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European Union Civil Service Tribunal

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS AND BODIES

COURT OF JUSTICE

(2008/C 51/01)

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

OJ C 37, 9.2.2008

Past publications

OJ C 22, 26.1.2008

OJ C 8, 12.1.2008

OJ C 315, 22.12.2007

OJ C 297, 8.12.2007

OJ C 283, 24.11.2007

OJ C 269, 10.11.2007

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Assumption of duties by a new Judge of the Court of Justice

(2008/C 51/02)

Following his appointment as Judge of the Court of Justice of the European Communities by decision of the Representatives of the Governments of the Member States of the European Communities of 5 December 2007 ([1]), Mr Jean-Jacques Kasel took the oath before the Court on 14 January 2008.

([1]) OJ L 325 of 11 December 2007, p. 89.

Decisions adopted by the Court of Justice at its general meeting on 15 January 2008

(2008/C 51/03)

At its meeting on 15 January 2008, the Court of Justice of the European Communities decided to assign Mr Kasel to the First and Fifth Chambers.

Accordingly, the composition of the First and Fifth Chambers is as set out below:

First Chamber

Mr Jann, President of Chamber

Mr Tizzano, Mr Borg Barthet, Mr Ilešič, Mr Levits and Mr Kasel.

Fifth Chamber

Mr Tizzano, President of Chamber

Mr Borg Barthet, Mr Ilešič, Mr Levits and Mr Kasel.

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

(2008/C 51/04)

At its meeting on 15 January 2008, the Court drew up the list referred to in Article 11b(2) of the Rules of Procedure for determining the composition of the Grand Chamber as follows:

Mr Tizzano

Mr Kasel

Mr Cunha Rodrigues

Ms Toader

Ms Silva de Lapuerta

Mr Arabadjiev

Sir Konrad Schiemann

Mr von Danwitz

Mr Makarczyk

Mr Bonichot

Mr Kūris

Ms Lindh

Mr Juhász

Mr Bay Larsen

Mr Arestis

Mr Ó Caoimh

Mr Borg Barthet

Mr Levits

Mr Ilešič

Mr Lõhmus

Mr Malenovský

Mr Klučka

At its meeting on 15 January 2008, the Court drew up the list referred to in the first subparagraph of Article 11c(2) of the Rules of Procedure for determining the composition of the First Chamber as follows:

Mr Tizzano

Mr Kasel

Mr Borg Barthet

Mr Levits

Mr Ilešič

At its meeting on 15 January 2008, the Court drew up the list referred to in the second subparagraph of Article 11c(2) of the Rules of Procedure for determining the composition of the Fifth Chamber as follows:

Mr Borg Barthet

Mr Ilešič

Mr Levits

Mr Kasel

Judgment of the Court (Grand Chamber) of 18 December 2007 — Commission of the European Communities v Ireland

(Case C-532/03) ([1])

(Failure of a Member State to fulfil obligations — Public procurement — Articles 43 EC and 49 EC — Emergency ambulance services)

(2008/C 51/05)

Language of the case: English

Parties

Applicant: Commission of the European Communities (represented by: K. Wiedner and X. Lewis, Agents, and J. Flynn QC))

Defendant: Ireland (represented by: D. O'Hagan, Agent, A. Collins SC, E. Regan SC and C. O'Toole, Barrister)

Intervener in support of the defendant: Kingdom of the Netherlands (represented by: H.G. Sevenster, C. Wissels and P. van Ginneken, Agents)

Re:

Failure of a Member State to fulfil obligations — Breach of Articles 43 EC and 49 EC — Arrangements for the provision of an emergency ambulance service — Obligation to arrange prior advertising — Principles of transparency, equality and non-discrimination

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 85, 3.4.2004.

Judgment of the Court (Second Chamber) of 13 December 2007 — Commission of the European Communities v Ireland

(Case C-418/04) ([1])

(Failure of a Member State to fulfil obligations — Directive 79/409/EEC — Conservation of wild birds — Articles 4 and 10 — Transposition and application — IBA 2000 — Value — Quality of the data — Criteria — Margin of discretion — Directive 92/43/EEC — Conservation of natural habitats and of wild fauna and flora — Article 6 — Transposition and application)

(2008/C 51/06)

Language of the case: English

Parties

Applicant: Commission of the European Communities (B. Doherty and M. van Beek, Agents)

Defendant: Ireland (represented by D. O'Hagan, Agent, E. Cogan, Barrister, and G. Hogan SC)

Interveners in support of the defendant: Hellenic Republic, (represented by: E. Skandalou, Agent), Kingdom of Spain (represented by N. Díaz Abad)

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 4 and 10 of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (OJ 1979 L 103, p. 1) — Breach of Article 6 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)

Operative part of the judgment

The Court:

1. *Declares that, by failing:*

   — *to classify, since 6 April 1981, in accordance with Article 4(1) and (2) of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds, as amended by Commission Directive 97/49/EC of 29 July 1997, all the most suitable territories in number and size for the species mentioned in Annex I to that directive, with the exception of those intended to ensure conservation of the Greenland white-fronted goose (Anser albifrons flavirostris), as well as for regularly occurring migratory species not mentioned in Annex I, with the exception of those intended to ensure protection of the lapwing (Vanellus vanellus), the redshank (Tringa totanus), the snipe (Gallinago gallinago) and the curlew (Numenius arquata);*

   — *to ensure that, since 6 April 1981, the provisions of the first sentence of Article 4(4) of Directive 79/409, as amended by Directive 97/49, are applied to areas requiring classification as special protection areas under that directive;*

   — *to transpose and apply the provisions of the second sentence of Article 4(4) of Directive 79/409, as amended by Directive 97/49, fully and correctly;*

   — *to take all the measures necessary to comply with Article 6(2) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora in respect of all special protection areas classified under Article 4(1) of Directive 79/409, as amended by Directive 97/49, or recognised under Article 4(2) of that directive;*

   — *to take all the measures necessary to comply with Article 6(2) of Directive 92/43 in respect of recreational use of all sites intended to be subject to that article;*

   — *to take all the measures necessary to comply with Article 6(3) and (4) of Directive 92/43 in respect of plans;*

   — *to take all the measures necessary to comply with Article 6(3) of Directive 92/43 in respect of authorisation of aquaculture programmes;*

   — *to take all the measures necessary to comply with of Article 6(2) to (4) of Directive 92/43 in respect of the drain maintenance works in the Glen Lough special protection area; and*

   — *to take all the measures necessary to comply with Article 10 of Directive 79/409, as amended by Directive 97/49,*

   Ireland has failed to fulfil its obligations under Articles 4(1), (2) and (4), and 10 of Directive 79/409, as amended by Directive 97/49, and Article 6(2) to (4) of Directive 92/43.

2. *Dismisses the remainder of the action.*

3. *Orders Ireland to pay the costs.*

4. *Orders the Hellenic Republic and the Kingdom of Spain to bear their own costs.*

([1]) OJ C 6, 8.1.2005.

Judgment of the Court (Grand Chamber) of 18 December 2007 — Kingdom of Sweden v IFAW Internationaler Tierschutz-Fonds gGmbH, formerly Internationaler Tierschutz-Fonds (IFAW) GmbH, Kingdom of Denmark, Kingdom of the Netherlands, United Kingdom of Great Britain and Northern Ireland, Commission of the European Communities

(Case C-64/05 P) ([1])

(Appeal — Regulation (EC) No 1049/2001 — Public access to documents of the institutions — Documents originating from a Member State — Objection of the Member State to disclosure of the documents — Scope of Article 4(5) of the Regulation)

(2008/C 51/07)

Language of the case: English

Parties

Appellant: Kingdom of Sweden (represented by K. Wistrand, Agent)

Intervener in support of the appellant: Republic of Finland (represented by E. Bygglin and A. Guimaraes-Purokoski, Agents)

Other parties to the proceedings: IFAW Internationaler Tierschutz-Fonds gGmbH, formerly Internationaler Tierschutz-Fonds (IFAW) GmbH (represented by S. Crosby, Solicitor, and R. Lang, avocat), Kingdom of Denmark (represented by B. Weis Fogh, Agent), Kingdom of the Netherlands (represented by H.G. Sevenster, C.M. Wissels and M. de Grave, Agents), United Kingdom of Great Britain and Northern Ireland (represented by S. Nwaokolo and V. Jackson, Agents, and J. Stratford, Barrister), Commission of the European Communities (represented by C. Docksey and P. Aalto, Agents)

Intervener in support of the respondent: Kingdom of Spain (represented by I. del Cuvillo Contreras and A. Sampol Pucurull, Agents)

Re:

Appeal against the judgment of the Court of First Instance (Fifth Chamber, Extended Composition) of 30 November 2004 in Case T-168/02 *IFAW Internationaler Tierschutz-Fonds* v *Commission*, dismissing an application for annulment of a decision of the Commission rejecting a request made by IFAW pursuant to 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) for access to certain documents of the German authorities claiming the existence of imperative grounds of major public interest for the declassification of a site protected under 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)

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the Court of First Instance of the European Communities of 30 November 2004 in Case T-168/02 IFAW Internationaler Tierschutz-Fonds v Commission;*

2. *Annuls the decision of the Commission of the European Communities of 26 March 2002 refusing IFAW Internationaler Tierschutz-Fonds gGmbH access to certain documents received by the Commission in the course of a procedure which ended with the Commission giving an opinion favourable to the carrying out of an industrial project on a site protected under Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora;*

3. *Orders the Commission of the European Communities to pay the costs incurred by the Kingdom of Sweden in connection with the appeal proceedings and the costs incurred by IFAW Internationaler Tierschutz-Fonds gGmbH both in the appeal proceedings and in those at first instance in which the Court of First Instance of the European Communities gave judgment on 30 November 2004, IFAW Internationaler Tierschutz-Fonds v Commission;*

4. *Orders the Kingdom of Denmark, the Kingdom of Spain, the Kingdom of the Netherlands, the Republic of Finland, the United Kingdom of Great Britain and Northern Ireland, and the Commission of the European Communities to bear their own costs relating to the appeal;*

5. *Orders the Kingdom of Denmark, the Kingdom of the Netherlands, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland, and the Commission of the European Communities to bear their own costs relating to the proceedings at first instance.*

(1) OJ C 115, 14.5.2005.

Judgment of the Court (Grand Chamber) of 18 December 2007 — United Kingdom of Great Britain and Northern Ireland v Council of the European Union

(Case C-77/05) (1)

(Regulation (EC) No 2007/2004 — Establishment of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union — Validity)

(2008/C 51/08)

Language of the case: English

Parties

Applicant: United Kingdom of Great Britain and Northern Ireland (represented by E. O'Neill and C. Gibbs, Agents, and A. Dashwood, Barrister)

Interveners in support of the applicant: Ireland (represented by D. O'Hagan, Agent, and A. Collins, SC, and P. McGarry, BL), Republic of Poland (represented by J. Pietras, Agent), Slovak Republic (represented by R. Procházka, J. Čorba and B. Ricziová, Agents)

Defendant: Council of the European Union (represented by J. Schutte and R. Szostak, Agents)

Interveners in support of the defendant: Kingdom of Spain (represented by J.M. Rodríguez Cárcamo, Agent), Commission of the European Communities (represented by C. O'Reilly, Agent)

Re:

Annulment of Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (OJ 2004 L 349, p. 1)

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the United Kingdom of Great Britain and Northern Ireland to pay the costs;*

3. *Orders the Kingdom of Spain, Ireland, the Republic of Poland, the Slovak Republic and the Commission of the European Communities to bear their own costs.*

(1) OJ C 82, 2.4.2005.

Judgment of the Court (Grand Chamber) of 18 December 2007 (reference for a preliminary ruling from the Regeringsrätten (Sweden)) — Skatteverket v A

(Case C-101/05) ([1])

(Free movement of capital — Restriction on the movement of capital between the Member States and third countries — Tax on revenue from capital — Dividends received from a company established in an EEA Member State — Exemption — Dividends received from a company established in a third country — Exemption subject to the existence of a taxation convention providing for the exchange of information — Effectiveness of fiscal supervision)

(2008/C 51/09)

Language of the case: Swedish

Referring court

Regeringsrätten

Parties to the main proceedings

Applicant: Skatteverket

Defendant: A

Re:

Reference for a preliminary ruling — Regeringsrätten — Interpretation of Articles 56 EC and 58 EC — Taxation, in the case of a taxable person resident in a Member State, in respect of dividends distributed by a company established in a non-member State — National legislation making the exemption of such dividends conditional upon the existence of a taxation convention with the non-member State that contains a provision on exchange of information

Operative part of the judgment

Articles 56 EC and 58 EC are to be interpreted as not precluding the legislation of a Member State which provides that exemption from income tax in respect of dividends distributed in the form of shares in a subsidiary may be granted only if the company making the distribution is established in a State within the EEA or a State with which a taxation convention providing for the exchange of information has been concluded by the Member State imposing the tax, where that exemption is subject to conditions compliance with which can be verified by the competent authorities of that Member State only by obtaining information from the State of establishment of the distributing company.

([1]) OJ C 106, 30.4.2005.

Judgment of the Court (Grand Chamber) of 18 December 2007 — United Kingdom of Great Britain and Northern Ireland, Council of the European Union

(Case C-137/05) ([1])

(Regulation (EC) No 2252/2004 — Passports and travel documents issued by the Member States — Standards for security features and biometrics — Validity)

(2008/C 51/10)

Language of the case: English

Parties

Applicants: United Kingdom of Great Britain and Northern Ireland, (represented by C. Jackson and C. Gibbs, Agents, A. Dashwood, Barrister)

Interveners in support of the applicants: Ireland (represented by: D. O'Hagan, Agent, and A. Collins, SC, and P. McGarry, BL), Slovak Republic, (represented by R. Procházka, J. Čorba and B. Ricziová, Agents)

Defendant: Council of the European Union (represented by M. J. Schutte, R. Szostak and G. Giglio, Agents,

Interveners in support of the defendant: Kingdom of Spain, (represented by J. Rodríguez Cárcamo, Agent), Kingdom of the Netherlands, (represented by H.G. Sevenster, Agent) Commission of the European Communities, (represented by C. O'Reilly, Agent)

Re:

Annulment of Council Regulation (EC) No 2252/2004 of 13 December 2004 on standards for security features and biometrics in passports and travel documents issued by Member States (OJ 2004 L 385, p. 1)

Operative part of the judgment

1. *Dismisses the action;*

2. *Orders the United Kingdom of Great Britain and Northern Ireland to pay the costs;*

3. *Orders the Kingdom of Spain, Ireland, the Kingdom of the Netherlands, the Slovak Republic and the Commission of the European Communities to bear their own costs.*

([1]) OJ C 132, 28.5.2005.

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

(Case C-194/05) ([1])

(Failure of a Member State to fulfil obligations — Environment — Directives 75/442/EEC and 91/156/EEC — Concept of 'waste' — Excavated earth and rocks intended for re-use)

(2008/C 51/11)

Language of the case: Italian

Parties

Applicant: Commission of the European Communities (represented by: M. Konstantinidis, Agent, and G. Bambara, avvocato)

Defendant: Italian Republic (represented by: I.M. Braguglia, Agent, and G. Fiengo, avvocato dello stato)

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 1(a) of Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39), as amended by Council Directive 91/156/EEC of 18 March 1991 (OJ 1991 L 78, p. 32) — National law excluding excavated earth and rocks intended for re-use from the scope of the directive

Operative part of the judgment

The Court:

1) *Declares that, in so far as Article 10 of Law No 93 of 23 March 2001 concerning provisions on the environment and Article 1(17) and (19) of Law No 443 of 21 December 2001 delegating to the Government matters of infrastructure and strategic installations of production and of other action to boost production excluded from the scope of the national legislation relating to waste excavated earth and rocks intended for actual re-use for filling, backfilling, embanking or as aggregates, with the exception of those from contaminated and decontaminated sites with a concentration of pollutants above the acceptable limits laid down by the regulations in force, the Italian Republic has failed to fulfil its obligations under Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Council Directive 91/156/EEC of 18 March 1991;*

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

([1]) OJ C 182, 23.7.2005.

