) lodged on 22 May 2006 — Inspecteur van de Belastingdienst v X BV**

**(Case C-429/07)**

(2007/C 297/37)

*Language of the case: Dutch*

**Referring court**

Gerechtshof Amsterdam

**Parties to the main proceedings**

*Applicant:* Inspecteur van de Belastingdienst

*Defendant:* X BV

**Question referred**

Is the Commission competent, under Article 15(3) of Regulation No 1/2003, to submit, on its own initiative, written observations in proceedings relating to the deductibility from the (taxable) profit realised by the party concerned in 2002 of a fine for infringement of Community competition law, which was imposed by the Commission on X KG and (partially) passed on to the party concerned?

**Reference for a preliminary ruling from the Raad van State (The Netherlands) lodged on 17 September 2007 — Exportslachterij J. Gosschalk & Zoon B.V. v Minister van Landbouw, Natuur en Voedselkwaliteit**

**(Case C-430/07)**

(2007/C 297/38)

*Language of the case: Dutch*

**Referring court**

Raad van State

**Parties to the main proceedings**

*Applicant:* Exportslachterij J. Gosschalk & Zoon B.V.

*Defendant:* Minister van Landbouw, Natuur en Voedselkwaliteit

**Questions referred**

1. Are the BSE tests which from 1 January 2001 were obligatory under the Regeling uitvoer vers vlees en vleesbereidingen (Regulation on the export of fresh meat and meat preparations) 1985 (Staatscourant 2001, No. 218), which served to implement Article 1(3) of Decision 2000/764/EC (1) on the testing of bovine animals for the presence of bovine spongiform encephalopathy and amending Decision 98/272/EC on epidemio-surveillance for transmissible spongiform encephalopathies, tests within the meaning of Article 2(1) of Regulation (EC) No 2777/2000 adopting exceptional support measures for the beef market (2)?

2. If so, should Article 2(1) of Regulation No 2777/2000 be seen as an intervention intended to stabilise the beef market (market support) within the meaning of Article 1(2)(b) of Regulation No 1258/1999 on the financing of the common agricultural policy (3), or as a specific veterinary measure within the meaning of subparagraph (d) of this provision, or both?

3. If it is (also) a case of market support, does it then mean, given the judgment of the Court in Case C-239/01 *Federal Republic of Germany* v *Commission* (4), that the tests should be financed exclusively by the Community and that therefore Article 2(2) of Regulation No 2777/2000 is invalid because of conflict with Regulation No 1254/1999 (5) in that it provides that the Community only partially contributes to the costs of the BSE tests?

4. If Article 2(2) of Regulation No 2777/2000 is valid, does this Regulation then preclude the Member States from passing on the costs for carrying out BSE tests to the market participants?

5. Must the last sentence of Article 5(4) of Directive 85/73/EEC on the financing of veterinary inspections and controls ([6]) covered by Directives 89/662/EEC ([7]), 90/425/EEC ([8]), 90/675/EEC ([9]) and 91/496/EEC ([10]), as amended and consolidated by Council Directive 96/43/EC, be interpreted as meaning that this Directive does not preclude the Member State from passing on the costs of the BSE tests which were carried out? If so, what requirements must be met by a fee for the BSE tests which were carried out?

([1]) Commission Decision of 29 November 2000 (OJ 2000 L 305, p. 35).
([2]) Commission Regulation of 18 December 2000 (OJ 2000 L 321, p. 47).
([3]) Council Regulation of 17 May 1999 (OJ 1999 L 160, p. 103).
([4]) *Federal Republic of Germany* v *Commission* [2003] ECR I-10333.
([5]) Council Regulation (EC) No 1254/1999 of 17 May 1999 on the common organisation of the market in beef and veal (OJ 1999 L 160, p. 21).
([6]) Council Directive of 29 January 1985 on the financing of health inspections and controls of fresh meat and poultrymeat (OJ 1985 L 32, p. 14).
([7]) Council Directive of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market (OJ 1990 L 151, p. 40).
([8]) Council Directive of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market (OJ 1990 L 224, p. 29).
([9]) Council Directive of 10 December 1990 laying down the principles governing the organization of veterinary checks on products entering the Community from third countries (OJ 1990 L 373, p. 1).
([10]) Council Directive of 15 July 1991 laying down the principles governing the organisation of veterinary checks on animals entering the Community from third countries and amending Directives 89/662/EEC, 90/425/EEC and 90/675/EEC (OJ 1991 L 268, p. 56).

## Action brought on 19 September 2007 — Commission of the European Communities v Italian Republic

**(Case C-437/07)**

(2007/C 297/39)

*Language of the case: Italian*

### Parties

*Applicant:* Commission of the European Communities (represented by: C. Zadra and D. Kukovec, Agents)

*Defendant:* Italian Republic

### Forms of order sought

The applicant claims that the Court should:

— declare that, in so far as the Comune di L'Aquila has awarded a public works contract for the design and construction of a rubber tramway for public transport in the town of L'Aquila by means of a procedure akin to the 'project financing' procedure, designed to culminate in the award of a works concession, and amended the preliminary project on which the tenders were to be based after publication of the contract notice, the Italian Republic has failed to fulfil its obligations under Council Directive 93/37/EEC ([1]) of 14 June 1993 concerning the coordination of procedures for the award of public works contracts and, in particular, Articles 7 and 11 thereof, as well as its obligations under Articles 43 EC and 49 EC and the principles of transparency and non-discrimination which constitute the corollary thereto;

— order the Italian Republic to pay the costs.

### Pleas in law and main arguments

The Comune di L'Aquila (Municipality of L'Aquila) has awarded a public works contract for the design and construction of a rubber tramway for public transport in the town of L'Aquila by means of a 'project financing' procedure designed to culminate in the award of a works concession, not a public works contract. The Comune di L'Aquila also amended — after publication of the contract notice — the preliminary project on which the tenders were to be based.

In the view of the Commission, the agreement between the Comune di L'Aquila and the construction group concerned constitutes a public works contract for the purposes of Community law. In consequence, the award of that contract by means of a procedure akin to the 'project financing' procedure, designed to culminate in the award of a works concession, is contrary to the rules laid down in Directive 93/37 and, in particular, to Articles 7 and 11 thereof. Furthermore, the amendment, after publication of the contract notice, of the project on which the tenders were to be based is incompatible with the principles of transparency and non-discrimination, on which the freedom of establishment and the freedom to provide services, as provided for in Articles 43 EC and 49 EC, are based.

([1]) OJ 1993 L 199, p. 54.

## Appeal brought on 28 September 2007 by the Commission of the European Communities against the judgment delivered on 18 July 2007 in Case T-189/02 Ente per le Ville Vesuviane v Commission of the European Communities

**(Case C-445/07 P)**

(2007/C 297/40)

*Language of the case: Italian*

### Parties

*Appellant:* Commission of the European Communities (represented by: L. Flynn, Agent, assisted by A. Dal Ferro, avvocato)

*Other party to the proceedings:* Ente per le Ville Vesuviane

### Form of order sought

— set aside the judgment delivered on 18 July 2007 in Case T-189/02 in so far as it declares that the action for annulment brought by the Ente per le Ville Vesuviane is admissible;

— declare that the action for annulment brought by the Ente per le Ville Vesuviane against Commission Decision D(2002) 810111 is inadmissible;

— order the Ente per le Ville Vesuviane to pay the costs of the present proceedings and of the proceedings at first instance.

### Pleas in law and main arguments

The Commission considers its own challenge against the judgment of the Court of First Instance admissible since, although it won the case at first instance as to the substance, it was unsuccessful regarding the plea of inadmissibility against the Ente per le Ville Vesuviane.

According to the applicant, the judgment under appeal is defective because it infringes Community law, in so far as it declared the action brought by the Ente per le Ville Vesuviane admissible, taking the view that the latter was directly concerned as provided for in the fourth paragraph of Article 230 EC. The applicant argues that according to current Community law, where, as in the present case, there is an act addressed to a Member State which is given discretion as to whether the effects of the act will have repercussions on the applicant, the decision in question cannot be considered to be of direct concern to the latter, irrespective of whether or not the applicant was a 'beneficiary' of Community funds.

## Action brought on 1 October 2007 — Commission of the European Communities v Italian Republic

**(Case C-447/07)**

(2007/C 297/41)

*Language of the case: Italian*

### Parties

*Applicant:* Commission of the European Communities (represented by: G. Rozet and L. Pignataro-Nolin, acting as Agents)

*Defendant:* Italian Republic

### Form of order sought

The applicant claims that the Court should:

— declare that, by laying down in its legislation that Italian citizenship is required for the posts of master or first officer (second-in-command) on all vessels flying the Italian flag, the Italian Republic has failed to fulfil its obligations under Article 39 EC;

— order the Italian Republic to pay the costs of the proceedings.

### Pleas in law and main arguments

The Commission claims that the Italian legislation laying down that Italian citizenship is required for the posts of master or second-in-command on all vessels flying the Italian flag does not comply with Article 39 EC, which enshrines the principle of freedom of movement for workers, as interpreted by the Court.

In two cases concerning, respectively, the posts of master and second-in-command of merchant ships flying the Spanish flag (Case C-405/01) and the post of master of vessels engaged in small-scale maritime shipping ('Kleine Seeschifffahrt'), and in the specific case of German-flagged fishing vessels carrying on small-scale maritime fishing (Case C-47/02), the Court made clear, in its judgments of 30 September 2003, the proper interpretation of Article 39 EC.

The Commission observes that, in the course of the present procedure, the Italian authorities have not put forward any arguments which differ from those put forward at the time in Case C-405/01 (in which the Italian Republic intervened) or those which the French authorities supported in Case C-47/02. Those arguments were rejected by the Court in its judgments of 30 September 2003.

The Commission confines itself to pointing out that the Italian authorities, in their reply to the reasoned opinion of 22 May 2007, do not deny the infringement. They actually stated their intention of repealing the requirement of Italian citizenship for appointment to the post of master or first officer (second-in-command), undertaking to inform the Commission of the outcome of the consultations between the Ministries concerned.

The Commission has received no information on the timetable for the amendment of the Italian legislation. Consequently, it submits that the Italian legislation laying down that Italian citizenship is required for the posts of master or second-in-command on all vessels flying the Italian flag does not comply with Article 39 EC, which enshrines the principle of freedom of movement for workers, as interpreted by the Court.

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**Reference for a preliminary ruling from the Tribunale Amministrativo Regionale del Lazio (Italy) lodged on 3 October 2007 — Roche Spa v Agenzia Italiana del Farmaco (AIFA), Ministero della Salute**

**(Case C-450/07)**

(2007/C 297/42)

*Language of the case: Italian*

**Referring court**

Tribunale Amministrativo Regionale del Lazio

**Parties to the main proceedings**

*Applicant:* Roche Spa

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

**Questions referred**

1. After the provisions contained in Articles 2 and 3 [of Directive 89/105/EEC] 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/EEC] 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/EEC] — 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/EEC], 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/EEC]) and for genuine participation by the applicant company, with the consequent need for the administrative authorities to state the reasons for any refusal?

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**Reference for a preliminary ruling from the Tribunale Amministrativo Regionale del Lazio (Italy) lodged on 3 October 2007 — Federfarma v Agenzia Italiana del Farmaco (AIFA), Ministero della Salute**

**(Case C-451/07)**

(2007/C 297/43)

*Language of the case: Italian*

**Referring court**

Tribunale Amministrativo Regionale del Lazio

**Parties to the main proceedings**

*Applicant:* Federfarma

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

**Questions referred**

1. After the provisions contained in Articles 2 and 3 [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?

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**Reference for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 4 October 2007 — Health Research Inc.**

**(Case C-452/07)**

(2007/C 297/44)

*Language of the case: German*

**Referring court**

Bundesgerichtshof

**Parties to the main proceedings**

*Applicant:* Health Research Inc.

**Questions referred**

1. Is the 'date on which the authorisation referred to in Article 3(b) to place the product on the market as a medicinal product was granted', referred to in Article 7(1) of the Regulation ([1]), determined according to Community law or does that rule refer to the date on which the authorisation takes effect under the law of the Member State in question?

2. If the Court's answer is that the date referred to in Question 1 is determined by Community law, which date must be taken into account for that purpose?

([1]) OJ L 182, p. 1.

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**Reference for a preliminary ruling from the Verwaltungsgericht Giessen (Germany) lodged on 4 October 2007 — Hakan Er v Wetteraukreis**

**(Case C-453/07)**

(2007/C 297/45)

*Language of the case: German*

**Referring court**

Verwaltungsgericht Giessen

**Parties to the main proceedings**

*Applicant:* Hakan Er

*Defendant:* Wetteraukreis

**Question referred**

Does a Turkish national who, as a member of the family, received authorisation to join his father living in Germany who as a Turkish worker was duly registered as belonging to the labour force of the Federal Republic of Germany, and who acquired, by virtue of previously living together legally with his father for five years, the legal status as referred to in the second indent of the first sentence of Article 7 of Decision No 1/80 of the EEC-Turkey Association Council on the development of the association ('Association Council Decision 1/80'), lose that legal status as a consequence of the fact that, for more than seven years after leaving school, apart from an alleged single day of work on a trial basis, he has at no time been in employment, drops out of all government support schemes designed to promote the taking-up of employment and does not himself make serious efforts to take up employment, instead living by turns on social security benefits, financial support from his mother living in Germany and means of unknown origin?

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**Appeal brought on 9 October 2007 by Ente per le Ville Vesuviane against the judgment delivered on 18 July 2007 in Case T-189/02 Ente per le Ville Vesuviane v Commission of the European Communities**

**(Case C-455/07 P)**

(2007/C 297/46)

*Language of the case: Italian*

**Parties**

*Appellant:* Ente per le Ville Vesuviane (represented by: E. Soprano, avvocato)

*Other party to the proceedings:* Commission of the European Communities

**Form of order sought**

— set aside in part, in accordance with the pleas set out below, the judgment under appeal and, consequently, declare void Decision D(2002) 810111, prot. 102504 of 13 March 2002 of the Directorate General for Regional Policy of the European Commission, and if necessary and in so far as is reasonable, Memorandum No Gt/SF/MF D(01) 810542, prot. 109720 of 12 October 2001 of the Directorate General for Regional Policy of the European Commission;

— in the alternative, annul in part, in accordance with the pleas set out below, the judgment under appeal and refer the case back to the Court of First Instance for a ruling on the substance of the dispute in the light of the directions which the Court sees fit to give for that purpose;

— order the European Commission to pay the costs of both the present proceedings and the proceedings at first instance in Case T-189/02.

**Pleas in law and main arguments**

(1) Error of law, failure to make inquiries and failure to state reasons with regard to Article 12 of Regulation No 4254/88 ([1]) as amended

The assistance acquired by the appellant and financed by the ERDF was uniform in nature, as confirmed by the wording of both the Commission decision of 18 December 1986, by which the contribution which is the subject-matter of the present proceedings was granted, and Article 12 of Council Regulation (EEC) No 2083/93 ([2]) (Article 12 of Regulation No 4254/88 as amended).

Accordingly, it follows that the assistance in question could not be divided into functional portions — as held, wrongly, by the Court of First Instance — and that therefore the suspension for judicial reasons even of just one part of that assistance, shown in the completion times for the same, required the entitlement introduced by Article 12 to be extended to the entire project financed by the decision of 18 December 1986.

(2) Error of law, failure to make inquiries and infringement of the rights of the defence with regard to Article 4 of the Commission decision of 18 December 1986

Contrary to what is stated in the judgment under appeal, in the proceedings at first instance the Ente per le Ville Vesuviane had documentary evidence that the works being carried out at the Villa Ruggiero (one of the three villas which are the subject-matter of the financial assistance in the decision of 18 December 1986) had been suspended for judicial reasons from 1989 through the whole of 1996, and therefore had not been completed in 1992, as maintained by the Italian State authorities.

In that regard, as indeed earlier before the Court of First Instance, the participation of the Ente in the proceedings prior to the adoption of the measure challenged at first instance would therefore certainly have been decisive, given that the Commission, faced with the documentary evidence referred to above — which would of course have been provided, if necessary, by the appellant — and in consideration of the uniform nature of the assistance realised by the latter, would certainly have recognised that the exception provided for in Article 12 of Regulation No 4254/88 as amended applied to the assistance in question, amd that the assistance granted in 1986 could not be ended early.

([1]) Council Regulation (EEC) No 4254/88 of 19 December 1988, laying down provisions for implementing Regulation (EEC) No 2052/88 as regards the European Regional Development Fund (OJ L 374, 31.12.1988, p. 15).

([2]) Council Regulation (EEC) No 2083/93 of 20 July 1993 amending Regulation (EEC) No 4254/88 laying down provisions for implementing Regulation (EEC) No 2052/898 as regards the European Regional Development Fund (OJ L 193, 31.7.1993, p. 34).

## Action brought on 9 October 2007 — Commission of the European Communities v Portuguese Republic

**(Case C-457/07)**

(2007/C 297/47)

*Language of the case: Portuguese*

**Parties**

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

*Defendant:* Portuguese Republic

**Form of order sought**

— a declaration that the Portuguese Republic has not complied with the judgment of the Court of Justice (First Chamber) of 10 November 2005 in Case C-432/03 *Commission* v *Portuguese Republic*;

— an order that the Portuguese Republic should make penalty payments of 37 400 euro a day until the Court shall have given judgment;

— an order that the Portuguese Republic should pay a fine of 5 280 euro a day from 10 November 2005, the date on which the judgment declaring the infringement was delivered, until the date on which the Portuguese State shall have complied with the judgment or until the Court shall have given judgment in accordance with Article 228 EC;

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

**Pleas in law and main arguments**

The Commission argues that the Portuguese Republic continues to restrict access to the market by requiring prior approval attesting to their fitness for a given use of new construction materials for which there exist no technical specifications or mutual recognition. The Portuguese Republic also continues to restrict access to the market by refusing to recognise the equivalence of certificates issued by other Member States, for new materials for which there exist no technical specifications, if recognition has been sought by economic operators other than the manufacturers of the products or their agents.