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

(Case C-195/05) ([1])

(Failure of a Member State to fulfil obligations — Environment — Directives 75/442/EEC and 91/156/EEC — Concept of waste — Food scraps from the agro food industry intended for the production of animal feed — Leftovers from the preparation of food in kitchens, intended for shelters for pet animals)

(2008/C 51/12)

Language of the case: Italian

Parties

Applicant: Commission of the European Communities (represented by: M. Konstantinidis, Agent and G. Bambara, lawyer)

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

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 1(a) of Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39), as amended by Council Directive 91/156/EEC of 18 March 1991 (OJ 1991 L 78, p. 32) — National law excluding certain waste from the scope of the directive

Operative part of the judgment

The Court:

1) *Declares that the Italian Republic has failed to fulfil its obligations under Article 1(a) of Council Directive 75/442/EEC of 15 July 1975 on waste as amended by Council Directive 91/156/EEC of 18 March 1991, by:*

   — *adopting operational instructions valid for the whole of the national territory, specified in particular in the circular of 28 June 1999 of the Minister for the Environment setting out explanatory guidance on the concept of waste and in the communication of the Ministry of Health of 22 July 2002 containing guidelines on the health and hygiene requirements relating to the use for animal feed of materials and by-products deriving from the production and commercial cycle of the agro-food industry, the purpose of which was to exclude, from the scope of the legislation on waste, food scraps from the agro-food industry intended for the production of animal feed; and*

— *excluding, by means of Article 23 of Law No 179 of 31 July 2002 laying down provisions on environmental matters, from the scope of the legislation on waste leftovers from the kitchen preparation of all types of solid food, cooked and uncooked, which have not entered the distribution system and are intended for shelters for pet animals;*

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

([1]) OJ C 182, 23.7.2005.

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

(Case C-263/05) ([1])

(Failure of a Member State to fulfil obligations — Environment — Directives 75/442/EEC and 91/156/EEC — Concept of 'waste' — Substances or objects intended for disposal or recovery operations — Production residues capable of re-use)

(2008/C 51/13)

Language of the case: Italian

Parties

Applicant: Commission of the European Communities (represented by: M. Konstantinidis and L. Cimaglia, Agents)

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

Re:

Failure of a Member State to fulfil its obligations — Infringement of Article 1(a) of Council Directive 75/442 of 15 July 1975 on waste (OJ 1975 L 194, p. 39), as amended by Council Directive 91/156/EEC of 18 March 1991 (OJ 1991 L 78, p. 32) — National law excluding from the scope of the directive certain substances or objects intended for disposal or recovery operations and also certain production waste of which the holder disposes or intends to dispose

Operative part of the judgment

The Court:

1) *Declares that the Italian Republic has failed to fulfil its obligations under Article 1(a) of Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Council Directive 91/156/EEC of 18 March 1991 and Commission Decision 96/350/EC of 24 May 1996, by adopting and maintaining in force Article 14 of Decree-Law No 138 of 8 July 2002 laying down urgent measures concerning taxation, privatisation and control of pharmaceutical expenditure and economic support in disadvantaged areas, now, after amendment, Law No 178 of 8 August 2002, which excludes from the scope of Legislative Decree No 22 of 5 February 1997 implementing Directives 91/156/EEC on waste, 91/689/EEC on hazardous waste and 94/62/EC on packaging and packaging waste the following: (i) substances, objects or goods intended for waste disposal or recovery operations not expressly listed in Annexes B or C to Legislative Decree No 22/97; and (ii) substances or objects forming production residue which the holder intends or is required to discard, where they may be and are re-used in a production or consumption cycle without undergoing prior treatment and without harming the environment, or, if they have undergone prior treatment, provided that that treatment is not one of the recovery operations listed in Annex C to Legislative Decree No 22/97;*

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

([1]) OJ C 217, 3.9.2005.

Judgment of the Court (Grand Chamber) of 11 December 2007 (Reference for a preliminary ruling from the Raad van State — Netherlands) — Minister voor Vreemdelingenzaken en Integratie v R.N.G. Eind

(Case C-291/05) ([1])

(Freedom of movement for persons — Workers — Right of residence for a family member who is a third-country national — Return of the worker to the Member State of which he is a national — Obligation for the worker's Member State of origin to grant a right of residence to the family member — Whether there is such an obligation where the worker does not carry on any effective and genuine activities)

(2008/C 51/14)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Applicant: Minister voor Vreemdelingenzaken en Integratie

Defendant: R.N.G. Eind

Re:

Reference for a preliminary ruling — Nederlandse Raad van State — Interpretation of Article 10 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition 1968(II), p. 475) and of Council Directive 90/364/EEC of 28 June 1990 on the right of residence (OJ 1990 L 180, p. 26) — Interpretation of Article 18 EC — Right of residence of a family member who is a national of a non-member country — Existence of such a right in the absence of genuine and actual work on the part of the worker — Return of the worker to his or her State of origin — No right of residence in that State for the family member

Operative part of the judgment

1) *In the event of a Community worker returning to the Member State of which he is a national, Community law does not require the authorities of that State to grant a right of entry and residence to a third-country national who is a member of that worker's family because of the mere fact that, in the host Member State where that worker was gainfully employed, that third-country national held a valid residence permit issued on the basis of Article 10 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community, as amended by Council Regulation (EEC) No 2434/92 of 27 July 1992.*

2) *When a worker returns to the Member State of which he is a national, after being gainfully employed in another Member State, a third-country national who is a member of his family has a right under Article 10(1)(a) of Regulation No 1612/68 as amended by Regulation No 2434/92, which applies by analogy, to reside in the Member State of which the worker is a national, even where that worker does not carry on any effective and genuine economic activities. The fact that a third-country national who is a member of a Community worker's family did not, before residing in the Member State where the worker was employed, have a right under national law to reside in the Member State of which the worker is a national has no bearing on the determination of that national's right to reside in the latter State.*

([1]) OJ C 296, 26.11.2005.

Judgment of the Court (Grand Chamber) of 18 December 2007 (reference for a preliminary ruling from the Arbetsdomstolen — Sweden) — Laval un Partneri Ltd v Svenska Byggnadsarbetareförbundet, Svenska Byggnadsarbetareförbundets avd. 1, Byggettan, Svenska Elektrikerförbundet

(Case C-341/05) ([1])

(Freedom to provide services — Directive 96/71/EC — Posting of workers in the construction industry — National legislation laying down terms and conditions of employment covering the matters referred to in Article 3(1), first subparagraph, (a) to (g), save for minimum rates of pay — Collective agreement for the building sector the terms of which lay down more favourable conditions or relate to other matters — Possibility for trade unions to attempt, by way of collective action, to force undertakings established in other Member States to negotiate on a case by case basis in order to determine the rates of pay for workers and to sign the collective agreement for the building sector)

(2008/C 51/15)

Language of the case: Swedish

Referring court

Arbetsdomstolen

Parties to the main proceedings

Applicant: Laval un Partneri Ltd

Defendants: Svenska Byggnadsarbetareförbundet, Svenska Byggnadsarbetareförbundets avd. 1, Byggettan, Svenska Elektrikerförbundet

Re:

Reference for a preliminary ruling — Arbetsdomstolen — Interpretation of Articles 12 EC and 49 EC and of Articles 3(1); 3(7); 3(8); 3(10) and Article 4 of Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJ 1997 L 18, p. 1) — Collective action against a construction company which supplied paid workers in a Member State other than that of its head office and which did not enter into a collective agreement in that State.

Operative part of the judgment

1) *Article 49 EC and Article 3 of Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services are to be interpreted as precluding a trade union, in a Member State in which the terms and conditions of employment covering the matters referred to in Article 3(1), first subparagraph, (a) to (g) of that directive are contained in legislative provisions, save for minimum rates of pay, from attempting, by means of collective action in the form of a blockade ('blockad') of sites such as that at issue in the main proceedings, to force a provider of services established in another Member State to enter into negotiations with it on the rates of pay for posted workers and to sign a collective agreement the terms of which lay down, as regards some of those matters, more favourable conditions than those resulting from the relevant legislative provisions, while other terms relate to matters not referred to in Article 3 of the directive;*

2) *Where there is a prohibition in a Member State against trade unions undertaking collective action with the aim of having a collective agreement between other parties set aside or amended, Articles 49 EC and 50 EC preclude that prohibition from being subject to the condition that such action must relate to terms and conditions of employment to which the national law applies directly.*

([1]) OJ C 281, 12.11.2005.

Judgment of the Court (Grand Chamber) of 18 December 2007 (Reference for a preliminary ruling from the Sozialgericht Berlin and Landessozialgericht Berlin-Brandenburg — Germany) — Doris Habelt (C-396/05), Martha Möser (C-419/05) and Peter Wachter (C-450/05) v Deutsche Rentenversicherung Bund

(Joined Cases C-396/05, C-419/05 and C-450/05) ([1])

(Social security — Regulation (EEC) No 1408/71 — Annexes III and VI — Freedom of movement for persons — Articles 18 EC, 39 EC and 42 EC — Old-age benefits — Periods of contribution completed outside the Federal Republic of Germany — Not exportable)

(2008/C 51/16)

Language of the case: German

Referring courts

Sozialgericht Berlin and Landessozialgericht Berlin-Brandenburg

Parties to the main proceedings

Applicants: Doris Habelt (C-396/05), Martha Möser (C-419/05) and Peter Wachter (C-450/05)

Defendant: Deutsche Rentenversicherung Bund

Re:

Reference for a preliminary ruling — Sozialgericht Berlin — Interpretation of Article 42 of the EC Treaty — Validity of Annex VI D. (Germany), No 1, to Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community (OJ, English special edition, 1971 (II), p. 416), as amended — Refusal to pay German old-age benefits in respect of periods of employment completed between 1939 and 1945 in the Sudetenland to a German national who has taken up residence in Belgium

Operative part of the judgment

1) *The provisions of Annex VI, Part C, headed 'Germany', point 1, to Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, in the version amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, are incompatible with freedom of movement for persons, and, in particular, with Article 42 EC, in that they make it possible, in circumstances such as those in the main proceedings, to make the inclusion, for the purposes of the payment of old-age benefits, of contribution periods completed between 1937 and 1945 on the parts of the territory where the social security legislation of the German Reich was applicable, but which are outside the territory of the Federal Republic of Germany, subject to the condition that the recipient reside in the territory of that Member State.*

2) *The provisions of Annex III, Parts A and B, point 35, headed 'Germany-Austria', under (e), to Regulation No 1408/71, as amended, are incompatible with Article 39 EC and Article 42 EC in that they make it possible, in circumstances such as those in the main proceedings, where the recipient resides in Austria, to make the inclusion, for the purposes of the payment of old-age benefits, of contribution periods completed under the law on pension rights acquired by contribution abroad (Fremdrentengesetz) between 1953 and 1970 in Romania subject to the condition that the recipient reside in the territory of the Federal Republic of Germany.*

3) *The provisions of Annex VI, Part C, headed 'Germany', point 1, to Regulation No 1408/71, as amended, are incompatible with freedom of movement for persons and, in particular, with Article 42 EC, in that they make it possible, in circumstances such as those in the main proceedings, to make the inclusion, for the purposes of the payment of old-age benefits, of contribution periods completed under the law on pension rights acquired by contribution abroad between 1953 and 1970 in Romania subject to the condition that the recipient reside in the territory of the Federal Republic of Germany.*

([1]) OJ C 22, 28.1.2006.
OJ C 22, 25.3.2006.

Judgment of the Court (Grand Chamber) of 11 December 2007 (reference for a preliminary ruling from the Court of Appeal (Civil Division) — United Kingdom) International Transport Workers' Federation, Finnish Seamen's Union v Viking Line ABP, OÜ Viking Line Eesti

(Case C-438/05) ([1])

(Maritime transport — Right of establishment — Fundamental rights — Objectives of Community social policy — Collective action taken by a trade union organisation against a private undertaking — Collective agreement liable to deter an undertaking from registering a vessel under the flag of another Member State)

(2008/C 51/17)

Language of the case: English

Referring court

Court of Appeal (Civil Division)

Parties to the main proceedings

Applicants: International Transport Workers' Federation, Finnish Seamen's Union

Defendants: Viking Line ABP, OÜ Viking Line Eesti

Re:

Reference for a preliminary ruling — Court of Appeals Civil Division — Interpretation of Article 43 EC and of Council Regulation (EEC) No 4055/86 of 22 December 1986 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries (OJ 1986 L 378, p. 1) — Industrial action by a trade union to compel a private undertaking to adopt a collective bargaining agreement making it pointless for that undertaking's vessels to reflag to another Member State — Applicability of Article 43 EC and/or Regulation No 4055/86 under Title XI of the EC Treaty and Case C-67/96 *Albany* — Whether an undertaking can rely on the provisions of Article 43 EC and/or Regulation No 4055/86 against another private person, including a trade union in respect of its industrial action.

Operative part of the judgment

1. *Article 43 EC is to be interpreted as meaning that, in principle, collective action initiated by a trade union or a group of trade unions against a private undertaking in order to induce that undertaking to enter into a collective agreement, the terms of which are liable to deter it from exercising freedom of establishment, is not excluded from the scope of that article.*

2. *Article 43 EC is capable of conferring rights on a private undertaking which may be relied on against a trade union or an association of trade unions.*

3. *Article 43 EC is to be interpreted to the effect that collective action such as that at issue in the main proceedings, which seeks to induce a private undertaking whose registered office is in a given Member State to enter into a collective work agreement with a trade union established in that State and to apply the terms set out in that agreement to the employees of a subsidiary of that undertaking established in another Member State, constitutes a restriction within the meaning of that article.*

   That restriction may, in principle, be justified by an overriding reason of public interest, such as the protection of workers, provided that it is established that the restriction is suitable for ensuring the attainment of the legitimate objective pursued and does not go beyond what is necessary to achieve that objective.

([1]) OJ C 60, 11.3.2006.

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

(Case C-465/05) ([1])

(Failure of a Member State to fulfil its obligations — Freedom to provide services — Right of establishment — Occupation of security guard — Private security services — Oath of allegiance to the Italian Republic — Authorisation from the Prefetto — Place of business — Minimum number of employees — Lodging of a guarantee — Administrative control of the pricing of services provided)

(2008/C 51/18)

Language of the case: Italian

Parties

Applicant: Commission of the European Communities (represented by: E. Traversa and E. Montaguti, Agents)

Defendant: Italian Republic (represented by: I.M. Braguglia, Agent, and D. Del Gaizo, avvocato dello Stato)

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 43 EC and 49 EC — Requirements for the exercise of the occupation of private security guard — Obligation to swear an oath of allegiance to the Italian Republic — Obligation to obtain an authorisation from the Prefetto

Operative part of the judgment

The Court:

1. *Declares that, in relation to the Consolidated Law on public security (Testo unico delle leggi di pubblica sicurezza), approved by Royal Decree No 773 of 18 June 1931, as amended:*

   — *by providing that it is obligatory to swear an oath of allegiance to the Italian Republic in order to work as a private security guard, the Italian Republic has failed to fulfil its obligations under Articles 43 EC and 49 EC;*

   — *by providing that private security activities may be pursued by service providers established in other Member States only after authorisation of limited territorial validity has been granted by the Prefetto, without requiring account to be taken of the obligations to which those service providers are already subject in the Member States of origin, the Italian Republic has failed to fulfil its obligations under Article 49 EC;*

   — *by providing that that authorisation is to have limited territorial validity and that the granting of such authorisation is to be subject to consideration of the number and size of security undertakings already operating in the area in question, the Italian Republic has failed to fulfil its obligations under Articles 43 EC and 49 EC;*

   — *by providing that private security undertakings must have a place of business in each province in which they operate, the Italian Republic has failed to fulfil its obligations under Article 49 EC;*

   — *by providing that the staff of those undertakings must be individually authorised to undertake private security work, without requiring account to be taken of the controls and verifications already carried out in the Member State of origin, the Italian Republic has failed to fulfil its obligations under Article 49 EC;*

   — *by providing that private security undertakings must have a minimum and/or a maximum number of employees in order to obtain authorisation, the Italian Republic has failed to fulfil its obligations under Articles 43 EC and 49 EC;*

   — *by providing that those undertakings must lodge a guarantee with the local Cassa depositi e prestiti, the Italian Republic has failed to fulfil its obligations under Articles 43 EC and 49 EC; and*

   — *by providing that the prices for private security services are to be fixed, with the approval of the Prefetto, within the limits of a predetermined margin for variation, the Italian Republic has failed to fulfil its obligations under Article 49 EC;*

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

(1) OJ C 60, 11.3.2006.