The Portuguese legislation still does not state what criteria are to be applied by the authorities in assessing applications for approval so that that assessment is not made arbitrarily. Where there are no technical specifications, the Portuguese law lays down criteria to be applied in recognition decisions that are not objective but are discriminatory.

The Portuguese Republic still has not adopted the measures that it ought to have adopted in relation to the economic traders to whom the law contrary to Articles 28 and 30 of the EC Treaty was applied.

## Action brought on 10 October 2007 — Commission of the European Communities v Portuguese Republic

**(Case C-458/07)**

(2007/C 297/48)

*Language of the case: Portuguese*

### Parties

*Applicant:* Commission of the European Communities (represented by: P. Andrade and G. Braun, Agents)

*Defendant:* Portuguese Republic

### Form of order sought

— a declaration that the Portuguese Republic, by failing to ensure in practice that at least one comprehensive telephone directory and at least one comprehensive telephone directory enquiry service are available to all end-users, as laid down in Articles 5(1) and (2) and 25(1) and (3) of Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services ([1]), 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

In Portugal, subscribers to Vodafone who expressed their wish to have their names included in the universal service directory are still not included in it.

The regulator, ANACOM, has not yet decided on the form and procedure for supplying the information in question. The present legal situation is the responsibility of the Portuguese Republic.

([1]) OJ L 108, p. 51.

## Reference for a preliminary ruling from the Unabhängiger Finanzsenat, Außenstelle Graz (Österreich) lodged on 9 October 2007 — Veli Elshani v Hauptzollamt Linz

**(Case C-459/07)**

(2007/C 297/49)

*Language of the case: German*

### Referring court

Unabhängiger Finanzsenat, Außenstelle Graz

### Parties to the main proceedings

*Applicant:* Veli Elshani

*Defendant:* Hauptzollamt Linz

### Questions referred

1. The criterion for extinction laid down in point (d) of the first paragraph of Article 233 of Council Regulation (EEC) No 2913/92 ([1]) establishing the Community Customs Code ('the Customs Code') does not refer to the time at which the customs debt is incurred but to a time after the customs debt is incurred, because it presupposes a customs debt 'incurred' in accordance with Article 202 of the Customs Code.

   Is the expression 'upon their unlawful introduction' within the meaning of point (d) of the first paragraph of Article 233 of the Customs Code to be interpreted as meaning that:

   — the introduction into the customs territory of the Community of goods in respect of which a customs debt is incurred in accordance with Article 202 of the Customs Code ends when they are introduced at the border customs office or at any other place designated by the customs authorities, but at the latest when they leave the premises of the border customs office or of the otherwise designated place, because the goods have thus entered the customs territory, with the result that seizure and confiscation of the goods after that time no longer results in the extinction of the customs debt,

   or as meaning that:

   — the introduction into the customs territory of the Community of goods in respect of which a customs debt is incurred in accordance with Article 202 of the Customs Code continues, adopting an economic approach, for as long as their transport continues as a single process following the introduction of the goods into the customs territory, and the goods in the customs territory have not yet therefore reached their first destination and come to rest there, with the result that seizure and confiscation of the goods up to that time results in the extinction of the customs debt?

2. In the event of unlawful conduct for the purposes of Article 202 of the Customs Code which is discovered upon introduction, the customs debt must be extinguished. By contrast, seizure of goods directly upon their being removed from customs supervision, as unlawful conduct for the purposes of Article 203 of the Customs Code, results in no immediate extinction of the customs debt.

   Is point (d) of the first paragraph of Article 233 of the Customs Code to be interpreted as meaning that this extinction of the customs debt, which is restricted expressly to cases where the customs debt is incurred in accordance with Article 202 of the Customs Code, is nevertheless consistent with the principle of equal treatment of unlawful conduct?

(1) OJ L 302, p. 1.

## Appeal brought on 22 October 2007 by Coats Holdings Ltd, J&P Coats Ltd against the judgment of the Court of First Instance (Second Chamber) delivered on 12 September 2007 in Case T-36/05: Coats Holdings Ltd and J&P Coats Ltd v Commission of the European Communities

**(Case C-468/07 P)**

(2007/C 297/50)

*Language of the case: English*

### Parties

*Appellants:* Coats Holdings Ltd, J&P Coats Ltd (represented by: W. Sibree and C. Jeffs, Solicitors)

*Other parties to the proceedings:* Commission of the European Communities

### Form of order sought

The appellants claim that the Court should:

— reduce the fine in relation to Coats such that (i) it recognises the principle of equal treatment; and (ii) takes account of the substantial parts of the Commission's findings which were annulled by the Court of First Instance, which go to reducing the gravity of the infringement and strengthening the attenuating circumstances.

### Pleas in law and main arguments

The appellant submits that having quashed all the Commission's factual findings relating to infringements of Article 81 except one narrow finding — and in particular having annulled the Commission's central finding that Coats was an equally active member of a tripartite agreement — the Court of First Instance failed to apply the principal of equal treatment by adjusting the basic amount of Coats' fine downwards by 20 percent only.

In the alternative the appellant submits that the Court of First Instance failed to take account of all the elements of the decision which it annulled in making a reduction of the fine on the grounds of attenuating circumstances.

## Action brought on 25 October 2007 — European Parliament v Commission of the European Communities

**(Case C-474/07)**

(2007/C 297/51)

*Language of the case: English*

### Parties

*Applicant:* European Parliament (represented by: K. Bradley and U. Rosslein, Agents)

*Defendant:* Commission of the European Communities

### The applicant claims that the Court should:

— annul Commission Regulations (EC) No 915/2007 (1) of 31 July 2007 amending Regulation (EC) No 622/2003 laying down measures for the implementation of the common basic standards on aviation security, and

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

### Pleas in law and main arguments

As co-legislator with the Council the European Parliament decided in 2002 that certain implementing measures on air security should not be published. The applicant maintains that the Commission has applied this rule incorrectly, by systematically failing to publish implementing measures which do not require to be kept secret. In adopting Regulation 915/207, the Commission has misinterpreted its powers under Regulation 2320/2002, contravened Article 254 EC and the principles of democracy, openness and the publicity of legislative acts, created legal uncertainty, and failed to provide a proper statement of reasons.

(1) OJ L 200, p. 3.

## Action brought on 26 October 2007 — French Republic v Council of the European Union

**(Case C-479/07)**

(2007/C 297/52)

*Language of the case: French*

### Parties

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

*Defendant:* Council of the European Union (represented by: A. de Gregorio Merino and M-M Joséphidès, Agents)

### Form of order sought

— Annul Council Regulation (EC) No 809/2007 of 28 June 2007 amending Regulations (EC) No 894/97, (EC) No 812/2004 and (EC) No 2187/2005 as concerns drift nets ([1]);

— Order the Council of the European Union to pay the costs.

### Pleas in law and main arguments

By its action, lodged at the Registry of the Court of First Instance on 10 October 2007 (received by fax on 5 October 2007) and referred to the Court of Justice under Article 51 and the second paragraph of Article 54 of the Statute of the Court of Justice by order of the Court of First Instance (Eighth Chamber) of 26 October 2007, the applicant disputes the definition of 'drift net' adopted by the Council in Regulation No 809/2007 to the extent that it includes stabilised nets such as the 'thonaille' (a tuna gillnet) among such drift nets. In extending to those nets the prohibition of drift nets laid down by Regulations 894/2007, 812/2004 and 2187/2005, the present regulation infringes both the obligation to provide reasons and the principles of proportionality and non-discrimination.

By its first plea, the applicant claims that the Council failed in its obligation to provide reasons by not mentioning in the contested regulation, first, the reasons which led it to include stabilised nets among drift nets and therefore to extend the substantive scope of the restrictions applicable to that type of nets and, second, the scientific and technical opinions it relied upon when adopting that measure.

By its second plea, the applicant complains of the manifestly inappropriate character of the prohibition of stabilised nets such as the thonaille, both with regard to the objective pursued by the regulations cited above which aim to limit the uncontrolled expansion of fishing activities carried out with drift gillnets and with regard to the objective of limiting by-catches. Carried out on a very small scale by a limited number of small vessels, fishing by thonaille is in fact a traditional activity practised on a small stretch of Mediterranean coastline which does not present any risk of uncontrolled expansion. The thonaille has moreover been subject to technical adjustments in order to reduce as far as possible the risk of by-catches and, in particular, by-catches of protected species.

By its third plea, the applicant alleges finally an infringement of the principle of non-discrimination since the contested regulation treats the thonaille in the same way as drift gillnets whereas the two categories are different both with regard to the particular technical characteristics of the thonaille and with regard to the small number of vessels concerned and the limited scale of the fishing activities.

([1]) OJ 2007 L 182, p. 1.

## Order of the President of the Court of 29 August 2007 — Commission of the European Communities v Republic of Malta

**(Case C-136/06)** ([1])

(2007/C 297/53)

*Language of the case: English*

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

([1]) OJ C 131, 3.6.2006.

## Order of the President of the Seventh Chamber of the Court of 28 June 2007 — Commission of the European Communities v Republic of Austria

**(Case C-369/06)** ([1])

(2007/C 297/54)

*Language of the case: German*

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

([1]) OJ C 261, 28.10.2006.

**Order of the President of the Sixth Chamber of the Court of 11 September 2007 — Commission of the European Communities v Kingdom of Belgium**

**(Case C-389/06)** ([1])

(2007/C 297/55)

*Language of the case: French*

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

([1]) OJ C 261, 28.10.2006.

**Order of the President of the Court of 17 September 2007 — Commission of the European Communities v Grand Duchy of Luxembourg**

**(Case C-10/07)** ([1])

(2007/C 297/58)

*Language of the case: French*

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

([1]) OJ C 69, 24.3.2007.

**Order of the President of the Court of 11 September 2007 — Commission of the European Communities v Italian Republic**

**(Case C-483/06)** ([1])

(2007/C 297/56)

*Language of the case: Italian*

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

([1]) OJ C 20, 27.1.2007.

**Order of the President of the Court of 28 August 2007 — Commission of the European Communities v Italian Republic**

**(Case C-36/07)** ([1])

(2007/C 297/59)

*Language of the case: Italian*

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

([1]) OJ C 82, 14.4.2007.

**Order of the President of the Court of 6 August 2007 — Commission of the European Communities v Republic of France**

**(Case C-7/07)** ([1])

(2007/C 297/57)

*Language of the case: French*

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

([1]) OJ C 69, 24.3.2007.

**Order of the President of the Court of 12 September 2007 — Commission of the European Communities v French Republic**

**(Case C-37/07)** ([1])

(2007/C 297/60)

*Language of the case: French*

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

([1]) OJ C 69, 24.3.2007.

**Order of the President of the Sixth Chamber of the Court of 27 August 2007 — Commission of the European Communities v Republic of Austria**

**(Case C-63/07)** ([1])

(2007/C 297/61)

*Language of the case: German*

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

([1]) OJ C 69, 24.3.2007.

**Order of the President of the Court of 14 August 2007 — Commission of the European Communities v Federal Republic of Germany**

**(Case C-70/07)** ([1])

(2007/C 297/62)

*Language of the case: German*

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

([1]) OJ C 69, 24.3.2007.

**Order of the President of the Court of 8 August 2007 — Commission of the European Communities v Republic of Malta**

**(Case C-79/07)** ([1])

(2007/C 297/63)

*Language of the case: Maltese*

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

([1]) OJ C 82, 14.4.2007.

**Order of the President of the Court of 4 September 2007 — Commission of the European Communities v Italian Republic**

**(Case C-86/07)** ([1])

(2007/C 297/64)

*Language of the case: Italian*

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

([1]) OJ C 82, 14.4.2007.

**Order of the President of the Seventh Chamber of the Court of 10 August 2007 — Commission of the European Communities v Republic of Malta**

**(Case C-87/07)** ([1])

(2007/C 297/65)

*Language of the case: Maltese*

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

([1]) OJ C 82, 14.4.2007.

**Order of the President of the Court of 8 October 2007 (reference for a preliminary ruling from the Arbitration Court attached to the Economic Chamber of the Czech Republic and Agricultural Chamber of the Czech Republic — Czech Republic) — Reisebüro Bühler GmbH v Dom.info e.K., Sebastian Dieterle**

**(Case C-126/07)** ([1])

(2007/C 297/66)

*Language of the case: German*

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

([1]) OJ C 117, 26.5.2007.

**Order of the President of the Court of 29 August 2007 — Commission of the European Communities v Kingdom of Sweden**

**(Case C-146/07)** ([1])

(2007/C 297/67)

*Language of the case: Swedish*

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

([1]) OJ C 95, 28.4.2007.

**Order of the President of the Court of 6 September 2007 — Commission of the European Communities v Republic of Hungary**

**(Case C-148/07)** ([1])

(2007/C 297/68)

*Language of the case: Hungarian*

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

([1]) OJ C 95, 28.4.2007.

**Order of the President of the Court of 28 September 2007 — Commission of the European Communities v Republic of Poland**

**(Case C-149/07)** ([1])

(2007/C 297/69)

*Language of the case: Polish*

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

([1]) OJ C 129, 9.6.2007.

**Order of the President of the Court of 30 July 2007 — Commission of the European Communities v Portuguese Republic**

**(Case C-159/07)** ([1])

(2007/C 297/70)

*Language of the case: Portuguese*

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

([1]) OJ C 117, 26.5.2007.

**Order of the President of the Court of 11 September 2007 — Commission of the European Communities v Portuguese Republic**

**(Case C-160/07)** ([1])

(2007/C 297/71)

*Language of the case: Portuguese*

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

([1]) OJ C 129, 9.6.2007.

**Order of the President of the Court of 20 July 2007 — Commission of the European Communities v Kingdom of the Netherlands**

**(Case C-217/07)** ([1])

(2007/C 297/72)

*Language of the case: Dutch*

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

([1]) OJ C 155, 7.7.2007.

# COURT OF FIRST INSTANCE

## Judgment of the Court of First Instance of 25 October 2007 — SP and Others v Commission

**(Joined Cases T-27/03, T-46/03, T-58/03, T-79/03, T-80/03, T-97/03 and T-98/03)** ([1])

***(Agreements, decisions and concerted practices — Producers of reinforcing bars — Decision establishing an infringement of Article 65 CS — Decision based on the ECSC Treaty after expiry of that treaty — Lack of competence of the Commission)***

(2007/C 297/73)

*Language of the case: Italian*

### Parties

*Applicant in Case T-27/03:* SP SpA (Brescia, Italy) (represented by: G. Belotti and N. Pisani, lawyers)

*Applicant in Case T-46/03:* Leali SpA (Odolo, Italy) (represented by: G. Vezzoli and G. Belotti, lawyers)

*Applicant in Case T-58/03:* Acciaierie e Ferriere Leali Luigi SpA (Brescia) (represented by: G. Vezzosi, G. Belotti, E. Piromalli and C. Carmignani, lawyers)

*Applicant in Case T-79/03:* Industrie Riunite Odolesi SpA (IRO) (Odolo) (represented by: A. Giardina, lawyer)

*Applicant in Case T-80/03:* Lucchini SpA (Milan, Italy) (represented initially by A. Santa Maria and C. Biscaretti di Ruffia, and subsequently by M. Delfino, M. van der Woude, S. Fontanelli and P. Sorvillo, lawyers)

*Applicants in Case T-97/03:* Ferriera Valsabbia SpA (Odolo) and Valsabbia Investimenti SpA (Odolo) (represented by: D. Fosselard and P. Fattori, lawyers)

*Applicant in Case T-98/03:* Alfa Acciai SpA (Brescia) (represented by: D. Fosselard, P. Fattori and G. d'Andria, lawyers)

*Defendant:* Commission of the European Communities (represented by: L. Pignatoro-Nolin and A. Whelan, Agents, assisted in Cases T-27/03 and T-58/03 by M. Moretto and in Cases T-79/03, T-97/03 and T-98/03 by P. Manzini, lawyers)

Intervener in support of the applicants: Italian Republic (represented by: I. Braguglia and M. Fiorilli, Agents)

### Re:

Applications for a declaration of the non-existence and for annulment in whole or in part of Commission Decision C(2002) 5087 final of 17 December 2002, relating to a proceeding under Article 65 CS (Case COMP/37.956 — Reinforcing bars).

### Operative part of the judgment

*The Court:*

1. *Annuls Commission Decision C (2002) 5087 final of 17 December 2002 relating to a proceeding under Article 65 CS (Case COMP/37.956 — Reinforcing bars) with regard to SP SpA, Leali SpA, Acciaierie e Ferriere Leali Luigi SpA, Industrie Riunite Odolesi SpA (IRO), Lucchini SpA, Ferriera Valsabbia SpA, Valsabbia Investimenti SpA and Alfa Acciai SpA;*

2. *Orders the Commission to bear its own costs, and to pay those incurred by SP, Leali, Acciaierie e Ferriere Leali Luigi, IRO, Lucchini, Ferriera Valsabbia, Valsabbia Investimenti and Alfa Acciai, including those relating to the interlocutory proceedings in Cases T-46/03 and T-79/03;*

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

([1]) OJ C 70, 22.3.2003.