Judgment of the Court (First Chamber) of 18 December 2007 (Reference for a preliminary ruling from the Supremo Tribunal Administrativo — Portugal) — Fazenda Pública — Director Geral das Alfândegas v ZF Zefeser — Importação e Exportação de Produtos Alimentares Lda

(Case C-62/06) (1)

(Regulation (EEC) No 1697/79 — Article 3 — Post-clearance recovery of import duties — Act that could give rise to criminal court proceedings — Competent authority for classifying the act)

(2008/C 51/19)

Language of the case: Portuguese

Referring court

Supremo Tribunal Administrativo

Parties to the main proceedings

Applicant: Fazenda Pública — Director Geral das Alfândegas

Defendant: ZF Zefeser — Importação e Exportação de Produtos Alimentares Lda

Intervener in support of the defendant: Ministério Público

Re:

Reference for a preliminary ruling — Supremo Tribunal Administrativo — Interpretation of Article 3 of Council Regulation (EEC) No 1697/79 of 24 July 1979 on the post-clearance recovery of import duties or export duties which have not been required of the person liable for payment on goods entered for a customs procedure involving the obligation to pay such duties (OJ 1979 L 197, p. 1) — 'Act that could give rise to criminal court proceedings' — Concept and classification

Operative part of the judgment

Classification of an act as 'an act that could give rise to criminal court proceedings' within the meaning of the first paragraph of Article 3 of Council Regulation (EEC) No 1697/79 of 24 July 1979 on the post-clearance recovery of import duties or export duties which have not been required of the person liable for payment on goods entered for a customs procedure involving the obligation to pay such duties, falls within the competence of the customs authorities required to determine the exact amount of the import duties or export duties in question.

(1) OJ C 86, 8.4.2006.

Judgment of the Court (Second Chamber) of 18 December 2007 — Roderich Weißenfels v European Parliament

(Case C-135/06 P) ([1])

(Appeal — Remuneration — Dependent child allowance — Deduction of the amount of an allowance of like nature paid from other sources — Unlimited jurisdiction — Disputes of a financial character)

(2008/C 51/20)

Language of the case: German

Parties

Appellant: Roderich Weißenfels (represented by: G. Maximini, Rechtsanwalt)

Other party to the proceedings: European Parliament (represented by: L.G. Knudsen, M. Ecker and U. Rösslein, Agents)

Re:

Appeal brought against the judgment of the Court of First Instance (First Chamber) of 25 January 2006 in Case T-33/04 Roderich Weißenfels v Parliament, whereby the Court of First Instance dismissed the appellant's application for annulment of the decision of the Parliament of 26 June 2003 deducting from the sum of the double dependent child allowance, granted to the appellant under Article 67(3) of the Staff Regulations of officials of the European Communities, the amount of an allowance of like nature received from another source — Conditions for the application of the rule against overlapping referred to in Article 67(2) of the Staff Regulations — meaning of 'allowances of like nature'

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the Court of First Instance of the European Communities of 25 January 2006 in Case T-33/04 Roderich Weißenfels v European Parliament.*

2. *Annuls the decisions of the European Parliament of 26 June 2003 and 28 April 2004.*

3. *Orders the European Parliament to pay to Mr Weißenfels the arrears of dependent child allowances which he should have received as from 1 July 2003, together with interest at the statutory rate.*

4. *Orders the European Parliament to bear its own costs and to pay the costs incurred by Mr Weißenfels before the Court of First Instance of the European Communities and the Court of Justice of the European Communties.*

([1]) OJ C 108, 6.5.2006.

Judgment of the Court (Grand Chamber) of 11 December 2007 (Reference for a preliminary ruling from the Krajský soud v Ostravě — Czech Republic) — Skoma-Lux sro v Celní ředitelství Olomouc

(Case C-161/06) ([1])

(Act concerning the conditions of accession to the European Union — Article 58 — Community legislation — No translation into the language of a Member State — Enforceability)

(2008/C 51/21)

Language of the case: Czech

Referring court

Krajský soud v Ostravě

Parties to the main proceedings

Applicant: Skoma-Lux sro

Defendant: Celní ředitelství Olomouc

Re:

Reference for a preliminary ruling — Krajský soud v Ostravě (Czech Republic) — Interpretation of Article 58 of 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. 33) — Imposition of a fine on a Czech importing undertaking for making a customs declaration containing incorrect information, pursuant to Regulation (EEC) No 2454/93 which had not yet been published in Czech in the *Official Journal of the European Union*

Operative part of the judgment

1. *Article 58 of the Act concerning the conditions of accession to the European Union 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, precludes the obligations contained in Community legislation which has not been published in the Official Journal of the European Union in the language of a new Member State, where that language is an official language of the European Union, from being imposed on individuals in that State, even though those persons could have learned of that legislation by other means.*

2. *In holding that a Community regulation which is not published in the language of a Member State is unenforceable against individuals in that State, the Court is interpreting Community law for the purposes of Article 234 EC.*

(1) OJ C 154, 1.7.2006.

Judgment of the Court (Sixth Chamber) of 13 December 2007 — Kingdom of Spain v Council of the European Union

(Case C-184/06) (1)

(Fisheries — Regulation (EC) No 51/2006 — Allocation of catch quotas among Member States — Act of Accession of the Kingdom of Spain — End of the transitional period — Requirement of relative stability — Principle of non-discrimination — New fishing opportunities)

(2008/C 51/22)

Language of the case: Spanish

Parties

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

Defendant: Council of the European Union (represented by: A. De Gregorio Merino and A. Westerhof Löfflerova, Agents)

Intervener in support of the defendant): Commission of the European Communities (represented by: T. van Rijn and F. Jimeno Fernández, Agents)

Re:

Annulment of Council Regulation (EC) No 51/2006 of 22 December 2005 fixing for 2006 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where catch limitations are required (OJ 2006 L 16, p. 1) — Discrimination — Application of Article 20(2) of Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy (OJ 2002 L 358, p. 59)

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

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

(1) OJ C 154, 1.7.2007.

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

(Case C-186/06) (1)

(Failure of a Member State to fulfil obligations — Directive 79/409/EEC — Conservation of wild birds — Irrigable area of the Segarra-Garrigues Canal (Lleida))

(2008/C 51/23)

Language of the case: Spanish

Parties

Applicant: Commission of the European Communities (represented by: D. Recchia and A. Alcover San Pedro, Agents,)

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

Re:

Failure of a Member State to fulfil its obligations — Infringement of Articles 2, 3 and 4(1) and (4) of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (OJ 1979 L 103, p. 1) — Plan to irrigate the irrigable area of the Segarra-Garrigues Canal (Lleida)

Operative part of the judgment

The Court:

1. *Declares that, by authorising the irrigation project in the irrigable area of the Segarra-Garrigues Canal in the Province of Lleida, the Kingdom of Spain has failed to fulfil its obligations under the first sentence of Article 4(4) of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds to take appropriate measures to avoid, in the areas affected by that project which ought to have been classified as special protection areas, the prohibited disturbances;*

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

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

(1) OJ C 154, 1.7.2006.

Order of the Court of 18 December 2007 — Cementbouw Handel & Industrie BV v Commission of the European Communities

(Case C-202/06 P) ([1])

(Appeals — Competition — Regulation (EEC) No 4064/89 — Competence of the Commission — Notification of a concentration having a Community dimension — Commitments proposed by the parties — Effect on the Commission's competence — Authorisation subject to certain commitments — Principle of proportionality)

(2008/C 51/24)

Language of the case: English

Parties

Appellant: Cementbouw Handel & Industrie BV (represented by: W. Knibbeler, O. Brouwer and P. Kreijger, lawyers)

Other party to the proceedings: Commission of the European Communities (represented by: E. Gippini Fournier, A. Nijenhuis and A. Whelan, Agents)

Action

Appeal brought against the judgment of the Court of First Instance (Fourth Chamber, Extended Composition) of 23 February 2006 in Case T-282/02 Cementbouw Handel & Industrie v Commission, whereby the Court of First Instance dismissed an application for the annulment of Commission Decision (2002)2315 final of 26 June 2002 relating to a procedure pursuant to Regulation (EEC) No 4064/89 — Haniel/Cementbouw/JV (CVK), declaring a concentration entailing the acquisition of joint control of the cooperative CVK by Franz Haniel & Cie GmbH and Cememtbouw Handel & Industrie BV to be compatible with the common market and the EEA Agreement, on condition that certain commitments be complied with in order to correct the dominant position created on the Netherlands market in construction materials for load-bearing walls — Incorrect interpretation of Articles l, 2, and 3(1) of Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings (OJ 1989 L 395, p. 1) and of Article 8(2) of Council Regulation (EC) No 1310/97 of 30 June 1997 amending Regulation (EEC) No 4064/89 (OJ 1997 L 180, p. 1) — Breach of the principle of proportionality

Operative part of the judgment

1. *Dismisses the appeal;*

2. *Orders Cementbouw Handel & Industrie BV to pay the costs.*

([1]) OJ C 178, 29.7.2006.

Judgment of the Court (First Chamber) of 18 December 2007 (Reference for a preliminary ruling from the Audiencia Nacional, Sala de lo Contencioso-Administrativo — Spain) — Asociación Profesional de Empresas de Reparto y Manipulado de Correspondencia v Administración General del Estado

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

(Public procurement — Liberalisation of postal services — Directives 92/50/EEC and 97/67/EC — Articles 43 EC, 49 EC and 86 EC — National legislation allowing public authorities to conclude agreements for the provision of both reserved and non-reserved postal services with a publicly owned company, namely the provider of universal postal service in the Member State concerned, without regard to the rules governing the award of public service contracts)

(2008/C 51/25)

Language of the case: Spanish

Referring court

Audiencia Nacional, Sala de lo Contencioso-Administrativo

Parties to the main proceedings

Applicant: Asociación Profesional de Empresas de Reparto y Manipulado de Correspondencia

Defendant: Administración General del Estado

Re:

Reference for a preliminary ruling — Audiencia Nacional, Sala de lo Contencioso-Administrativo — Interpretation of Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service (OJ 1998 L 15, p. 14), as amended by Directive 2002/39/EC (OJ 2002 L 176, p. 21) — Agreement concluded without regard to the rules governing the award of public service contracts between a department of the State administration and a publicly owned company covering, in particular, the provision of postal services, including those not reserved to the universal service providers

Operative part of the judgment

1) *Community law must be interpreted as not precluding legislation of a Member State that allows public authorities to entrust, without regard to the rules governing the award of public service contracts, the provision of postal services reserved, in a manner consistent*

with Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service, to a public limited company whose capital is wholly state-owned and which, in that State, is the provider of the universal postal service.

2) *Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts, as amended by Commission Directive 2001/78/EC of 13 September 2001, must be interpreted as precluding legislation of a Member State that allows public authorities to entrust, without regard to the rules governing the award of public service contracts, the provision of non-reserved postal services within the meaning of Directive 97/67 to a public limited company whose capital is wholly state-owned and which, in that State, is the provider of the universal postal service, in so far as the contracts to which that legislation applies*

— *reach the relevant threshold as provided for in Article 7(1) of Directive 92/50, as amended by Directive 2001/78, and*

— *constitute contracts within the meaning of Article 1(a) of Directive 92/50, as amended by Directive 2001/78, concluded in writing for pecuniary interest,*

which are matters for the national court to establish.

3) *Articles 43 EC, 49 EC and 86 EC, as well as the principles of equal treatment, non-discrimination by reason of nationality and transparency, must be interpreted as precluding legislation of a Member State that allows public authorities to entrust, without regard to the rules governing the award of public service contracts, the provision of non-reserved postal services within the meaning of Directive 97/67 to a public limited company whose capital is wholly state-owned and which, in that State, is the provider of universal postal services, in so far as the contracts to which that legislation applies*

— *do not reach the relevant threshold as provided for in Article 7(1) of Directive 92/50, as amended by Directive 2001/78, and*

— *do not in actual fact constitute a unilateral administrative measure creating obligations solely for the provider of the universal postal service and departing significantly from the normal conditions of a commercial offer made by that company,*

which are matters for the national court to establish.

(1) OJ C 178, 29.7.2006.

Judgment of the Court (Third Chamber) of 13 December 2007 (reference for a preliminary ruling from the Conseil d'État (Belgium)) — United Pan-Europe Communications Belgium SA, Coditel Brabant SA, Société Intercommunale pour la Diffusion de la Télévision (Brutele), Wolu TV ASBL v État Belge

(Case C-250/06) (1)

(Article 49 EC — Freedom to provide services — National legislation requiring cable operators to broadcast programmes transmitted by certain private broadcasters ('must carry') — Restriction — Overriding reason relating to the general interest — Maintenance of pluralism in a bilingual region)

(2008/C 51/26)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicants: United Pan-Europe Communications Belgium SA, Coditel Brabant SPRL, Société Intercommunale pour la Diffusion de la Télévision (Brutele), Wolu TV ASBL

Defendant: État Belge

Intervening parties: BeTV SA, Tvi SA, Télé Bruxelles ASBL, Belgian Business Television SA, Media ad Infinitum SA, TV5-Monde,

Re:

Reference for a preliminary ruling — Conseil d'État (Belgium) — Interpretation of Articles 49 EC and 86 EC — Definition of 'special right' — Obligation imposed on cabled distribution companies to distribute television programmes broadcast by certain broadcasting organisations established mainly in national territory

Operative part of the judgment

Article 49 EC is to be interpreted as meaning that it does not preclude legislation of a Member State, such as the legislation at issue in the main proceedings, which requires, by virtue of a must-carry obligation, cable operators providing services on the relevant territory of that State to broadcast television programmes transmitted by private broadcasters falling under the public powers of that State and designated by the latter, where such legislation:

— *pursues an aim in the general interest, such as the retention, pursuant to the cultural policy of that Member State, of the pluralist character of the television programmes available in that territory, and*

— *is not disproportionate in relation to that objective, which means that the manner in which it is applied must be subject to a transparent procedure based on objective non-discriminatory criteria known in advance.*

It is for the national court to determine whether those conditions are satisfied.

(1) OJ C 212, 2.9.2006.