## Judgment of the Court of First Instance of 25 October 2007 — Riva Acciaio v Commission

**(Case T-45/03)** ([1])

***(Agreements, decisions and concerted practices — Producers of reinforcing bars — Decision establishing an infringement of Article 65 CS — Decision based on the ECSC Treaty after expiry of that treaty — Lack of competence of the Commission)***

(2007/C 297/74)

*Language of the case: Italian*

### Parties

*Applicant:* Riva Acciaio SpA (Milan, Italy) (represented by: A. Pappalardo, M. Merola, M. Pappalardo and F. Martin, lawyers)

*Defendant:* Commission of the European Communities (represented by: L. Pignataro-Nolin and A. Whelan, Agents, and P. Manzini, lawyer)

Intervener in support of the applicant:Italian Republic (represented by: I. Braguglia and M. Fiorilli, Agents)

**Re:**

Application for annulment of Commission Decision C(2002) 5087 final of 17 December 2002, relating to a proceeding under Article 65 CS (Case COMP/37.956 — Reinforcing bars).

**Operative part of the judgment**

*The Court:*

1. *Annuls Commission Decision C(2002) 5087 final of 17 December 2002 relating to a proceeding under Article 65 CS (Case COMP/37.956 — Reinforcing bars) with regard to Riva Acciaio SpA;*

2. *Orders the Commission to bear its own costs and to pay those incurred by Riva Acciaio;*

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

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([1]) OJ C 101, 26.4.2003.

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## Judgment of the Court of First Instance of 25 October 2007 — Feralpi Siderurgica v Commission

**(Case T-77/03)** ([1])

***(Agreements, decisions and concerted practices — Producers of reinforcing bars — Decision establishing an infringement of Article 65 CS — Decision based on the ECSC Treaty after expiry of that treaty — Lack of competence of the Commission)***

(2007/C 297/75)

*Language of the case: Italian*

**Parties**

*Applicant:* Feralpi Siderurgica SpA (Brescia, Italy) (represented by: G.M. Roberti, A. Franchi and I. Perego, lawyers)

*Defendant:* Commission of the European Communities (represented by: L. Pignataro-Nolin and A. Whelan, Agents, and P. Manzini, lawyer)

Intervener in support of the applicant:Italian Republic (represented by: I. Braguglia, Agent)

**Re:**

Application for annulment of Commission Decision C(2002) 5087 final of 17 December 2002, relating to a proceeding under Article 65 CS (Case COMP/37.956 — Reinforcing bars).

**Operative part of the judgment**

*The Court:*

1. *Annuls Commission Decision C(2002) 5087 final of 17 December 2002 relating to a proceeding under Article 65 CS (Case COMP/37.956 — Reinforcing bars) with regard to Feralpi Siderurgica SpA;*

2. *Orders the Commission to bear its own costs and to pay those incurred by Feralpi Siderurgica;*

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

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([1]) OJ C 112, 10.5.2003.

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## Judgment of the Court of First Instance of 25 October 2007 — Ferriere Nord v Commission

**(Case T-94/03)** ([1])

***(Agreements, decisions and concerted practices — Producers of reinforcing bars — Decision establishing an infringement of Article 65 CS — Decision based on the ECSC Treaty after expiry of that treaty — Lack of competence of the Commission)***

(2007/C 297/76)

*Language of the case: Italian*

**Parties**

*Applicant:* Ferriere Nord SpA (Osoppo, Italy) (represented by: W. Viscardini, G. Donà and E. Perricone, lawyers)

*Defendant:* Commission of the European Communities (represented by: L. Pignataro-Nolin and A. Whelan, Agents, and M. Moretto, lawyer)

Intervener in support of the applicant:Italian Republic (represented by: I. Braguglia, Agent)

**Re:**

Application for annulment of Commission Decision C(2002) 5087 final of 17 December 2002, relating to a proceeding under Article 65 CS (Case COMP/37.956 — Reinforcing bars).

**Operative part of the judgment**

*The Court:*

1. *Annuls Commission Decision C(2002) 5087 final of 17 December 2002 relating to a proceeding under Article 65 CS (Case COMP/37.956 — Reinforcing bars) with regard to Ferriere Nord SpA;*

2. *Orders the Commission to bear its own costs and to pay those incurred by Ferriere Nord;*

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

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([1]) OJ C 112, 10.5.2003.

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## Judgment of the Court of First Instance of 18 October 2007 — AMS v OHIM — American Medical Systems (AMS Advanced Medical Services)

**(Case T-425/03)** ([1])

***(Community trade mark — Opposition proceedings — Application for the Community trade mark AMS Advanced Medical Services — Earlier national word mark AMS — Absolute ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94 — Request for proof of genuine use made for the first time before the Board of Appeal — Article 43(2) and (3) of Regulation No 40/94)***

(2007/C 297/77)

*Language of the case: German*

**Parties**

*Applicant:* AMS Advanced Medical Services GmbH (Mannheim, Germany) (represented by: G. Lindhofer initially, and subsequently by G. Lindhofer and S. Schäffler, lawyers)

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

*Other party to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance:* American Medical Systems, Inc. (Minnetonka, Minnesota, United States) (represented by: H. Kunz-Hallstein and R. Kunz-Hallstein, lawyers)

**Re:**

Action brought against the decision of the Fourth Board of Appeal of OHIM of 12 September 2003 (Case R 671/2002-4) relating to the opposition proceedings between AMS Advanced Medical Services GmbH and American Medical Systems, Inc.

**Operative part of the judgment**

*The Court:*

1. *Dismisses the action;*

2. *Orders AMS Advanced Medical Services GmbH to pay the costs.*

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([1]) OJ C 71, 20.3.2004.

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## Judgment of the Court of First Instance of 23 October 2007 — Borco-Marken-Import Mathiessen v OHIM (Caipi)

**(Case T-405/04)** ([1])

***(Community trade mark — Application for the Community word mark Caipi — Absolute ground for refusal — Descriptive character — Article 7(1)(b) and (c) of Regulation (EC) No 40/94)***

(2007/C 297/78)

*Language of the case: German*

**Parties**

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

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

**Re:**

Action brought against the decision of the Second Board of Appeal of OHIM of 6 August 2004 (Case R 912/2002-2) concerning the application for registration as a Community trade mark of the word sign Caipi.

**Operative part of the judgment**

*The Court:*

1. *Dismisses the action;*

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

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([1]) OJ C 314 of 18.12.2004.

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## Judgment of the Court of First Instance of 25 October 2007 — Lo Giudice v Commission

**(Case T-27/05)** ([1])

***(Officials — Career development report — 2003 assessment procedure — Procedural irregularities — Article 43 of the Staff Regulations — Right to be heard — Sick leave — Medical certificate)***

(2007/C 297/79)

*Language of the case: French*

**Parties**

*Applicant:* Carmela Lo Giudice (Grimbergen, Belgium) (represented by: F. Frabetti and G. Bounéou initially, then by F. Frabetti, lawyers)

*Defendant:* Commission of the European Communities (represented by: J. Currall and H. Kraemer, agents)

**Re:**

Application seeking the annulment of the assessment procedure covering the period from 1 January to 31 December 2003 and, in the alternative, the annulment of the decision of 4 May 2004 drawing up the definitive version of the career development report on the applicant in respect of the relevant period.

**Operative part of the judgment**

*The Court:*

1. *Annuls the Commission's decision of 4 May 2004 drawing up the definitive version of the career development report on the applicant in respect of the 2003 assessment procedure;*

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

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([1]) OJ C 82, 2.4.2005.

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## Judgment of the Court of First Instance of 18 October 2007 — Ekabe International v OHIM — Ebro Puleva (OMEGA 3)

**(Case T-28/05)** ([1])

***(Community trade mark — Opposition proceedings — Application for the Community figurative trade mark OMEGA 3 — Earlier national word mark PULEVA-OMEGA 3 — Likelihood of confusion — Similarity of the signs — Article 8(1)(b) of Regulation (EC) No 40/94)***

(2007/C 297/80)

*Language of the case: French*

**Parties**

*Applicant:* Ekabe International SCA (Luxembourg, Luxembourg) (represented by: C. de Haas, lawyer)

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

*Other party to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance:* Ebro Puleva SA (Madrid, Spain) (represented by: P. Casamitjana Lleonart, lawyer)

**Re:**

Action brought against the decision of the Fourth Board of Appeal of OHIM of 6 October 2004 (Case R 117/2001-4), relating to opposition proceedings between Puleva SA (now Ebro Puleva SA) and Ekabe International SCA

**Operative part of the judgment**

*The Court:*

1. *Dismisses the action.*

2. *Orders Ekabe International SCA to pay the costs.*

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([1]) OJ C 82, 2.4.2005.