Judgment of the Court (Grand Chamber) of 11 December 2007 (reference for a preliminary ruling from the Consiglio di Stato — Italy) — Autorità Garante della Concorrenza e del Mercato v Ente tabacchi italiani — ETI SpA, Philip Morris Products SA, Philip Morris Holland BV, Philip Morris GmbH, Philip Morris Products Inc. and Philip Morris International Management SA; and Philip Morris Products SA, Philip Morris Holland BV, Philip Morris GmbH, Philip Morris Products Inc. and Philip Morris International Management SA v Autorità Garante della Concorrenza e del Mercato, Ente tabacchi italiani — ETI SpA; and Philip Morris Products SA, Philip Morris Holland BV, Philip Morris GmbH, Philip Morris Products Inc. and Philip Morris International Management SA v Autorità Garante della Concorrenza e del Mercato, Amministrazione autonoma dei monopoli di Stato, Ente tabacchi italiani — ETI SpA

(Case C-280/06) (1)

(Competition — Imposition of fines where undertakings succeed each other — Principle of personal responsibility — Entities belonging to the same group of undertakings or answering to the same public authority — National law referring to Community competition law as source of interpretation — Questions referred for a preliminary ruling — Jurisdiction of the Court of Justice)

(2008/C 51/27)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Appelant: Autorità Garante della Concorrenza e del Mercato

Respondents: Ente tabacchi italiani — ETI SpA, Philip Morris Products SA, Philip Morris Holland BV, Philip Morris GmbH, Philip Morris Products Inc., Philip Morris International Management SA

Appellants: Philip Morris Products SA, Philip Morris Holland BV, Philip Morris GmbH, Philip Morris Products Inc. and Philip Morris International Management SA

Respondents: Autorità Garante della Concorrenza e del Mercato, Ente tabacchi italiani — ETI SpA

Appellants: Philip Morris Products SA, Philip Morris Holland BV, Philip Morris GmbH, Philip Morris Products Inc. and Philip Morris International Management SA

Respondents: Autorità Garante della Concorrenza e del Mercato, Amministrazione autonoma dei monopoli di Stato, Ente tabacchi italiani — ETI SpA

Re:

Preliminary ruling — Consiglio di Stato — Interpretation of Article 81 EC — Agreement concerning the sale price of cigarettes in beach of national anti-trust legislation — Attribution to the legal person which is the economic successor of an undertaking of liability in respect of breaches committed by that undertaking before its activities were taken over by that successor

Operative part of the judgment

Article 81 EC et seq. must be interpreted as meaning that, in the case of entities answering to the same public authority, where conduct amounting to one and the same infringement of the competition rules was adopted by one entity and subsequently continued until it ceased by another entity which succeeded the first, which has not ceased to exist, that second entity may be penalised for that infringement in its entirety if it is established that those two entities were subject to the control of the said authority.

(1) OJ C 224, 16.9.2006.

Judgment of the Court (Third Chamber) of 18 December 2007 (reference for a preliminary ruling from the Bundesfinanzhof (Germany)) — Hans-Dieter Jundt, Hedwig Jundt v Finanzamt Offenburg

(Case C-281/06) (1)

(Freedom to provide services — Secondary teaching activity — Concept of 'remuneration' — Allowances for professional expenses — Legislation concerning tax exemption — Conditions — Remuneration paid by a national university)

(2008/C 51/28)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicants: Hans-Dieter Jundt, Hedwig Jundt

Defendant: Finanzamt Offenburg

Re:

Reference for a preliminary ruling — Bundesfinanzhof — Interpretation of Articles 49 EC and 149 EC — Teaching activity carried on as a secondary professional activity for a public-law legal person (a university) for remuneration which may be regarded as an expense allowance — National legislation restricting the tax exemption laid down for such remuneration to that paid by public-law legal persons established in the Member State

Operative part of the judgment

1. *A teaching activity carried out by a taxpayer of one Member State for a legal person established under public law, in the present case a university, situated in another Member State comes within the scope of Article 49 EC, even if it is carried out on a secondary basis and in a quasi-honorary capacity.*

2. *The restriction on the freedom to provide services constituted by the fact that national legislation confines the application of an exemption from income tax to remuneration paid by universities, that is to say, public-law legal persons, established on national territory, in return for teaching activities carried out on a secondary basis, and refuses to apply that exemption where that remuneration is paid by a university established in another Member State, is not justified by overriding reasons relating to the public interest.*

3. *The fact that the Member States are themselves competent to organise their respective education systems is not such as to render compatible with Community law national legislation which confines the benefit of a tax exemption to taxpayers carrying out activities for or on behalf of national public universities.*

([1]) OJ C 224, 16.9.2006.

Judgment of the Court (Second Chamber) of 18 December 2007 (reference for a preliminary ruling from the Cour de cassation (France)) — Société Pipeline Méditerranée et Rhône (SPMR) v Administration des douanes et droits indirects, Direction nationale du renseignement et des enquêtes douanières (DNRED)

(Case C-314/06) ([1])

(Directive 92/12/EEC — Excise duties — Mineral Oils — Losses — Exemption from tax — Force majeure)

(2008/C 51/29)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Applicant: Société Pipeline Méditerranée et Rhône (SPMR)

Defendant: Administration des douanes et droits indirects, Direction nationale du renseignement et des enquêtes douanières (DNRED)

Re:

Reference for a preliminary ruling — Cour de cassation (France) — Interpretation of Article 14(1) of Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products (OJ 1992 L 76, p. 1) — Exemption from duty provided for in respect of losses occurring under suspension arrangements which are attributable to fortuitous events or *Force majeure* and in respect of losses inherent in the nature of the products during production and processing, storage and transport — Applicability of that exemption to the loss of petroleum products resulting from leaks from and then the bursting of a pipeline operated by the approved warehousekeeper

Operative part of the judgment

1. *'Force majeure' within the meaning of the first sentence of Article 14(1) of Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products, as amended by Council Directive 94/74/EC of 22 December 1994, refers to abnormal and unforeseeable circumstances extraneous to the authorised warehousekeeper, the consequences of which, despite the exercise by him of all due care, could not have been avoided. The requirement that the circumstances must be extraneous to the authorised warehousekeeper is not limited to those circumstances which are outside his control in a material or physical sense, but refers also to circumstances which are objectively outside the authorised warehousekeeper's control or situated outside his sphere of responsibility.*

2. *Losses of part of petroleum products which escaped from a pipeline, caused by the fact that those products were in a liquid state and the type of soil they spilled on prevented their recovery, cannot be regarded as 'inherent in the nature of the products' within the meaning of the second sentence of Article 14(1) of Directive 92/12, as amended by Directive 94/74.*

([1]) OJ C 224, 16.9.2006.

Judgment of the Court (Fourth Chamber) of 13 December 2007 (reference for a preliminary ruling from the Oberlandesgericht Düsseldorf — Germany) — Bayerischer Rundfunk, Deutschlandradio, Hessischer Rundfunk, Mitteldeutscher Rundfunk, Norddeutscher Rundfunk, Radio Bremen, Rundfunk Berlin-Brandenburg, Saarländischer Rundfunk, Südwestrundfunk, Westdeutscher Rundfunk, Zweites Deutsches Fernsehen v GEWA Gesellschaft für Gebäudereinigung und Wartung mbH

(Case C-337/06) ([1])

(Directives 92/50/EEC and 2004/18/EC — Public service contracts — Public broadcasting bodies — Contracting authorities — Bodies governed by public law — Condition that the activity of the institution be 'financed, for the most part, by the State')

(2008/C 51/30)

Language of the case: German

Referring court

Oberlandesgericht Düsseldorf

Parties to the main proceedings

Applicants: Bayerischer Rundfunk, Deutschlandradio, Hessischer Rundfunk, Mitteldeutscher Rundfunk, Norddeutscher Rundfunk, Radio Bremen, Rundfunk Berlin-Brandenburg, Saarländischer Rundfunk, Südwestrundfunk, Westdeutscher Rundfunk, Zweites Deutsches Fernsehen

Defendant: GEWA Gesellschaft für Gebäudereinigung und Wartung mbH

Intervener in support of the defendant: Heinz W. Warnecke

Re:

Reference for a preliminary ruling — Oberlandesgericht Düsseldorf — Interpretation of indent (c) of the second subparagraph of Article 1(9) and Article 16(b) of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ L 134 of 30.4.2004, p. 114) — Award of cleaning services by an association of broadcasting bodies indirectly financed by the State without compliance with formal European procurement procedure — Concept of 'contracting authority'.

Operative part of the judgment

1) *The first condition of the third indent of the second subparagraph of Article 1(b) of Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts must be interpreted as meaning that there is financing, for the most part, by the State when the activities of public broadcasting bodies such as those in the main proceedings are financed for the most part by a fee payable by persons who possess a receiver, which is imposed, calculated and levied according to rules such as those in the main proceedings;*

2) *The first condition of the third indent of the second subparagraph of Article 1(b) of Directive 92/50 must be interpreted as meaning that, that, if the activities of public broadcasting bodies such as those in the main proceedings are financed according to the procedures set out when examining the first question, the condition of 'financing … by the State' does not require that there be direct interference by the State or by other public authorities in the awarding, by such bodies, of a contract such as that at issue in the main proceedings;*

3) *Article 1(a)(iv) of Directive 92/50 must be interpreted as meaning that only the public contracts specified in that provision are excluded from the scope of that directive.*

([1]) OJ C 281, 18.11.2006.

Judgment of the Court (Fourth Chamber) of 18 December 2007 (reference for a preliminary ruling from the Tribunale amministrativo regionale per la Lombardia, Italy) — Frigerio Luigi & C. Snc v Comune di Triuggio

(Case C-357/06) ([1])

(Directive 92/50/EEC — Public service contracts — National legislation restricting the award of local public services of economic interest to companies with share capital — Compatibility)

(2008/C 51/31)

Language of the case: Italian

Referring court

Tribunale amministrativo regionale per la Lombardia (Italy)

Parties to the main proceedings

Applicant: Frigerio Luigi & C. Snc

Defendant: Comune di Triuggio

Intervening party: Azienda Servizi Multisettoriali Lombarda — A. S.M.L. SpA

Re:

Preliminary ruling — Tribunale amministrativo regionale per la Lombardia — Interpretation of Arts 39, 43, 48 and 81 EC, Article 26(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), Article 4(1) of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ 2004 L 134, p. 114), Article 9(1) of Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39) and Article 7(1) of Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste (OJ 2006 L 114, p. 9) — Procedure for the award of public service contracts — Environmental hygiene service — Domestic legislation authorising joint stock companies alone to hold contracts for waste management and disposal services

Operative part of the judgment

Article 26(1) and (2) of Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts, as amended by Commission Directive 2001/78/EC of 13 September 2001, precludes national provisions, such as those at issue in the main proceedings, which exclude candidates or tenderers entitled under the law of the Member State concerned to provide the service in question, including those composed of groups of service providers, from submitting a tender, in a procedure for the award of a public service contract with a value greater than the threshold for application of Directive 92/50, solely on the ground that those candidates or tenderers do not have a legal form corresponding to a specific category of legal persons, namely that of a company with share capital. It is for the national court, to the full extent of its discretion under national law, to interpret and apply national law in accordance with the requirements of Community law and, in so far as such an interpretation is not possible, to disapply any provision of national law which is contrary to those requirements.

([1]) OJ C 281, 18.11.2006.

Judgment of the Court (First Chamber) of 18 December 2007 (reference for a preliminary ruling from the Tribunal administratif de Lyon — France) — Cedilac SA v Ministère de l'Économie, des Finances et de l'Industrie

(Case C-368/06) ([1])

(Sixth VAT Directive — Right to deduct — Principles of immediate deduction and fiscal neutrality — Carry forward of the excess VAT to the following period or refund — One-month delay rule — Transitional provisions — Retention of the exemption)

(2008/C 51/32)

Language of the case: French

Referring court

Tribunal administratif de Lyon

Parties to the main proceedings

Applicant: Cedilac SA

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

Re:

Reference for a preliminary ruling — Tribunal administratif de Lyon — Interpretation of Articles 17 and 18(4) 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) — Conditions for the exercise of the right to deduct VAT charged on the price of a taxable transaction when the amount of authorised transactions exceeds the amount of tax due for a given tax period — Excess carried forward to the next period or refunded

Operative part of the judgment

Articles 17 and 18(4) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, are to be interpreted as not precluding national measures such as the transitional measures provided for by Law No 93-859 of 22 June 1993, the amending Finance Law for 1993, which are designed to accompany the abolition of a national derogating provision authorised by Article 28(3)(d) of the same directive, in so far as the national court verifies that, in its application to the specific case before it, those measures reduce the effects of the national derogating provision.

([1]) OJ C 281, 18.11.2006.

Judgment of the Court (Fourth Chamber) of 13 December 2007 (Reference for a preliminary ruling from the VAT and Duties Tribunal, London — United Kingdom) — Asda Stores Ltd v Commissioners of Her Majesty's Revenue and Customs

(Case C-372/06) ([1])

(Community Customs Code — Implementing measures — Regulation (EEC) No 2454/93 — Annex 11 — Non-preferential origin of goods — Television receivers — Concept of substantial processing or working — Added value test — Validity and interpretation — EEC-Turkey Association Agreement and Decision No 1/95 of the Association Council — Interpretation)

(2008/C 51/33)

Language of the case: English

Referring court

VAT and Duties Tribunal, London

Parties to the main proceedings

Applicant: Asda Stores Ltd

Defendant: Commissioners of Her Majesty's Revenue and Customs

Re:

Reference for a preliminary ruling — VAT and Duties Tribunal, London — Validity of Annex 11 to Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ 1993 L 253, p. 1) — Criteria for determining the non-preferential origin of goods — Television receivers manufactured in Turkey incorporating cathode-ray tubes originating in China or Korea.

Operative part of the judgment

1) *Examination of the first question has disclosed nothing capable of affecting the validity of the provisions in column 3 under heading 8528 of the Combined Nomenclature, mentioned in Annex 11 to Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code.*

2) *The provisions in column 3 under heading 8528 of the Combined Nomenclature, mentioned in Annex 11 to Regulation No 2454/93 must be interpreted as meaning that, in calculating the value acquired by colour television receivers on their manufacture in circumstances such as those at issue in the main proceedings, there is no cause to determine separately the non-preferential origin of a distinct part, such as a chassis.*

3) *The provisions of Article 44 of Decision No 1/95 of the EEC-Turkey Association Council of 22 December 1995, which laid down the conditions for the entry into force of the final phase of the Customs Union, read in conjunction with those of Article 47(1) to (3) of the Additional Protocol, signed on 23 November 1970 in Brussels and concluded, approved and confirmed on behalf of the Community by Council Regulation (EEC) No 2760/72 of 19 December 1972, annexed to the Agreement establishing an Association between the European Economic Community and Turkey signed at Ankara on 12 September 1963 by the Republic of Turkey, on the one part, and by the Member States of the EEC and the Community, on the other part, and concluded, approved and confirmed on behalf of the Community by Council Decision 64/732/EEC of 23 December 1963, and the provisions of Articles 45 and 46 of the said Decision No 1/95 do not have direct effect before national courts and do not therefore allow individual operators validly to plead their infringement in order to resist payment of anti-dumping duties normally due. The provisions of Article 47 of Decision No 1/95 have direct effect and the individuals to whom they apply have the right to rely on them before the courts of the Member States.*

4) *The provisions of Article 47 of Decision No 1/95 must be interpreted as not requiring that the information which the contracting parties which adopted anti-dumping measures must provide to the Customs Union Joint Committee pursuant to Article 46 of Decision No 1/95 or to the Association Council pursuant to Article 47(2) of the Additional Protocol, must be brought to the knowledge of operators.*

([1]) OJ C 294, 2.12.2006.

Judgment of the Court (First Chamber) of 13 December 2007 (reference for a preliminary ruling from the Finanzgericht Düsseldorf — Germany) — BATIG Gesellschaft für Beteiligungen mbH v Hauptzollamt Bielefeld

(Case C-374/06) ([1])

(Preliminary reference — Tax provisions — Harmonisation of laws — Directive 92/12/EEC — Products subject to excise duty — Tax markings — Irregular departure from a suspension arrangement — Theft — Release for consumption in the Member State of the theft — Non-reimbursement of the tax markings of a Member State already affixed to the stolen products)

(2008/C 51/34)

Language of the case: German

Referring court

Finanzgericht Düsseldorf

Parties to the main proceedings

Applicant: BATIG Gesellschaft für Beteiligungen mbH

Defendant: Hauptzollamt Bielefeld

Re:

Reference for a preliminary ruling — Finanzgericht Düsseldorf — Interpretation of Council Directive 92/12/EEC of 25 February on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products (OJ 1992 L 76, p. 1) — Refusal of a Member State to repay the amount paid for tax markings attached to tobacco products which then irregularly left the duty suspension arrangements of another Member State with the consequence that excise duty was paid in the latter State — Theft of cigarettes.

Operative part of the judgment

Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products, as amended by Council Regulation (EC) No 807/2003 of 14 April 2003 adapting to Decision 1999/468/EC the provisions relating to committees which assist the Commission in the exercise of its implementing powers laid down in Council instruments adopted in accordance with the consultation procedure (unanimity), does not preclude the legislation of a Member State which excludes the reimbursement of the amount paid to obtain tax markings issued by that Member State when those markings have been affixed to products subject to excise duty before being released for consumption in that Member State, when those products have been stolen in another Member State, involving the payment of excise duties in that other Member State, and when evidence has not been furnished that the stolen products will not be marketed in the Member State which issued those markings.