## Judgment of the Court of First Instance of 23 October 2007 — Commission v Impetus

**(Case T-138/05)** ([1])

***(Arbitration clause — Framework programmes for activities in the field of research and technological development — Contracts concerning projects in the field of telematics applications of common interest — Lack of supporting documentation and failure of part of the declared expenditure to comply with the contractual provisions — Repayment of the sums paid)***

(2007/C 297/81)

*Language of the case: Greek*

### Parties

*Applicant:* Commission of the European Communities (represented by: D. Triantafyllou, Agent, assisted by N. Kostikas, lawyer)

*Defendant:* Impetus Simvouli Mikhanikoi — Kainotomia kai Tekhnologia EPE (Athens, Greece) (represented by: P. Miliarakis, lawyer)

### Re:

Application, pursuant to an arbitration clause within the meaning of Article 238 EC, for an order against Impetus Simvouloi Mikhanikoi — Kainotomia kai Tekhnologia EPE to repay part of the sums paid to it by the European Community under the Invite (Inland Navigation Telematics) contract (reference COP 493) and under the Ausias (ATT in Urban Sites with Integration and Standardisation) contract (reference TR 1006), concluded in the framework of Decision No 1110/94 of the European Parliament and of the Council of 26 April 1994 concerning the fourth framework programme of the European Community activities in the field of research and technological development and demonstration (OJ 1994 L 126, p. 1), and part of the sums paid under the Artis (Advanced Road Transport Informatics in Spain) contract (reference V 2043), concluded in the framework of Council Decision 90/221/Euratom, EEC of 23 April 1990 concerning the framework programme of Community activities in the field of research and technological development (1990 to 1994) (OJ 1990 L 117, p. 28).

### Operative part of the judgment

*The Court:*

1. *Dismisses the Commission's claim for repayment of the sum of EUR 136 037,30 under the Invite (Inland Navigation Telematics) contract (reference COP 493);*

2. *Orders Impetus Simvouloi Mikhanikoi — Kainotomia kai Tekhnologia EPE, under the Ausias (ATT in Urban Sites with Integration and Standardisation) contract (reference TR 1006), to pay to the Commission the sum of EUR 14 678,41 by way of principal sum, together with interest for late payment, at the statutory annual rate applicable in Spain, from 15 November 2002 until payment in full of the debt;*

3. *Orders Impetus Simvouloi Mikhanikoi — Kainotomia kai Tekhnologia EPE, under the Artis (Advanced Road Transport Informatics in Spain) contract (reference V 2043), to pay to the Commission the sum of EUR 9 230,77 by way of principal sum, together with interest for late payment, at the statutory annual rate applicable in Spain, from 29 January 2003 until payment in full of the debt.*

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

([1]) OJ C 182, 23.7.2005.

## Judgment of the Court of First Instance of 25 October 2007 — Lo Giudice v Commission

**(Case T-154/05)** ([1])

***(Staff case — Officials — Mental harassment — Actions for annulment — Duty to provide assistance — Duty to state reasons — Legitimate expectations — Article 24 of the Staff Regulations — Duty to have regard for the welfare of officials — Admissibility — Application for damages)***

(2007/C 297/82)

*Language of the case: French*

### Parties

*Applicant:* Carmela Lo Giudice (Grimbergen, Belgium) (represented by: F. Frabetti and G. Bouneou initially, then by F. Frabetti, lawyers)

*Defendant:* Commission of the European Communities (represented by: J. Currall and H. Kraemer)

### Re:

In substance, first, an application for annulment of the Commission's decision concluding there was no mental harassment and, secondly, an application for damages seeking compensation for the non-material harm allegedly suffered.

**Operative part of the judgment**

*The Court:*

1. *Dismisses the action;*

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

(1) OJ C 155, 25.6.2005.

## Judgment of the Court of First Instance of 17 October 2007 — InterVideo v OHIM (WinDVD Creator)

**(Case T-105/06)** (1)

***(Community trade mark — Application for Community figurative mark WinDVD Creator — Absolute grounds for refusal — Articles 4 and 7(1)(b) and (c) of Regulation (EC) No 40/94)***

(2007/C 297/83)

*Language of the case: English*

**Parties**

*Applicant:* InterVideo Inc. (Fremont, California, United States) (represented by: K. Manhaeve, lawyer)

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

**Re:**

Action against the decision of the Second Board of Appeal of OHIM of 31 January 2006 (Case R 987/2005-2), relating to registration of the figurative sign WinDVD Creator as a Community trade mark

**Operative part of the judgment**

*The Court:*

1. *Dismisses the action.*

2. *Orders InterVideo Inc. to pay the costs.*

(1) OJ C 121, 20.5.2006.

## Order of the Court of First Instance of 1 October 2007 — U.S. Steel Košice v Commission

**(Case T-489/04)** (1)

***(Action for annulment — Directive 2003/87/EC — Scheme for greenhouse gas emission allowance trading — National allocation plan for emission allowances for Slovakia in respect of the period from 2005 to 2007 — Decision indicating that the Commission has no intention to raise objections — Non-actionable measure — Inadmissibility)***

(2007/C 297/84)

*Language of the case: English*

**Parties**

*Applicant:* U.S. Steel Košice s.r.o. (Košice, Slovakia) (represented by: E. Vermulst, Lawyer, C. Thomas, Solicitor, and D. Hueting, Barrister)

*Defendant:* Commission of the European Communities (represented by: U. Wölker and D. Lawunmi, Agents)

**Re:**

ACTION for annulment of the Commission Decision of 20 October 2004 concerning the national allocation plan for greenhouse gas emission allowances notified by the Slovak Republic for the period from 2005 to 2007 in accordance with Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ 2003 L 275, p. 32),

**Operative part of the order**

1. *The action is dismissed as inadmissible.*

2. *U.S. Steel Košice s.r.o. shall pay the costs.*

(1) OJ C 82, 2.4.2005.

## Order of the Court of First Instance of 1 October 2007 — U.S. Steel Košice v Commission

**(Case T-27/07)** ([1])

***(Action for annulment — Directive 2003/87/EC — Scheme for greenhouse gas emission allowance trading — National allocation plan for emission allowances for Slovakia in respect of the period from 2008 to 2012 — Commission rejection decision — Lack of direct concern — Inadmissibility)***

(2007/C 297/85)

*Language of the case: English*

### Parties

*Applicant:* U.S. Steel Košice s.r.o. (Košice, Slovakia) (represented by: E. Vermulst, Lawyer, and C. Thomas, Solicitor)

*Defendant:* Commission of the European Communities (represented by: D. Lawunmi and U. Wölker, Agents)

### Re:

Annulment of the Commission's Decision of 29 November 2006 on the national allocation plan for the allocation of emissions allowances for greenhouse gases notified by the Slovak Republic for the period from 2008 to 2012, in accordance with Directive 2003/87/EC of the European Parliament and of the Council (OJ 2003 L 275, p. 32).

### Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *U.S. Steel Košice s.r.o shall pay the costs.*

([1]) OJ C 69, 24.3.2007.

## Action brought on 26 September 2007 — Germany v Commission

**(Case T-376/07)**

(2007/C 297/86)

*Language of the case: German*

### Parties

*Applicant:* Republic of Germany (represented by: M. Lumma and J. Möller)

*Defendant:* Commission of the European Communities

### Form of order sought

— annul Commission Decision C(2007) 3226 of 18 July 2007 concerning an order to provide information in relation to MX 19/2006 — Monitoring of State aid scheme XS 24/2002 — Financing of business start-ups and growth ('GuW') — Germany and MX 9/2006 — Monitoring of State aid scheme XS 29/2002 — Guidelines for implementing the Bavarian regional aid programme for industry and commerce — Germany;

— order the defendant to pay the costs.

### Pleas in law and main arguments

The applicant seeks the annulment of Commission Decision C(2007) 3226 final of 18 July 2007 concerning an order to provide information pursuant to Article 9 of Regulation (EC) No 70/2001 ([1]) in relation to State aid schemes XS 24/2002 and XS 29/2002.

In support of its application, the applicant submits first that the contested decision infringes Regulation (EC) No 994/98 ([2]). The applicant submits in this regard that by making this request for information, the Commission is carrying out an *ex-post* control without cause. According to the applicant, that control goes beyond the authority which Regulation No 994/98 confers on the defendant, which provides that the Commission has the right to request information only if it harbours doubts concerning the proper implementation of a group exemption regulation.

In addition, the applicant claims that there has been an infringement of the principle of *nemini licet venire contra factum proprium* (estoppel), because several Commission documents show that the Commission itself assumes that it does not have the authority to conduct an *ex-post* control without cause.

(1) Commission Regulation (EC) No 70/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises (OJ 2001 L 10, p. 33).
(2) Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State aid (OJ 1998 L 142, p. 1).

## Action brought on 24 September 2007 — Evropaïki Dynamiki v Commission

**(Case T-377/07)**

(2007/C 297/87)

*Language of the case: English*

### Parties

*Applicant:* Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE (represented by: N. Korogiannakis, lawyer)

*Defendant:* Commission of the European Communities

### Form of order sought

— Annul the Commission's decision of the Direction General for Informatics to reject the bid of the applicant — filed in response to the open Call for Tender ENTR/05/86 — Content Interoperability for European eGovernment Services (OJ S 128, 8.7.2006) communicated to the applicant by letter dated 13 July 2007 and to award the contracts to the successful contractor;

— order the Commission (DIGIT) to pay the applicant's legal and other costs and expenses incurred in connection with this application, even if the current application is rejected;

— order the Commission (DIGIT) to pay the applicant's damages suffered on account of the tendering procedure in question for an amount of EUR 3,5 million for lot 2.