([1]) OJ C 326, 30.12.2006.

Judgment of the Court (Third Chamber) of 13 December 2007 (reference for a preliminary ruling from the Bundesfinanzhof — Germany) — Landesanstalt für Landwirtschaft v Franz Götz

(Case C-408/06) ([1])

(Sixth VAT Directive — Economic activity — Taxable persons — Bodies governed by public law — Milk-quota sales point — Transactions of agricultural intervention agencies and staff shops — Significant distortions of competition — Geographic market)

(2008/C 51/35)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Landesanstalt für Landwirtschaft

Defendant: Franz Götz

Re:

Reference for a preliminary ruling — Bundesfinanzhof — Interpretation of the second and third subparagraphs of Article 4(5) of and points 7 and 12 in Annex D to 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) — Allocation of reference quantities of milk invoiced without a separate statement of the VAT — Assessment of the classification as a taxable person of a body established by a *Land* which transfers reference quantities of milk to milk producers against prepayment

Operative part of the judgment

1. *A milk-quota sales point is neither an agricultural intervention agency within the meaning of the third subparagraph of Article 4(5) 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 2001/4/EC of 19 January 2001, read in conjunction with point 7 of Annex D thereto, nor a staff shop within the meaning of the third subparagraph of Article 4(5) of that directive, read in conjunction with point 12 of Annex D thereto;*

2. *The treatment of a milk-quota sales point as a non-taxable person in respect of activities or transactions in which it engages as a public authority, within the meaning of Article 4(5) of the Sixth Directive, as amended by Directive 2001/4/EC, cannot give rise to significant distortions of competition, by reason of the fact that it is not faced, in a situation such as that at issue in the main proceedings, with private operators providing services which are in competition with the public services. As that finding applies in respect of all milk-quota sales points operating within a given delivery reference quantity transfer area, defined by the Member State concerned, that area constitutes the relevant geographic market for the purpose of establishing whether there are significant distortions of competition.*

([1]) OJ C 310, 16.12.2006.

Judgment of the Court (Second Chamber) of 18 December 2007 (Reference for a preliminary ruling from the Finanzgericht Hamburg — Germany) — Per Grønfeldt and Tatiana Grønfeldt v Finanzamt Hamburg — Am Tierpark

(Case C-436/06) ([1])

(Free movement of capital — Taxation — Income tax — National legislation concerning the taxation of profits made from the sale of shareholdings (shares) in limited companies)

(2008/C 51/36)

Language of the case: German

Referring court

Finanzgericht Hamburg

Parties to the main proceedings

Applicants: Per Grønfeldt and Tatiana Grønfeldt

Defendant: Finanzamt Hamburg — Am Tierpark

Re:

Reference for a preliminary ruling — Finanzgericht Hamburg — Interpretation of Article 56 EC — Tax on the profits made from the sale of shares in limited companies — National legislation making taxation conditional upon a shareholding of at least 10 % if the company concerned is subject to unlimited corporation tax in the Member State, but conditional upon a shareholding of at least 1 % if the company concerned is established in another Member State

Operative part of the judgment

Article 56 EC is to be interpreted as precluding the legislation of a Member State, such as that at issue in the main proceedings, by which the profits from a sale of shares in 2001 in a limited company established in another Member State are immediately taxable where the seller had held, either directly or indirectly, a share of at least 1 % of the company's capital within the previous five years, whereas the profits from the sale of shares in 2001, in the same circumstances, in a limited company established in that first Member State subject to unlimited corporation tax were subject to tax only in the case of a substantial shareholding of at least 10 %.

([1]) OJ C 326, 30.12.2006.

Judgment of the Court (Second Chamber) of 13 December 2007 (reference for a preliminary ruling from the Bundesgerichtshof (Germany)) — FBTO Schadeverzekeringen NV v Jack Odenbreit

(Case C-463/06) ([1])

(Regulation (EC) No 44/2001 — Jurisdiction in matters relating to insurance — Liability insurance — Action brought by the injured party directly against the insurer — Rule of jurisdiction of the courts for the place where the plaintiff is domiciled)

(2008/C 51/37)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: FBTO Schadeverzekeringen NV

Defendant: Jack Odenbreit

Re:

Reference for a preliminary ruling — Bundesgerichtshof — Interpretation of Articles 9(1)(b) and 11(2) 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) — Legal proceedings against the civil liability insurance provider in the Member State in which the injured party is domiciled — Beneficiary of insurance

Operative part of the judgment

The reference in Article 11(2) 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 to Article 9(1)(b) of that regulation is to be interpreted as meaning that the injured party may bring an action directly against the insurer before the courts for the place in a Member State where that injured party is domiciled, provided that such a direct action is permitted and the insurer is domiciled in a Member State.

([1]) OJ C 326, 30.12.2006.

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

(Case C-481/06) ([1])

(Failure of a Member State to fulfil obligations — Public procurement — Infringement of Article 6(3) of Directive 93/36/EC — General principles of the Treaty — Principle of equal treatment and obligation of transparency — National rules allowing use of the negotiated procedure for public supply contracts relating to certain medical equipment)

(2008/C 51/38)

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: S. Chala and D. Tsagkaraki, Agents)

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 6(3) of Council Directive 93/36/EEC of 14 June 1993 coordinating procedures for the award of public supply contracts (OJ 1993 L 199, p. 1) and of the obligation to ensure effective and fair competition — National provision placing all material for medical use into categories and setting a specific maximum price for each category — Provision forming part of a legislative framework which allows use of the negotiated procedure for public supply contracts in respect of whole groups of products of that nature which are not comparable

Operative part of the judgment

The Court:

1. *Declares that, by retaining in force Article 7(2) of Law 2955/2001 relating to the 'Supplies of hospitals and other health units of regional health and pension schemes and other provisions' and Joint Ministerial Decisions DY6a/oik.38611 and DY6a/oik.38609 of 12 April 2005, the Hellenic Republic has failed to fulfil its obligations under Article 6(3) of 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 and has infringed general principles of the Treaty, in particular equal treatment and the obligation of transparency;*

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

([1]) OJ C 326, 30.12.2006.

Judgment of the Court (Seventh Chamber) of 13 December 2007 (reference for a preliminary ruling from the Hoge Raad der Nederlanden — The Netherlands) — Staatssecretaris van Financiën v Road Air Logistics Customs BV

(Case C-526/06) ([1])

(Community Customs Code and implementing regulation — Community transit — Offence — Proof of the regularity of the transit operation or of the place of the offence — Failure to grant a period of three months in which to furnish such proof — Repayment of customs duties — Concept of 'legally owed')

(2008/C 51/39)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Appellant: Staatssecretaris van Financiën

Respondent: Road Air Logistics Customs BV

Re:

Reference for a preliminary ruling — Hoge Raad der Nederlanden — Interpretation of Article 236 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1) and of Article 379 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 (OJ 1993 L 253, p. 1) — Reimbursement or remission of customs duties — Amount not legally owed — Determination of the place in which the customs debt was incurred

Operative part of the judgment

Article 236(1), first subparagraph, of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code must be interpreted to mean that the failure of the national customs authorities to determine, in accordance with Article 379 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92, the place where the customs debt was incurred does not have the effect of rendering the amount of customs duties not legally owed.

Nevertheless, the Member State to which the office of departure belongs can proceed to recovery of import duties only if, pursuant to Article 379(2) of Regulation No 2454/93, it has first informed the principal that it has a period of three months in which to furnish proof of the place where the infringement or the irregularity was actually committed and such proof has not been provided within that period.

(1) OJ C 42, 24.2.2007.

Judgment of the Court (Seventh Chamber) of 13 December 2007 — Commission of the European Communities v Kingdom of Belgium

(Case C-528/06) (1)

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

(2008/C 51/40)

Language of the case: French

Parties

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

Defendant: Kingdom of Belgium (represented by: D. Haven, acting as Agent)

Re:

Failure of a Member State to fulfil obligations — Failure to adopt, 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 failing to adopt the laws, regulations and administrative provisions 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 Kingdom of Belgium has failed to fulfil its obligations under that directive;*

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

(1) OJ C 42, 24.2.2007.

Judgment of the Court (Eighth Chamber) of 18 December 2007 — Commission of the European Communities v Italian Republic

(Case C-85/07) (1)

(Failure of a Member State to fulfil obligations — Directive 2000/60/EC — Articles 5(1) and 15(2) — Community action in the field of water policy — River basin district — Summary report and analyses — Communication thereof — None)

(2008/C 51/41)

Language of the case: Italian

Parties

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

Defendants: Italian Republic (represented by: I. Braguglia, Agent and G. Fiengo, lawyer)

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 5(1) and 15(2) of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ 2000 L 327, p. 1) — Failure to submit summary reports on the analyses required under Article 5 as regards certain river basin districts — Failure to carry out the analyses and studies provided for in Article 5(1) of that directive

Operative part of the judgment

The Court:

1. *Declares that, in respect of the pilot river basin district of the River Serchio and a part of the river basin districts of the Eastern Alps and the Northern, Central and Southern Apennines, by failing to submit a summary report on the analyses required under Article 5(1) of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy, as provided for in Article 15(2) thereof, and by failing to carry out the analyses and the study referred to in Article 5(1) thereof, the Italian Republic has failed to fulfil its obligations under Articles 5(1) and 15(2) of that directive;*

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

(1) OJ C 95, 28.4.2007.

Judgment of the Court (Sixth Chamber) of 13 December 2007 — Commission of the European Communities v Grand Duchy of Luxembourg

(Case C-244/07) ([1])

(Failure of a Member State to fulfil obligations — Directive 2004/50/EC — Interoperability of the trans-European high-speed rail system and of the trans-European conventional rail system — Failure to transpose within the prescribed period)

(2008/C 51/42)

Language of the case: French

Parties

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

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

Re:

Failure of a Member State to fulfil obligations — Failure to adopt, within the prescribed period, the provisions necessary to comply with Directive 2004/50/EC of the European Parliament and of the Council of 29 April 2004 amending Council Directive 96/48/EC on the interoperability of the trans-European high-speed rail system and Directive 2001/16/EC of the European Parliament and of the Council on the interoperability of the trans-European conventional rail system (OJ 2004 L 164, p. 114)

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt, within the prescribed period, the laws, regulations and administrative provisions necessary to comply with Directive 2004/50/EC of the European Parliament and of the Council of 29 April 2004 amending Council Directive 96/48/EC on the interoperability of the trans-European high-speed rail system and Directive 2001/16/EC of the European Parliament and of the Council on the interoperability of the trans-European conventional rail system, the Grand Duchy of Luxembourg has failed to comply with its obligations under that directive;*

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

([1]) OJ C 155, 7.7.2007.

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

(Case C-257/07) ([1])

(Failure of a Member State to fulfil its obligations — Directive 2004/17/EC — Coordination of the procurement procedures of entities operating in the water, energy, transport and postal services sectors — Failure to transpose within the period prescribed)

(2008/C 51/43)

Language of the case: Swedish

Parties

Applicant: Commission of the European Communities (represented by: D. Kukovec and K. Nyberg, Agents)

Defendant: Kingdom of Sweden (represented by: A. Falk, Agent)

Re:

Failure of a Member State to fulfil its obligations — Failure to adopt, within the period prescribed, the measures necessary to comply with Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ 2004 L 134, p. 1)

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt, within the prescribed period, the laws, regulations and administrative provisions necessary to comply with Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors, the Kingdom of Sweden has failed to fulfil its obligations under that directive;*

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

([1]) OJ C 183, 4.8.2007.

Judgment of the Court (Seventh Chamber) of 18 December 2007 — Commission of the European Communities v Portuguese Republic

(Case C-284/07) ([1])

(Failure of a Member State to fulfil obligations — Directive 2005/51/EC — Public procurement — Procedures for the award of contracts — Failure to transpose within the prescribed period)

(2008/C 51/44)

Language of the case: Portuguese

Parties

Applicant: Commission of the European Communities (represented by: A. Caeiros, D. Kukovec and P. Andrade, Agents)

Defendant: Portuguese Republic (represented by: M.L. Fernandes, Agent)

Re:

Failure of a Member State to fulfil obligations — Failure to adopt, within the period prescribed, the measures necessary to comply with Commission Directive 2005/51/EC of 7 September 2005 amending Annex XX to Directive 2004/17/EC and Annex VIII to Directive 2004/18/EC of the European Parliament and of the Council on public procurement (OJ 2005 L 257, p. 127)

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Commission Directive 2005/51/EC of 7 September 2005 amending Annex XX to Directive 2004/17/EC and Annex VIII to Directive 2004/18/EC of the European Parliament and of the Council on public procurement, the Portuguese Republic has failed to fulfil its obligations under that directive;*

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

([1]) OJ C 183, 4.8.2007.

Judgment of the Court (Seventh Chamber) of 13 December 2007 — Commission of the European Communities v Grand Duchy of Luxembourg

(Case C-294/07) ([1])

(Failure of a Member State to fulfil obligations — Right of citizens of the Union and their family members to move and reside freely within the territory of the Member States — Failure to transpose into national law within the prescribed period)

(2008/C 51/45)

Language of the case: French

Parties

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

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

Re:

Failure of a Member State to fulfil obligations — Failure to adopt, within the prescribed period, the measures necessary to comply with Directive 2004/38/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 and corrigenda — OJ 2004 L 229, p. 35 and OJ 2005 L 197, p. 34)

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2004/38/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, 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 211, 8.9.2007.

Order of the Court of 4 October 2007 — Fred Olsen SA v Commission of the European Communities, Kingdom of Spain

(Case C-320/05 P) ([1])

(Appeal — State aid — Maritime transport — Maritime cabotage — Existing aid — New aid — Aid that may be declared compatible with the common market — Service of general economic interest — Appeal in part manifestly inadmissible and in part manifestly unfounded)

(2008/C 51/46)

Language of the case: Spanish

Parties

Applicant: Fred Olsen SA (represented by R. Marín Correa, abogado)

Other parties to the proceedings: Commission of the European Communities (represented by J.L. Buendía Sierra and R. Vidal Puig, Agents), Kingdom of Spain (represented by N. Díaz Abad, Agent)

Re:

Appeal against the judgment of the Court of First Instance (Second Chamber, Extended Composition) of 15 June 2005 in Case T-17/02 *Olsen* v *Commission*, in which the Court rejected the action for annulment of the Commission's decision of 25 July 2001 relating to State aid file NN 48/2001 — Spain — Aid for the Transmediterránea shipping company (OJ 2002 C 96, p. 4)

Operative part of the order

1. *Dismisses the appeal.*

2. *Orders Fred Olsen SA to pay the costs.*

3. *Orders the Kingdom of Spain to bear its own costs.*

([1]) OJ C 271 of 29.10.2005.

Order of the Court (Seventh Chamber) of 24 September 2007 — Miguel Torres SA v Office for Harmonisation in the Internal Market (Trade Marks and Designs), Bodegas Muga SA

(Case C-405/06 P) ([1])

(Appeal — Community trade mark — Application for the figurative mark 'Torre Muga' — Opposition proceedings — Earlier international and national word mark 'TORRES' — Likelihood of confusion — Opposition rejected)

(2008/C 51/47)

Language of the case: Spanish

Parties

Appellant: Miguel Torres SA (represented by: E. Armijo Chávarri, abogado)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: I. de Medrano Caballero, Agent), Bodegas Muga SA (represented by: F. Porcuna de la Rosa, abogado)

Re:

Appeal against the judgment of the Court of First Instance (Second Chamber) of 11 July 2006 in Case T-247/03 *Torres* v *OHIM* and *Bodegas Muga*, by which the Court dismissed the action brought against the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 7 April 2003 (Case R 998/2001-1) relating to opposition proceedings between Miguel Torres SA and Bodegas Muga SA

Operative part of the order

1. *The appeal is dismissed;*

2. *Miguel Torres SA is ordered to pay the costs.*

([1]) OJ C 310, 16.12.2006.

Order of the Court of 6 November 2007 (reference for a preliminary ruling from the Bundesfinanzhof (Germany)) — Stahlwerk Ergste Westig GmbH v Finanzamt Düsseldorf-Mettmann

(Case C-415/06) [1]

(First subparagraph of Article 104(3) of the Rules of Procedure — Answer clearly able to be deduced from case-law — Free movement of capital — Taxation on income — Company having permanent establishments in a non-Member State — Account taken of losses incurred by those establishments)

(2008/C 51/48)

Language of the case: German

Referring court

Bundesfinanzhof (Germany)

Parties

Applicant: Stahlwerk Ergste Westig GmbH

Defendant: Finanzamt Düsseldorf-Mettmann

Re:

Preliminary ruling — Bundesfinanzhof — Interpretation of Articles 56 EC, 57(1) EC and 58 EC — Deduction from the taxable profits of a German company of losses resulting from the activity of a permanent establishment in a non-member country — Deduction refused on the basis of a bilateral double taxation convention concluded with that non-member country

Operative part of the order

A national system of taxation under which a company having its head office in a Member State, when determining its results, cannot deduct losses incurred by an establishment in a non-Member State fundamentally affects the exercise of the freedom of establishment within the meaning of Articles 43 EC to 48 EC. Those provisions cannot be relied upon in a situation involving such an establishment in a non-Member State.

[1] OJ C 326, 31.12.2006.

Order of the Court of 26 October 2007 — PTV Planung Transport Verkehr AG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-512/06 P) [1]

(Appeal — Community trade mark — Article 7(1)(b) and (c) of Regulation (EC) No 40/94 — Absolute grounds for refusal — Lack of distinctiveness — Word mark 'map&guide')

(2008/C 51/49)

Language of the case: German

Parties

Applicant: PTV Planung Transport Verkehr AG (represented by: F. Nielsen, Rechtsanswalt)

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

Re:

Appeal against the judgment of the Court of First Instance (Second Chamber) of 10 October 2006 in Case T-302/03, *PTV v OHIM* (*map&guide*), dismissing the action for annulment of the decision which refused the application for registration of the word mark 'map&guide' in respect of certain goods and services in Classes 9, 41 and 42 — Distinctiveness of the mark

Operative part of the order

1. *The appeal is dismissed.*

2. *PTV Planung Transport Verkehr AG is ordered to pay the costs.*

[1] OJ C 42, 24.2.2007.

Order of the Court of 27 November 2007 — Diy-Mar Insaat Sanayi ve Ticaret Ltd Sirketi and Musa Akar v Commission of the European Communities

(Case C-163/07 P) ([1])

(Appeal — Public works contracts — Admissibility — Essential procedural conditions — Mandatory representation of natural or legal persons by a lawyer authorised to practise before a court of a Member State — Appeal clearly unfounded)

(2008/C 51/50)

Language of the case: German

Parties

Applicants: Diy-Mar Insaat Sanayi ve Ticaret Ltd Sirketi and Musa Akar (represented by: C. Şahin, lawyer)

Other party to the proceedings: Commission of the European Communities (represented by: P. van Nuffel and F. Hoffmeister, Agents)

Re:

Appeal brought against the order of the Court of First Instance (Fourth Chamber) of 17 January 2007 in Case T-129/06 *Diy-Mar Insaat Sanayi ve Ticaret Ltd Sirketi and Akar* v *Commission* in which the Court of First Instance dismissed as inadmissible an application for, first, the annulment of the decision of the Commission of 23 December 2005 relating to the award of the public works contract for the construction of educational establishments in the provinces of Siirt and Diyarbakir and, secondly, suspension of the implementation of the procedure in question — No information, in the contested decision, as to the need to be represented by a lawyer qualified to practise before a court of a Member State in the event of proceedings being brought against the contested decision — Regularised application lodged out of time.

Operative part

1. *The appeal is dismissed.*

2. *Diy-Mar Insaat Sanayi ve Ticaret Ltd Sirketi and Musa Akar are ordered to pay the costs.*

([1]) OJ C 129, 9.6.2007.

Order of the Court of 19 October 2007 — Derya Beyatli v Commission of the European Communities

(Case C-238/07 P) ([1])

(Appeals — Staff cases — Open competition for citizens of the Republic of Cyprus — Notice of competition — Time-limits — Complaint — Letter addressed to the head of the Commission delegation in Cyprus)

(2008/C 51/51)

Language of the case: English

Parties

Appellant: Derya Beyatli (represented by: A. Demetriades, dikigoros)

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

Re:

Appeal against the order of the Court of First Instance (Fifth Chamber) of 5 March 2007 in Case T-455/04 *Beyatli and Candan* v *Commission* by which the Court of First Instance dismissed as inadmissible an application seeking the annulment of the decision of the selection board in Competition EPSO/A/1/03 for the establishment of a reserve list of assistant administrators of Cypriot nationality not to admit the appellants to the oral tests in that competition — Period within which a complaint must be lodged pursuant to Article 90(2) of the Staff Regulations

Operative part of the order

The Court:

1. *Dismisses the appeal;*

2. *Orders Ms Beyatli to pay the costs.*

([1]) OJ C 183, 4.8.2007.

Reference for a preliminary ruling from the Tribunale civile di Modena (Italy) lodged on 1 October 2007 — Alberto Severi, Cavazzuti e figli v Regione Emilia-Romagna

(Case C-446/07)

(2008/C 51/52)

Language of the case: Italian

Referring court

Tribunale civile di Modena

Parties to the main proceedings

Applicants: Alberto Severi, Cavazzuti e figli

Defendant: Regione Emilia-Romagna

Questions referred

1. Must Articles 3(1) and 13(3) of Regulation (EC) No 2081/92 (now Articles 3(1) and 13(2) of Regulation (EC) No 510/06) [1] in relation to Article 2 of Legislative Decree 109/92 (Article 2 of Directive 2000/13/EC) [2] be interpreted as meaning that the name of a food product containing geographical references, for which, at national level, the submission of an application to the Commission for registration as a protected designation of origin (PDO) or a protected geographical indication (PGI) within the meaning of those regulations has been 'rejected' or blocked, must be considered generic at least throughout the period for which such 'rejection' or blocking remains effective?

2. Must Articles 3(1) and 13(3) of Regulation (EC) No 2081/92 (now Articles 3(1) and 13(2) of Regulation (EC) No 510/06) in relation to Article 2 of Legislative Decree 109/92 (Article 2 of Directive 2000/13/EC) be interpreted as meaning that the name of a food product which is evocative of a place not registered as a PDO or PGI within the meaning of those regulations may be legitimately used in the European market by producers who have used it in good faith and uninterruptedly for a considerable period before the entry into force of Regulation (EEC) No 2081/92 (now Regulation (EC) No 510/06) and in the period following the entry into force of that provision?

3. Must Article 15(2) of the First Council Directive 89/104/EEC [3] of 21 December 1988 to approximate the laws of the Member States relating to trade marks be interpreted as meaning that the proprietor of a collective mark for a food product containing a geographical reference is not allowed to prevent producers of a product having the same characteristics from using to describe it a name similar to that contained in the collective mark, where those producers have used that name in good faith and uninterruptedly over a period of time considerably pre-dating the registration of that collective mark?

[1] OJ 2006 L 93, p. 12.
[2] OJ 2000 L 109, p. 29.
[3] OJ 1989 L 40, p. 1.

Appeal brought on 21 November 2007 by AGC Flat Glass Europe SA, formerly Glaverbel SA, against the judgment of the Court of First Instance (Second Chamber) delivered on 12 September 2007 in Case T-141/06: Glaverbel SA v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case C-513/07 P)

(2008/C 51/53)

Language of the case: English

Parties

Appellant: AGC Flat Glass Europe SA, formerly Glaverbel SA (represented by: S. Möbus and T. Koerl, lawyers)

Other party to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Form of order sought

The appellant claims that the Court should:

— annul the judgment of the Court of First Instance of 12 September 2007 in case T-141/06 concerning the Community trade mark application No 3183068;

— order the Defendant to pay the costs.

Pleas in law and main arguments

The Appellant submits that the appealed judgment of the Court of First Instance is based on a wrong intepretation of Article 7(3) of the Community Trade Mark Regulation [1] (hereinafter 'CTMR') caused by a wrong assessment of the target public and a wrong assessment of the territory which has to be considered.

1. Contrary to the assessment of the Court of First Instance the target public consists of specialists of the glass industry only. The Court of First Instance thus incorrectly applied Article 7(3) CTMR in respect of the assessment of the target public.

2. Contrary to the assessment of the Court of First Instance the Defendant incorrectly examined the evidence provided in respect of the acquired distinctiveness for each member state separately as this apparently contradicts Article 7(3) CTMR requiring an acquired distnctiveness through use throughout the Community. What the Defendant would have been required to do — instead of assessing the number of member states — is to look at the provided evidence as a whole and to assess whether it builds a coherent picture of sustained use in a sufficiently large geographical area over a sufficiently long period of time before the filing date.

(1) Council Regulation (EC) No 40/94 of 20 December 1993 on the Community Trade Mark (OJ L 11, 14.1.1994, p. 1).

Appeal brought on 22 November 2007 by the Kingdom of Sweden to the Court of Justice against the judgment delivered on 12 September 2007 in Case T-36/04: Association de la presse internationale a.s.b.l. (API) v Commission of the European Communities

(Case C-514/07 P)

(2008/C 51/54)

Language of the case: Swedish

Parties

Appellant: Kingdom of Sweden (represented by: A. Falk and S. Johannesson, Legal Advisers)

Other party to the proceedings: Association de la presse internationale a.s.b.l. (API) by the European Commission

Form of order sought

— Set aside paragraph 2 of the operative part of the judgment of the Court of First Instance of 12 September 2007 in Case T-36/04;

— annul the Commission's decision of 20 November 2003 in its entirety, in accordance with the forms of order sought by API before the Court of First Instance, and thus also in respect of the refused access to the pleadings submitted by the Commission in Case T-209/01 *Honeywell* v *Commission*, Case T-210/01 *General Electric* v *Commission* and Case C-203/03 *Commission* v *Austria*, and

— order the Commission to pay the costs.

Pleas in law and main arguments

1. By the judgment under appeal, the Court of First Instance incorrectly applied Community law by failing to annul the Commission's decision in its entirety.

2. On the one hand, the Court of First Instance found that, in accordance with Article 4(2) of Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents (1), the institutions are obliged to assess whether disclosure would specifically and in a concrete manner harm an interest protected by an exception. Only if that is the case can an exception form the basis of a refusal to disclose a document. That examination must be made in respect of each individual document. The applicant supports that conclusion.

3. Nevertheless, on the other hand, the Court of First Instance concluded that in precisely that case the Commission was not obliged to carry out such an examination, by reference to the fact that there is a general requirement of confidentiality for documents lodged in pending cases until the oral procedure has taken place in the case. That general requirement for confidentiality is based in part on the right to a fair hearing before an impartial tribunal, in part on the fact that the Commission is to be able to uphold its interests as a party to the case. In that regard, the Court of First Instance found that the Commission did not make an incorrect assessment when it refused access to the documents lodged.

4. In the view of the applicant the later ruling is incompatible with the obligation to examine the question of disclosure by reference to the contents of the specific document. By its judgment, the Court of First Instance thus incorrectly applied Community law.

(1) OJ L 145, p. 43.

Action brought on 30 November 2007 — Commission of the European Communities v Republic of Austria

(Case C-535/07)

(2008/C 51/55)

Language of the case: German

Parties

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

Defendant: Republic of Austria

Form of order sought

— Declare that, by failing

(a) in accordance with ornithological criteria correctly to designate or delimit ('*Hansag*' in the Province of Burgenland and '*Niedere Tauern*' in the Province of Steiermark respectively) the most suitable areas in

Austria in terms of numbers and size as special protection areas under Article 4(1) and (2) of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds, ([1]) and

(b) to provide legal protection, in accordance with the requirements of Article 4(1) and (2) of Directive 79/409/EEC or Article 6(2) in conjunction with Article 7 of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, ([2]) for part of the special protection areas already designated,

the Republic of Austria has failed to fulfil its obligations under Article 4(1) and (2) of Directive 79/409/EEC and Article 6(2) in conjunction with Article 7 of Directive 92/43/EEC;

— order Republic of Austria to pay the costs.

Pleas in law and main arguments

Article 4(1) and (2) of Council Directive 79/409/EEC (bird protection directive) requires the Member States to declare as special protection areas (SPAs) all those areas which are the most suitable territories in number and size for the conservation of the species listed in Annex I and to take similar measures for the conservation of regularly occurring migratory species not listed in Annex I to the Directive. An SPA is to be given a legal protection status that is appropriate, inter alia, to secure the survival and reproduction of the species listed in Annex I to the Directive and the breeding, moulting and wintering of regularly occurring migratory species not listed in Annex I to the Directive. Since, under Article 7 of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (fauna and flora directive), obligations arising, inter alia, under Article 6(2) of that directive in respect of special areas of conservation are to replace the obligations under the first sentence of Article 4(1) of the bird protection directive, the legal protection status of those areas must also ensure that there is no deterioration of the natural habitats of the species for which the areas have been designated and no significant disturbance of those species.

The Republic of Austria has infringed its obligations under those Community law provisions by failing to designate the '*Hansag*' area as an SPA, delimit the '*Niedere Tauern*' special protection area in accordance with the requirements of the bird protection directive, and provide part of the existing special protection areas with the legal protection required by the above provisions.

Although the Republic of Austria has recognised the need to designate '*Hansag*' as an SPA and has, on several occasions, confirmed its intention to do so, it has not complied with its designation obligation within the period laid down in the reasoned opinion.

The failure to delimit the '*Niedere Tauern*' area in accordance with the requirements of the bird protection directive relates to the failure to have sufficient regard to the necessary habitat of the dotterel and the inadequate inclusion of the established habitats of certain woodland bird species, namely the grey-headed woodpecker (*picus canus*) and the hazel hen (*Bonasa bonasia*). Although the Member States enjoy some latitude in the selection and delimitation of SPAs, it is limited by the requirement that the delimitation of those areas must comply with particular ornithological criteria laid down in the Directive. In particular, when selecting and delimiting an SPA, a Member State is not entitled to take into account the economic requirements referred to in Article 2 of the bird protection directive or Article 6(4) of the fauna and flora directive.

As regards the legal protection status of the protection areas already designated in Austria, *special conservation measures* are necessary for each bird fauna designated in an area that satisfies the criteria for designation as an SPA, and it is also necessary to establish with precision the necessary conservation measures and adapt them to the specific features and environmental conditions of the BSG and the species living there. The specific conservation aims contained in the legal protection instruments for the purposes of Article 4(1) and (2) of the bird protection directive and Article 6(2) of the fauna and flora directive for each bird species in question, together with the necessary concrete measures and conditions (prohibitions and requirements) for the area should also be binding and given adequate publicity. After an examination of the rules existing in the individual provinces, it has been found that the legal protection status does not comply with the above requirements and thus can not be regarded as adequate when measured against the provisions of the bird protection directive and the fauna and flora directive.

([1]) OJ 1979 L 103, p. 1.
([2]) OJ 1992 L 206, p. 7.

Action brought on 30 November 2007 — Commission of the European Communities v Federal Republic of Germany

(Case C-536/07)

(2008/C 51/56)

Language of the case: German

Parties

Applicant: Commission of the European Communities (represented by: D. Kukovec and R. Sauer, Agents)

Defendant: Federal Republic of Germany

Form of order sought

— The Federal Republic of Germany has infringed its obligations under Article 7 in conjunction with Article 11 of Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts ([1]), as a result of the conclusion by the city of Cologne of the contract of 6 August 2004 with the Grundstücksgesellschaft Köln Messe 15-18 GbR (in the meantime Grundstücksgesellschaft Köln Messe 8-11) without carrying out a procedure for the award of contracts involving a Europe-wide invitation to tender in compliance with the above-mentioned provisions;

— The Federal Republic of Germany is to pay the costs.