### Pleas in law and main arguments

The applicant submitted a bid in response to the defendant's call for an open tender for the contract 'content interoperability technologies for European eGovernment services' (OJ 2006/S 128-136080). The applicant contests the decision to reject its bid and to award the contract to another bidder.

The pleas in law and main arguments relied on by the applicant are identical to those relied on in Case T-300/07 *Evropaïki Dynamiki* v *Commission* (1).

(1) JO 2007 C 235, p. 22.

## Action brought on 2 October 2007 — CNH Global v OHIM (Figurative mark representing a tractor in red, black and grey)

**(Case T-378/07)**

(2007/C 297/88)

*Language of the case: English*

### Parties

*Applicant:* CNH Global NV (Amsterdam, Netherlands) (represented by: M. Edenborough, Barrister, and R. Harrison, Solicitor)

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

### Form of order sought

— The decision of the First Board of Appeal No R 1642/2006-1 be annulled in its entirety; and

— the Office pays to the applicant/appellant the costs incurred by the applicant/appellant in connection with this appeal.

**Pleas in law and main arguments**

*Community trade mark concerned:* A figurative mark representing a tractor in red, black and grey for goods in class 12 — application No 3 944 139

*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 (3) of Council Regulation No 40/94 as the figurative mark applied for had acquired distinctive character through use.

*Mark or sign cited:* The community and national word mark 'Aygill's' for goods in classes 3, 6, 8, 9, 11, 14, 16, 18, 20, 21, 24, 25, 26, 27 and 28

*Decision of the Opposition Division:* Opposition upheld in its entirety

*Decision of the Board of Appeal:* Annulment of the Opposition Division's decision and rejection of the opposition in its entirety

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

## Action brought on 4 October 2007 — Peek & Cloppenburg v OHIM — Redfil (Agile)

**(Case T-386/07)**

(2007/C 297/89)

*Language in which the application was lodged: English*

**Parties**

*Applicant:* Peek & Cloppenburg (KG) (Hamburg, Germany) (represented by: T. Dolde, A. Renck and V. von Bomhard, lawyers)

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

*Other party to the proceedings before the Board of Appeal:* Redfil SL (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 26 July 2007 in Case No R 1324/2006-2; and

— order that the costs of the proceedings be borne by the defendant.

**Pleas in law and main arguments**

*Applicant for the Community trade mark:* Redfil SL

*Community trade mark concerned:* The figurative mark 'Agile' for goods in classes 18, 25 and 28 — application No 2 659 456

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

## Action brought on 11 October 2007 — Portuguese Republic v Commission

**(Case T-387/07)**

(2007/C 297/90)

*Language of the case: Portuguese*

**Parties**

*Applicant:* Portuguese Republic (Lisbon, Portugal) (represented by: L. Inês Fernandes, S. Rodrigues and A. Gattini, Agents)

*Defendant:* Commission of the European Communities

**Form of order sought**

— annulment of Article 1 of Commission Decision C(2007) 3772 of 31 July 2007 reducing the assistance granted by the European Regional Development Fund for the global grant 'SGAIA' (global grant for local development) pursuant to Decision C(95) 1769 of the European Commission of 28 July 1995;

— an order that the Commission of the European Communities should pay the costs.

**Pleas in law and main arguments**

Lack of clarity in the statement of reasons. With the expression 'as shown above', the defendant makes a generic reference to the analysis summarily carried out and reconstructed in the contested decision. In Chapter 6, 'Conclusions', the defendant does not clearly identify what are the laws or provisions infringed by the Portuguese Republic.

Non-existence of the irregularity detected and infringement of the terms of the agreement concluded by the Commission and the Caixa Geral de Depósitos on 15 November 1995 by the Commission in the contested decision. The irregularity referred to by the Commission in the contested decision is groundless, for no account has been taken of Articles 5 and 6 of the Agreement, which allow the remaining future payments to be put back to 31 December 2001.

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**Action brought on 15 October 2007 — Earth Products v OHIM — Meynard Designs (EARTH)**

**(Case T-389/07)**

(2007/C 297/91)

*Language in which the application was lodged: English*

**Parties**

*Applicant:* Earth Products, Inc. (Carlsbad, United States) (represented by: M. Graf, lawyer)

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

*Other party to the proceedings before the Board of Appeal:* Meynard Designs, Inc. (Waltham, United States)

**Form of order sought**

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market of 9 August 2007 insofar as it has upheld the decision of the Opposition Division;

— order the defendant to bear its own costs and to pay those of the applicant.

**Pleas in law and main arguments**

*Applicant for the Community trade mark:* The applicant

*Community trade mark concerned:* The figurative mark 'EARTH' for goods in class 25 — application No 2 907 608

*Proprietor of the mark or sign cited in the opposition proceedings:* Meynard Designs, Inc.

*Mark or sign cited:* The Community and national figurative mark 'EARTH' for goods in classes 3, 14, 18, 25 and 35

*Decision of the Opposition Division:* Opposition upheld in its entirety

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

*Pleas in law:* Infringement of Article 8(1)(b) of Council Regulation No 40/94 as the conflicting trade marks are not visually or phonetically similar.

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**Appeal brought on 11 October 2007 by Michael Alexander Spenser against the judgment of the Civil Service Tribunal delivered on 10 September 2007 in Case F-146/06, Speiser v Parliament**

**(Case T-390/07 P)**

(2007/C 297/92)

*Language of the case: German*

**Parties**

*Appellant:* Michael Alexander Spenser (Ixelles, Belgium) (represented by F. Theumer, lawyer)

*Other party to the proceedings:* European Parliament

**Form of order sought by the appellant**

— Annul paragraphs 1 and 2 of the operative part of the decision of the Civil Service Tribunal in full;

— Annul paragraph 3 of the operative part of the decision of the Tribunal in so far as it does not order the other party to pay all the costs.

**Pleas in law and main arguments**

The appeal is directed against the decision of the Civil Service Tribunal of 10 September 2007 in Case F-146/06, *Speiser* v *Parliament*, by which the appellant's application was dismissed as being manifestly inadmissible.

The appellant submits, in support of his appeal, first of all, that the evidence relevant to the ruling presented by both parties was in part not assessed, contradictorily and/or not properly assessed. He further argues that the Civil Service Tribunal failed to apply the principles of good faith and sound administration to the whole of its decision. Finally, the appellant contends that, by the disputed decision, the Civil Service Tribunal departs from its ruling of 28 June 2006 in Case F-101/05, *Grundheid* v *Commission*.

**Action brought on 12 October 2007 — Strack v Commission**

**(Case T-392/07)**

(2007/C 297/93)

*Language of the case: German*

**Parties**

*Applicant:* Guido Strack (Cologne, Germany) (represented by: H. Tettenborn, lawyer)

*Defendant:* Commission of the European Communities

**Form of order sought**

— annul the decisions adopted by the Commission — either actually or in the form of a deemed refusal under Article 8(3) of Regulation (EC) No 1049/2001 — in the context of the processing of the applicant's application for access to documents of 20 June 2007 and his confirmatory application of 23 July 2007 or, in the alternative, his confirmatory applications of 15 August 2007;

— order the European Commission to pay the applicant compensation for the immaterial and moral damage suffered by the applicant as a result of the processing of his application, of an appropriate amount, but at least symbolic damages in the amount of 1 Euro;

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

**Pleas in law and main arguments**

The applicant applied, on the one hand, for access to certain documents in connection with confirmatory applications for access to documents under Regulation (EC) No 1049/2001 [1] which the Commission rejected wholly or partially and, on the other hand, access to documents relating to Case T-110/04. He was refused access to those documents or access was not granted within the period provided for.

In support of his application, the applicant submits that the defendant has infringed Article 255 EC as well as Article 2(1), (4) and (6)ff of Regulation No 1049/2001. In addition, the applicant claims that there has been an infringement of the principles of good administration and Articles 41 and 42 of the Charter of Fundamental Rights.

[1] Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43).

# EUROPEAN UNION CIVIL SERVICE TRIBUNAL

## Judgment of the Civil Service Tribunal (Second Chamber) of 25 October 2007 — Milella and Campanella v Commission

**(Case F-71/05)** ([1])

***(Staff case — Officials — Elections — Staff Committee — Appointment of representatives of the Commission's Local Staff Committee for Luxembourg to the Central Staff Committee of the Commission — Principle of overall proportional allocation of election results — Action for annulment — Admissibility)***

(2007/C 297/94)

*Language of the case: French*

### Parties

*Applicants:* Arcangelo Milella (Niederanven, Luxembourg) and Delfina Campanella (Luxembourg, Luxembourg) (represented by: M.-A. Lucas, lawyer)

*Defendant:* Commission of the European Communities (represented by: J. Currall and H. Kraemer)

### Re:

Annulment of the Commission decisions concerning the appointment of representatives of the Local Staff Committee for Luxembourg (LSCL) to the Central Staff Committee (CSC) and a declaration that the LSCL's decisions are illegal.