Pleas in law and main arguments

Article 7 of Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts ('the Directive') obliged the contracting authorities when awarding public works contracts to observe certain procedures. In that regard, the negotiated procedure applies only in exceptional cases and only subject to very specific conditions, whereas the open or restricted procedure applies as a rule. In order to ensure development of effective competition in the field of public contracts, it is moreover necessary that contract notices be advertised as a rule throughout the Community. Article 11 of the Directive contains the relevant advertising rules.

The action concerns the award of a public works contract by the city of Cologne to a private investment firm which took place without the required procedure being observed, in particular without publication of a notice. The aim of the award of the contract was the building of four new exhibition halls for use by Kölnmesse GmbH, a private company, the majority of whose shares are held by the city of Cologne. Under the contested public works contract, the investment firm is to construct the new exhibition halls and additional premises according to detailed specifications. The city rented the buildings for a fixed period of thirty years for a total rent of more than EUR 600 million. Under a subtenancy it will in turn sublet the buildings to the trade fair company KölnMesse GmbH.

In the view of the Commission, the contract concerned is a public works contract, which according to the Directive should have been awarded in a competitive procedure, in the context of a Europe-wide invitation to tender. First, the city of Cologne as local authority is the contracting authority within the meaning of the Directive. It is therefore bound to observe the procedural rules laid down in the Directive in relation to the contracts which fall within the scope of the Directive. Second, the Commission is of the view that, despite its designation as 'lease' and the apparent precedence of the provision for a right of use (against payment), the contract is for the following reasons to be designated as a public works contract in the sense of Article 1(a) of the Directive.

The Community law definition of a public works contract also applies to contracts which aim to obtain the possibility of using a building which does not yet exist but which was precisely identified by the contracting authority in its specifications. As it is clear from the case-law of the Court that, where it contains various elements, a contract will be classified in accordance with its main purpose, the description of the contract at issue as a 'lease' and even any classification as such under German law is irrelevant for assessment pursuant to the Directive.

With regard to the contract at issue, the economic context and the circumstances in which the contract was concluded indicate that the first concern of the parties when concluding the principal contract was the construction of the exhibition halls according to the detailed specifications laid down by the city of Cologne. The focus of the contract is the financing of building work, with the consideration being extended over time. From an economic point of view, the contract leads to the same result as the award of a contract to carry out building works.

It is also irrelevant with regard to the provisions of the Directive whether the contracting authority will own the building to be constructed or not, or whether it wishes itself to use the building or whether it is considering making it available to the public or to certain third parties.

The right of use is in this case a simple consequence of the fact that the building plot (and accordingly under German law necessarily also the building to be constructed) is owned by the private builder. The circumstance that the future user of the exhibition halls will be the Kölnmesse GmbH does not alter the fact that the contracting partner of the investment firm is the city of Cologne alone and that successful performance is also owed to it alone.

As there are no indications in this case which would justify a direct award of the contract without first publishing a notice, the Commission must conclude that, as a result of the conclusion by the city of Cologne as contracting authority of the contract at issue without first publishing a notice, the Federal Republic of Germany has infringed its obligations under the Directive.

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

Reference for a preliminary ruling from the Sofiyski gradski sad (Bulgaria) lodged on 4 December 2007 — Apis-Hristovich EOOD v Lakorda AD

(Case C-545/07)

(2008/C 51/57)

Language of the case: Bulgarian

Referring court

Sofiyski gradski sad

Parties to the main proceedings

Claimant: Apis-Hristovich EOOD

Defendant: Lakorda AD

Questions referred

1. How are the terms 'permanent transfer' and 'temporary transfer' to be interpreted and to be delimited in relation to each other for the purpose of:

   — determining whether extraction within the meaning of Article 7(2)(a) of Directive 96/9/EC ([1]) from a database accessible by electronic means has taken place,

   — at what point in time is it to be assumed that extraction within the meaning of Article 7(2)(a) of Directive 96/9/EC from a database accessible by electronic means has taken place,

   — what is the significance, for the assessment of extraction, of the fact that the content of a database extracted in this way has served to create a new and amended database?

2. Which criterion is to be applied in interpreting the concept 'extraction of a substantial part, evaluated quantitatively' if the databases are divided into separate subgroups and are used in these subgroups, which are independent commercial products? Is the size of the databases in the entire commercial product or the size of the databases in the relevant subgroup to be used as the criterion?

3. In interpreting the concept 'a substantial part, evaluated qualitatively', is the fact that a certain type of data allegedly extracted was obtained by the database maker from a source which is not generally accessible, so that it was possible to procure the data only by extracting them from the databases of that very database maker, to be used as a criterion?

4. What criteria are to be applied when determining whether extraction from a database accessible by electronic means has taken place? Can it be regarded as an indication that extraction has taken place if the maker's database has a particular structure, notes, references, commands, fields, hyperlinks and editorial text and these elements are also found in the database of the person who has committed the alleged infringement? In the carrying out of this assessment, are the various original organisational structures of the two opposing databases relevant?

5. When determining whether extraction has taken place, is the computer program/the system for database management material if it is not part of the database?

6. Since, according to Directive 96/9/EC and the case-law of the Court of Justice of the European Communities, 'a substantial part of the database from a quantitative and qualitative point of view' is linked to substantial investment in the obtaining, verification or presentation of a database: how are these concepts to be interpreted in relation to legislative measures, and measures having individual application, which have been adopted by executive State bodies and are publicly accessible, to their official translations and to case-law?

([1]) Directive 96/9/EC of the European Parliament and the Council of 11 March 1996 on the legal protection of databases (OJ 1996 L 77, p. 20).

Action brought on 7 December 2007 — Commission of the European Communities v Republic of Poland

(Case C-547/07)

(2008/C 51/58)

Language of the case: Polish

Parties

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

Defendant: Republic of Poland

Form of order sought

— by failing to classify as special protection areas (SPAs) for birds all areas which, on the application of ornithological criteria, appear to be the most appropriate for the conservation of bird species, the Republic of Poland has failed to fulfil its obligations under Article 4(1) and (2) of Directive 79/409/EEC ([1]) of 2 April 1979 on the conservation of wild birds;

— order the Republic of Poland to pay the costs.

Pleas in law and main arguments

The obligation to carry out the classification of special protection areas for birds (SPAs) was imposed on the Republic of Poland at the time of its accession to the European Union.

In December 2004 an ornithological inventory was published which detailed the situation of birds of European significance in Poland (IBA 2004) and designated, on the basis of ornithological criteria, 140 areas of crucial importance for the conservation of birds.

Of the areas included on the IBA 2004 list, 15 were not classified by the Republic of Poland as SPAs, notwithstanding the fact that the Polish authorities failed to produce any scientific evidence to justify that failure to designate them.

Furthermore, the areas of 8 SPAs are much smaller than their equivalents on the IBA 2004 inventory, with the result that outside their limits there are areas which, according to IBA 2004, would appear to be most suitable for the conservation of bird species.

In addition, in September 2007 the Polish authorities, without notifying the Commission, reduced the areas of 5 designated SPAs in a manner impacting significantly on bird conservation.

([1]) OJ 1979 L 103, p. 1.

Action brought on 11 December 2007 — Commission of the European Communities v Ireland

(Case C-554/07)

(2008/C 51/59)

Language of the case: English

Parties

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

Defendant: Ireland

The applicant claims that the Court should:

— declare that by failing to transpose correctly into Irish legislation Article 13 of Directive 2006/112 (including Annex I to the directive) and consequently by excluding from the scope of the tax all economic activities in which the State, local authorities and other bodies governed by public law engage, with certain limited exceptions, Ireland has failed to comply with its obligations under Articles 2, 9 and 13 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ([1]);

— order Ireland to pay the costs.

Pleas in law and main arguments

In Ireland, the State and local authorities are treated as taxable persons only in so far as a specific order to that effect has been made by the Minister for Finance. In the Commission's view that situation is contrary to the scheme laid down in Article 13 of the VAT directive in several respects. First, no provision is made for the taxation of public bodies where they act other than in their capacity as public authorities. Secondly, no general provision is made for the taxation of public bodies where they act in their capacity as public authorities but engage in an economic activity whose non-taxation would result in a significant distortion of competition. The taxation of public bodies is wholly at the discretion of the Minister for Finance; no criteria for his decision are contained in the relevant provisions. Thirdly, no provision is made for taxation of the activities listed in Annex I to the VAT directive.

([1]) OJ L 347, p. 1.

Reference for a preliminary ruling from the High Court of Justice (Queen's Bench Division) Administrative Court (United Kingdom) made on 17 December 2007 — The Queen on the application of S.P.C.M. SA, C.H. Erbslöh KG, Lake Chemicals and Minerals Limited, Hercules Incorporated v Secretary of State for Environment, Food and Rural Affairs

(Case C-558/07)

(2008/C 51/60)

Language of the case: English

Referring court

High Court of Justice (Queen's Bench Division) Administrative Court

Parties to the main proceedings

Applicants: S.P.C.M. SA, C.H. Erbslöh KG, Lake Chemicals and Minerals Limited, Hercules Incorporated

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

Questions referred

1. In light of the fact that the registration requirements in Title II of the REACH Regulation ([1]) do not apply to polymers by virtue of Article 2(9) of the Regulation, does the reference to '*monomer substances*' in Article 6(3) mean:

   (a) reacted monomers, that is monomers which have reacted together such that they are indissociable from the polymer of which they form part;

   (b) unreacted monomers, that is monomers that are residual to the polymerisation process and which retain their own chemical identities and properties separate from the polymer after that process is complete; or

   (c) both reacted and unreacted monomers?

2. If the answer to question 1 is either (a) or (c), is the application of Article 6(3) to manufacturers or importers of polymers unlawful by reason that the requirements are irrational, discriminatory or disproportionate?

([1]) Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ L 396, p. 1)

Action brought on 20 December 2007 — Commission of the European Communities v Republic of Malta

(Case C-563/07)

(2008/C 51/61)

Language of the case: English

Parties

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

Defendant: Republic of Malta

The applicant claims that the Court should:

— declare that, by failing to provide the information necessary to comply with Decision No. 280/2004/EC ('the Decision') of the European Parliament and of the Council of 11 February 2004 concerning a mechanism for monitoring Community Greenhouse gas emissions and for implementing the Kyoto Protocol ([1]) in Malta in conjunction with Articles 2 to 7 of Commission Decision 166/2005/EC of 10 February 2005 laying down rules implementing Decision 280/2004/EC, the Republic of Malta has failed to fulfil its obligations under Article 3(1) of the Decision.

Pleas in law and main arguments

According to Article 3(1) of decision No 280/2004/EC the Member States shall, for the assessment of actual progress and to enable the preparation of annual reports by the Community, in accordance with obligations under the UNFCCC and the Kyoto protocol, provide the Commission with certain information regarding greenhouse gas emissions by 15 January each year.

In view of the fact that the Republic of Malta has not provided the Commission with the information due on 15 January 2006 the Commission is obliged to assume that the Maltese authorities have failed to meet their obligations under Article 3(1) of the decision.

([1]) OJ L 49, p. 1.

Action brought on 10 January 2008 — Commission of the European Communities v Republic of Malta

(Case C-11/08)

(2008/C 51/62)

Language of the case: English

Parties

Applicant: Commission of the European Communities (represented by: K. Simonsson, Agent)

Defendant: Republic of Malta

The applicant claims that the Court should:

— declare that, by providing in its national law that inspectors who do not fulfil the criteria in Annex VII of Council Directive 95/21/EC of 19 June 1995 on port State control of shipping ([1]) are accepted if they are employed by the competent authority for port State control on 1 May 2004, the Republic of Malta has failed to fulfil its obligations under Article 12(1) and Annex VII of the Directive;

— order Republic of Malta to pay the costs.

Pleas in law and main arguments

Article 12(1) of the directive provides, as a main rule, that inspections shall be carried out only by inspectors who fulfil the qualification criteria set out in Annex VII thereof. Paragraph 5 of Annex VII provides, as an exception to this main rule, that inspectors who do not fulfil the criteria in paragraphs 1-4 thereof are accepted if they are employed by the competent authority of a Member State for port State control at the date of adoption of the directive, in other words, on 19 June 1995.

The Act of Accession does not provide for any transitional measures relating to the application of the directive in respect of Malta. In accordance with article 2 of the Act of Accession the provisions of the directive are binding upon Malta from the date of accession.

It is the Commission's view that the Merchant Shipping (Port State Control) Regulations, 2004 (the 'Regulations'), adopted by Malta to implement the directive, are incompatible with the directive, read in conjunction with the Act of Accession, in so far as they provide that inspectors who do not fulfil the criteria in paragraphs 1-4 of Annex VII of the directive are accepted if they have been employed by the competent authority for port State control between 19 June 1995 and the date of entry into force of the Regulations — in other words, 1 May 2004.

([1]) OJ L 157, p. 1.

Order of the President of the Fourth Chamber of the Court of 11 December 2007 — Commission of the European Communities v Centre de traduction des organes de l'Union européenne

(Case C-269/06) ([1])

(2008/C 51/63)

Language of the case: French

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

([1]) OJ C 190, 12.8.2006.

Order of the President of the Sixth Chamber of the Court of 20 November 2007 — Commission of the European Communities v Portuguese Republic

(Case C-482/06) ([1])

(2008/C 51/64)

Language of the case: Portuguese

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

([1]) OJ C 326, 30.12.2006.

Order of the President of the Eighth Chamber of the Court of 27 November 2007 — Commission of the European Communities v Republic of Hungary

(Case C-30/07) ([1])

(2008/C 51/65)

Language of the case: Hungarian

The President of the Eighth 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 16 November 2007 — Commission of the European Communities v Ireland

(Case C-31/07) ([1])

(2008/C 51/66)

Language of the case: English

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

([1]) OJ C 56, 10.3.2007.

Order of the President of the Court of 20 November 2007 — Commission of the European Communities v Italian Republic

(Case C-190/07) ([1])

(2008/C 51/67)

Language of the case: Italian

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 16 November 2007 (Reference for a preliminary ruling from the Zala Megyei Bíróság — Republic of Hungary) — OTP Bank rt and Merlin Gerin Zala kft v Zala Megyei Közigazgatási Hivatal

(Case C-195/07) ([1])

(2008/C 51/68)

Language of the case: Hungarian

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 November 2007 — Commission of the European Communities v Portuguese Republic

(Case C-206/07) ([1])

(2008/C 51/69)

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 29 November 2007 — Commission of the European Communities v Portuguese Republic

(Case C-234/07) ([1])

(2008/C 51/70)

Language of the case: Portuguese

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

([1]) OJ C 155, 7.7.2007.

Order of the President of the Court of 5 December 2007 — Commission of the European Communities v Federal Republic of Germany

(Case C-245/07) ([1])

(2008/C 51/71)

Language of the case: German

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

([1]) OJ C 155, 7.7.2007.

Order of the President of the Court of 21 November 2007 — Commission of the European Communities v Portuguese Republic

(Case C-266/07) ([1])

(2008/C 51/72)

Language of the case: Portuguese

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

([1]) OJ C 183, 4.8.2007.

Order of the President of the Court of 22 November 2007 — Commission of the European Communities v Portuguese Republic

(Case C-382/07) ([1])

(2008/C 51/73)

Language of the case: Portuguese

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

([1]) OJ C 223, 22.9.2007.

Order of the President of the Court of 4 December 2007 (Reference for a preliminary ruling from the Landesarbeitsgericht Mecklenburg-Vorpommern — Germany) — Kathrin Haase, Adolf Oberdorfer, Doreen Kielon, Peter Schulze, Peter Kliem, Dietmar Bössow, Helge Riedel, André Richter, Andreas Schneider v Superfast Ferries SA, Superfast OKTO Maritime Company, Baltic SF VIII LTD

(Case C-413/07) ([1])

(2008/C 51/74)

Language of the case: German

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

([1]) OJ C 283, 24.11.2007.