### Operative part of the judgment

*The Tribunal:*

1. *Annuls the decision of the Director General of the 'Personnel and Administration' Directorate-General of the Commission of the European Communities of 18 April 2005 inasmuch as it formally called on the representatives of the Commission's Local Staff Committee for Luxembourg to abide by '[t]he indications which appear in this decision';*

2. *Annuls the decision of the Director General of the 'Personnel and Administration' Directorate-General of the Commission of the European Communities of 11 May 2005;*

3. *Dismisses the remainder of the action;*

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

([1]) OJ C 229, 17.9.2005, p. 36.

## Judgment of the Civil Service Tribunal (Second Chamber) of 18 October 2007 — Krčová v Court of Justice

**(Case F-112/06)** ([1])

***(Staff case — Probationary official — Article 34 of the Staff Regulations — Dismissal of a probationary official — Discretion — Duty to state reasons — Duty to have regard to the welfare of officials — Principle of sound administration)***

(2007/C 297/95)

*Language of the case: French*

### Parties

*Applicant:* Erika Krčová (Trnava, Slovakia) (represented by: S. Orlandi, A. Coolen, J.-N. Louis and É. Marchal, lawyers)

*Defendant:* Court of Justice of the European Communities (represented by: M. Schauss)

### Re:

Annulment of the Court of Justice decision of 18 October 2005 dismissing the applicant at the end of her probationary period.

### Operative part of the judgment

*The Tribunal:*

1. *Dismisses the action;*

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

([1]) OJ C 281, 18.11.2006, p. 49.

# Action brought on 3 October 2007 — Petrilli v Commission

**(Case F-98/07)**

(2007/C 297/96)

*Language of the case: French*

## Parties

*Applicant:* Nicole Petrilli (Sint Stevens Woluwe, Belgium) (represented by: J.L. Lodomez, lawyer)

*Defendant:* Commission of the European Communities

## Form of order sought

— declare the present action for annulment admissible and well founded;

— annul the decision of 20 July 2007 by which the appointing authority dismissed the applicant's request, brought on the basis of Article 90(1) of the Staff Regulations of Officials of the European Communities ('the Staff Regulations'), for the renewal of her contract in DG 'Research' of the Commission;

— annul any decision that the Commission may make on the complaint, brought by the applicant in parallel to the present action and to an action to stay the appointing authority's decision of 20 July 2007;

— declare the present action for damages admissible and well founded;

— order the Commission to permit the applicant to return to her post as a member of the contract staff in Unit 'T2' of DG 'Research' for a period of 18 months; couple with that order a periodic penalty payment of EUR 1 000 for each day of delay;

— order the Commission to pay the applicant, by way of damages for the material loss caused by the loss of remuneration as a consequence of the refusal to renew her contract, a sum corresponding to the remuneration which she would have received if she had been able to continue her contract as a member of the contract staff until the expiration of the three years;

— order the Commission to make good the additional loss suffered by the applicant as a result of the loss of a chance of obtaining a contract for an indefinite period in the future Research Executive Agency (REA), following the lack of renewal of the abovementioned contract and the denial to her of the possibility of completing her mission in the Commission and of deepening thereby her experience by continuing to carry out that mission;

— order the Commission to pay the applicant, as compensation for the non-material loss caused by the decision not to renew her contract, a sum the amount of which is to be determined by the Tribunal, provisionally set at EUR 1, subject to an express reservation that that sum may be increased in the course of proceedings;

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

## Pleas in law and main arguments

In support of her action, the applicant relies on four pleas in law, the first of which alleges breach of the principle of legality and Article 88 of the Conditions of Employment of Other Servants (CEOS). The applicant submits that the decision refusing to renew her contract as a member of the contract staff, taken on the basis of the Commission decision of 28 April 2004 on the maximum duration for the recourse to non-permanent staff in the Commission services, precludes the operation of Article 88 of the CEOS which would allow her contract to be renewed for a new period of 18 months. The decision of 28 April 2004 is illegal inasmuch as it introduces restrictions on the rights laid down by the provisions of the Staff Regulations.

The second plea in law alleges breach of the principle of sound administration, of the duty to have regard to the interests of members of staff and to the interests of the service. The applicant submits that the contested decision does not take into account her personal situation, the interests of the service or those of the future agency which is to be established.

The third plea in law alleges a failure to state sufficient reasons and an infringement of Article 3b of the CEOS. The applicant submits in particular that the automatic refusal to renew her contract, because she had reached the ceiling of six years laid down in the decision of 28 April 2004, is counter to the philosophy of Article 3c of the CEOS, which is founded on the wish to employ persons under a contract for a fixed period in order to fulfil tasks in specialised fields for the time necessary for the accomplishment of a specific task.

The fourth plea in law alleges that the decision of 28 April 2004 infringes Council Directive 1999/70/EC of 28 June 1999 (OJ 1999 L 175, p. 43), the general principles of European labour law, the social rights of workers and, in particular, the principle of stability in employment and the principle of non-discrimination. As regards the last of those, the applicant submits that the ceiling of six years applies only to members of the contract staff falling under Article 3b of the CEOS, whilst those falling under Article 3a of the CEOS have the possibility of having an indefinite contract.

## Action brought on 28 September 2007 — Kerstens v Commission

**(Case F-102/07)**

(2007/C 297/97)

*Language of the case: French*

### Parties

*Applicant:* Petrus J.F. Kerstens (Overijse, Belgium) (represented by: M.C. Mourato, lawyer)

*Defendant:* Commission of the European Communities

### Form of order sought

— annul the decision of the appointing authority of 23 November 2005 awarding the applicant three directorate-general priority points (PMO) (PPDG) under the 2004 promotion exercise as published in Administrative Notices 85/2005 of 23 November 2005;

— annul the decision of the appointing authority of 23 November 2005 awarding the applicant zero directorate-general priority points (PMO) (PPDG) under the 2005 promotion exercise as published in Administrative Notices 85/2005 of 23 November 2005;

— annul the decision of the appointing authority of 17 November 2006 awarding the applicant zero directorate-general priority points (PMO) (PPDG) under the 2006 promotion exercise as published in Administrative Notices 55/2006;

— annul the decision of the appointing authority of 17 November 2006 awarding the applicant zero priority points for activities in the interest of the institution (PPII) under the 2006 promotion exercise as published in Administrative Notices 55/2006;

— annul the express decision of the appointing authority of 15 June 2007 giving a negative response to the applicant's complaints R/142/07 and R/183/07, dated 16 and 22 February 2007 respectively;

— take formal note that the applicant reserves, in that context, the right to rely on the existence of a misuse of powers and infringement of the rules for disciplinary procedures and to claim damages from the Commission of the European Communities;

— order the Commission to pay the costs.

### Pleas in law and main arguments

In support of his action, the applicant, an official in Grade A*12, relies on five pleas in law, the first of which alleges breach of the principle that the quota of priority points should be used up arising from Article 5 of the of the General provisions for implementing Article 45 of the Staff Regulations (GIP 45) and a manifest error of assessment concerning the grant of priority points awarded by the Director General (PPDG) under the 2004 promotion exercise.

The second plea in law alleges breach of Articles 4 to 6 of GIP 45 and a manifest error of appreciation concerning the award of PPDG for 2005 and 2006.

The third plea in law alleges infringement of Article 9 of GIP 45 consisting of a manifest error of assessment concerning the grant of priority points in recognition of work carried out in the interests of the institution (PPII). In the alternative, the third plea in law alleges a breach of the principles of non-retroactivity and legal certainty.

The fourth plea in law alleges breach of the principle of equal treatment concerning the grant of PPDG for 2004, 2005 and 2006 and PPII for 2006.

The fifth plea in law alleges a breach of the duty to state reasons concerning the award of PPDG for 2004, 2005 and 2006.

Finally, the applicant reserves the right to rely on the existence of a misuse of powers and breach of the rules for disciplinary procedures and to claim damages from the Commission.

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## Action brought on 5 October 2007 — Giaprakis v Committee of the Regions

**(Case F-106/07)**

(2007/C 297/98)

*Language of the case: French*

### Parties

*Applicant:* Stavros Giaprakis (Brussels, 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 the Administration Director of the CoR of 21 November 2006 to recover the amounts paid to the applicant in application of the correction coefficient for that part of his remuneration transferred to France between April 2004 and June 2005, in the amount of EUR 1 246,06;

— order the CoR to repay to the applicant the sum of EUR 1 246,06 withheld from his pay, 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 to him the sum of EUR 1 000 as compensation for the non-material loss which he has suffered as a result of the contested decision;

— order the CoR to pay the costs.

**Pleas in law and main arguments**

In support of his action, the applicant relies on the very similar pleas in law relied on in Case F-59/07 ([1]).

([1]) OJ C 199, 25.8.2007, p. 51.

## Order of the Civil Service Tribunal of 8 October 2007 — Daskalakis v Commission

**(Case F-96/07)**

(2007/C 297/99)

*Language of the case: English*

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