COURT OF FIRST INSTANCE

Judgment of the Court of First Instance of 15 January 2008 — Hoya v OHIM — Indo (AMPLITUDE)

(Case T-9/05) ([1])

(Community trade mark — Opposition proceedings — Application for the Community word mark AMPLITUDE — Earlier national figurative mark AMPLY — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94)

(2008/C 51/75)

Language of the case: English

Parties

Applicant: Hoya Kabushiki Kaisha (Tokyo, Japan) (represented by: A. Nordemann, C.-R. Haarmann, F. Schwab and M. Nentwig, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the Court of First Instance: Indo Internacional SA (Hospitalet de Llobregat, Spain) (represented by: M. Currel Aguilà, lawyer)

Re:

ACTION brought against the decision of the First Board of Appeal of OHIM of 3 November 2004 (Case R 433/2004-1), relating to opposition proceedings between Indo Internacional SA and Hoya Kabushiki Kaisha

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Hoya Kabushiki Kaisha to pay the costs.*

([1]) OJ C 106, 30.4.2005.

Judgment of the Court of First Instance (First Chamber) of 16 January 2008 — Scippacercola and Terezakis v Commission

(Case T-306/05) ([1])

(Competition — Abuse of dominant position — Allegation of excessive charges applied by the operator of Athens International Airport — Rejection of the complaint — No Community interest)

(2008/C 51/76)

Language of the case: English

Parties

Applicants: Isabella Scippacercola (Brussels, Belgium) and Ioannis Terezakis (Brussels) (represented by: A. Krystallidis and G. Stylianakis, lawyers)

Defendant: Commission of the European Communities (represented by: P. Hellström, A. Nijenhuis and F. Amato, Agents)

Re:

Application for annulment in part of the Commission's decision of 2 May 2005 pursuant to Article 7(2) of Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 EC and 82 EC (OJ 2004 L 123, p. 18), rejecting complaint No COMP/D3/38469 concerning the levy of certain charges by the operator of Athens International Airport at Spata and by Olympic Fuel Company.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Isabella Scippacercola and Ioannis Terezakis to pay the costs.*

([1]) OJ C 271, 29.10.2005.

Judgment of the Court of First Instance of 16 January 2008 — Inter-Ikea OHIM — Waibel (idea)

(Case T-112/06) ([1])

(Community trade mark — Invalidity proceedings — Community figurative mark 'idea' — Earlier Community and national figurative and word marks 'IKEA' — Relative ground for invalidity — No likelihood of confusion — Article 8(1)(b) and Article 52(1)(a) of Regulation (EC) No 40/94)

(2008/C 51/77)

Language of the case: English

Parties

Applicant: Inter-Ikea Systems BV, (Delft, Netherlands) (represented by: J. Gulliksson and J. Olsson, lawyers)

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 and intervener before the Court of First Instance: Walter Waibel (Dingolfing, Germany) (represented by: A. Fottner and M. Müller, lawyers)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 10 February 2006 (Case R 80/2005-1) relating to invalidity proceedings between Inter Ikea Systems BV and Walter Waibel.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Inter-Ikea Systems BV to pay the costs, including those incurred by Walter Waibel in the proceedings before the Board of Appeal.*

([1]) OJ C 131, 3.6.2006.

Order of the Court of First Instance of 12 December 2007 — Vodafone España and Vodafone Group v Commission

(Case T-109/06) ([1])

(Action for annulment — Directive 2002/21/EC — Commission's letter of comments — Article 7 of Directive 2002/21 — Act not amenable to review — Applicant not affected directly — Inadmissibility)

(2008/C 51/78)

Language of the case: English

Parties

Applicants: Vodafone España SA (Madrid, Spain) and Vodafone Group plc (Newbury, Berkshire, United Kingdom) (represented by: J. Flynn QC, E. McKnight and K. Fountoukakos-Kyriakakos, Solicitors)

Defendant: Commission of the European Communities (represented by: M. Shotter and K. Mojzesowicz, Agents)

Intervener in support of the defendant: Kingdom of Spain (represented by M. Muñoz Pérez, abogado del Estado)

Re:

Application for annulment of the decision allegedly contained in the letter addressed by the Commission on 30 January 2006 to the Comisión del Mercado de las Telecomunicaciones, on the basis of Article 7(3) of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (OJ 2002 L 108, p. 33).

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *Vodafone España SA and Vodafone Group plc shall bear their own costs and pay those incurred by the Commission.*

3. *The Kingdom of Spain shall bear its own costs.*

([1]) OJ C 131, 3.6.2006.

Order of the Court of First Instance of 11 December 2007 — Regione Siciliana v Commission of the European Communities

(Case T-156/06) ([1])

(European Social Fund (ESF) — Reduction in Community assistance initially granted — Action for annulment — Regional or local entity — Lack of direct effect — Inadmissibility)

(2008/C 51/79)

Language of the case: Italian

Parties

Applicant(s): Regione Siciliana (Italy) (represented by: P. Gentile, Avvocato dello Stato)

Defendant(s): Commission of the European Communities (represented by: L. Flynn, M. Velardo and A. Weimar, agents, assisted by G. Faedo, lawyer)

Re:

Action for the annulment of Commission Decision C(2006) 1171 of 23 March 2006 concerning a reduction in assistance from the European Social Fund (ESF) for an operational programme in the Region of Sicily forming part of the Community support framework for structural assistance under Objective 1 in Italy (period 1994 to 1999)

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *Regione Siciliana is ordered to pay the costs.*

([1]) OJ C 178 of 29.7.2006.

Order of the Court of First Instance of 13 December 2007 — Beniamino Donnici v European Parliament

(Case T-215/07) ([1])

(Disclaimer of jurisdiction)

(2008/C 51/80)

Language of the case: Italian

Parties

Applicant: Beniamino Donnici (Castrolibero, Italy) (represented by: M. Sanino, G. M. Roberti, I. Perego and P. Salvatore, lawyers)

Defendant: European Parliament (represented by: H. Krück, N. Lorenz and L. Vasaggio, lawyers)

Re:

Application for the annulment of the decision of the European Parliament of 24 May 2007 on the verification of Beniamino Donnici's credentials [2007/2121(REG)] declaring invalid his mandate as member of the European Parliament

Operative part of the order

1. *The Court of First Instance disclaims jurisdiction in Case T-215/07 in favour of the Court of Justice so that the latter may rule on the application for annulment.*

2. *Costs are reserved.*

([1]) OJ C 183 of 4.8.2007.

Order of the President of the Court of First Instance of 17 December 2007 — Dow AgroSciences and Others v Commission

(Case T-367/07 R)

(Application for interim relief — Directive 91/414/EEC — Application for suspension of operation of a measure — Admissibility — No urgency)

(2008/C 51/81)

Language of the case: English

Parties

Applicants: Dow AgroSciences Ltd (Hitchin, Hertfordshire, United Kingdom); Dow AgroSciences BV (Hoek, Netherlands); Dow AgroSciences Danmark A/S (Kongens Lyngby, Denmark); Dow AgroSciences GmbH, (Munich, Germany); Dow AgroSciences (Mougins, France); Dow AgroSciences Export (Mougins); Dow AgroSciences Hungary kft (Budapest, Hungary); Dow AgroSciences Italia Srl (Milan, Italy); Dow AgroSciences Polska sp. z o.o. (Warsaw, Poland); Dow AgroSciences Distribution (Mougins); Dow AgroSciences Iberica, SA (Madrid, Spain); Dow AgroSciences s.r.o. (Prague, Czech Republic); Dow AgroSciences LLC (Indianapolis, Indiana, United States) (represented by C. Mereu and K. Van Maldegem, lawyers)

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

Re:

Application for suspension of the operation of Commission Decision 2007/437/EC of 19 June 2007 concerning the non-inclusion of haloxyfop-R in Annex I to Council Directive 91/414/EEC and the withdrawal of authorisations for plant protection products containing that substance (OJ 2007 L 163, p. 22) pending the full resolution of the dispute in the main proceedings.

Operative part of the order

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

2. *Costs are reserved.*

Order of the President of the Court of First Instance of 14 December 2007 — Portuguese Republic v Commission of the European Communities

(Case T-387/07 R)

(Interim measures — Reduction of assistance — Application to suspend operation Lack of urgency)

(2008/C 51/82)

Language of the case: Portuguese

Parties

Applicant: Portuguese Republic (represented by: L. Fernandes, S. Rodrigues and A. Gattini, agents)

Defendant: Commission of the European Communities (represented by: P. Guerra e Andrade and L. Flynn, agents)

Re:

Application to suspend operation, on the one hand, 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 and, on the other, of the alleged payment order contained in a debit note of 17 September 2007.

Operative part of the order

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

2. *Costs are reserved.*

Action brought on 7 December 2007 — YKK and Others v Commission

(Case T-448/07)

(2008/C 51/83)

Language of the case: English

Parties

Applicants: YKK Corp. (Tokyo, Japan), YKK Holding Europe BV (Sneek, Netherlands), YKK Stocko Fasteners GmbH (Wuppertal, Germany) (represented by: H. Kaneko and C. Vennemann, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Annul the contested decision in so far as it concerns each of the applicants;

— as a consequence, cancel the fines imposed on each of the applicants;

— in the alternative, annul Article 2 of the contested decision in so far as it concerns each of the applicants, or, at least cancel or reduce the fines imposed on each of the applicants;

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicants seek the annulment of Commission Decision C(2007) 4257 final of 19 September 2007 in Case COMP/E-1/39.168 — PO/Hard Haberdashery: Fasteners, by which the Commission found that the applicants, together with other undertakings, had infringed Article 81 EC by:

— agreeing on coordinated price increases and exchanging confidential information on prices and implementation of price increases within the 'Baseler, Wuppertaler and Amsterdamer cooperation';

— fixing prices, monitoring price increases and allocating customers in a bilateral cooperation with Prym Fashion; and

— exchanging price information, discussing prices and agreeing on a methodology to fix minimum prices in a tripartite cooperation with Coats and Prym.

In support of their application, the applicants submit that the 1,25 multiplier for deterrence imposed on them breaches the principle of proportionality.

Concerning the 'Baseler, Wuppertaler and Amsterdamer cooperation', the applicants allege that, with respect to YKK Stocko Fasteners, the Commission misapplied Article 23(2) of Regulation 1/2003 [1], according to which the fine to be imposed on an undertaking shall not exceed 10 % of its total turnover in the preceding business year. Furthermore, the increase by 1,25 for deterrence is, according to the applicants, not justified for the period prior to the acquisition of YKK Stocko Fasteners by YKK Holding Europe.

Concerning the bilateral cooperation between Prym Fashion and the applicants YKK Stocko Fasteners and YKK Corp., the applicants contend that the Commission was incorrect to assume that the cooperation was of a worldwide dimension.

Concerning the tripartite cooperation between Coats, Prym and the applicant YKK Holding Europe, the applicants consider:

— that the Commission failed to prove to the requisite standard that the discussions about harmonising prices at the five zip fastener meetings in 1998 and 1999 constitute an agreement or concerted practice in violation of Article 81 EC;

— that if the discussions at the five zip fastener meetings in 1998 and 1999 were to constitute an infringement of Article 81 EC, the applicants should have been granted a reduction of fines for their cooperation with the Commission under the Commission's Leniency Program;

— that these discussions are not sufficient to be categorised as a 'very serious' infringement;

— that the fine imposed by the Commission is disproportionate to the nature of any possible infringement; and

— that the Commission failed to consider the impact of such an infringement on the EC market.

(1) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1).

Action brought on 7 December 2007 — Ecolean Research & Development v OHIM

(Case T-452/07)

(2008/C 51/84)

Language in which the application was lodged: Swedish

Parties

Applicant: Ecolean Research & Development A/S (Copenhagen, Denmark) (represented by L.-E. Ström, lawyer)

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

Form of order sought

— Referral back to the Board of Appeal for a fresh examination.

Pleas in law and main arguments

Community trade mark concerned: Word mark CAPS for goods in Classes 7, 16 and 17 — application No 4 957 131

Decision of the Examiner: Rejection of the application

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: The Board of Appeal infringed essential procedural requirements and Council Regulation No 40/94, in part by failing to declare that the appeal should have been translated into the applicant's first language, Swedish, and in part by upholding the appeal and continuing to correspond in English. The Board of Appeal thus failed to comply with the principles of the protection of legitimate expectations and of the right to equal treatment.

Action brought on 7 December 2007 — Prym and Others v Commission

(Case T-454/07)

(2008/C 51/85)

Language of the case: German

Parties

Applicants: William Prym GmbH & Co KG (Stolberg, Germany), Prym Inovan GmbH & Co KG (Stolberg, Germany), EP Group S. A. (Comines-Warneton, Belgium) (represented by: H.-J. Niemeyer and C. Herrmann, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Annul the decision of the defendant of 19 September 2007, in so far as it is addressed to the applicants;

— In the alternative, reduce the fines imposed on the applicants under Article 2 of the decision to a reasonable amount;

— Order the defendant to pay the costs.

Pleas in law and main arguments

The applicants contest Commission Decision C(2007) 4257 final of 19 September 2007 in Case COMP/E-1/39.168 — PO/Hard Haberdashery — Fasteners. Pursuant to that decision, companies in the Prym group were fined for infringement of Article 81 EC in respect of three separate infringements in the hard haberdashery sector, whereas the Commission found a total of four infringements.

The applicants base their action on eleven pleas in law.

In connection with the allegation of multilateral cooperation in relation to 'other fasteners' and attaching machines, it is submitted as follows:

— Infringement of Article 23(2) of Regulation (EC) No 1/2003 (1), as one set of actions was split up into two separate infringements;

— Erroneous application of the Leniency Notice of 2002 ([2]), as the reduction of the fine by 30 % was too low.

In connection with the allegation of trilateral cooperation in the sector of zip fasteners, it is submitted as follows:

— Unlawful taking into account of the conduct of a joint venture of the first and second applicants and erroneous calculation of the fine imposed on the third applicant;

— Infringement of Section C or D of the Leniency Notice of 1996 ([3]).

With regard to the allegation of bilateral cooperation with an undertaking of the Coats group, it is submitted as follows:

— Infringement of Article 23(2) of Regulation No 1/2003, since that cooperation and one of the infringements penalised by Commission Decision C(2004) 4221 final of 26 October 2004 (Case COMP/F-1/38.338 — PO/Needles) were split up into two separate infringements, although they should be treated as a single infringement;

— Infringement of the *ne bis in idem* principle by imposing a second fine in respect of the same act;

— Infringement of Article 253 EC by failing to provide sufficient reasons for the splitting up of a single infringement;

— Infringement of the principle of cooperation and of equal treatment.

With regard to the determination of the fine, the following is submitted:

— Infringement of the Guidelines on the method of setting fines ([4]) and of the principle of proportionality and of the principle of equal treatment;

— Infringement of Article 253 EC by failing to provide sufficient reasons for the setting of the starting amount and for the definition of the objectively relevant markets;

— In the alternative, infringement of the principle of proportionality by the excessive overall burden imposed on the applicants and failure to provide adequate reasons.

([1]) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1).
([2]) Commission notice on immunity from fines and reduction of fines in cartel cases (OJ 2002 C 45, p. 3).
([3]) Commission Notice on the non-imposition or reduction of fines in cartel cases (OJ 1996 C 207, p. 4).
([4]) Guidelines on the method of setting fines imposed pursuant to Article 15(2) of Regulation No 17 and Article 65(5) of the ECSC Treaty (OJ 1998 C 9, p. 3).

Action brought on 14 December 2007 — Centre d'Etude et de Valorisation des Algues v Commission of the European Communities

(Case T-455/07)

(2008/C 51/86)

Language of the case: French

Parties

Applicant: Centre d'Etude et de Valorisation des Algues (CEVA) (Pleubian, France) (represented by: J.-M. Peyrical, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— Principally, declare that the procedure is irregular and that there has been an infringement of the right to be heard and, therefore, annul the Commission's debit note No 3240909271, dated 4 October 2007, and order the Commission to reimburse that note to CEVA;

— In the alternative, declare that the errors noted in the RAIA audit report are not so serious that Article 3.5 of Annex II to the contract may be applied to them, annul the Commission's debit note No 3240909271, dated 4 October 2007, to the extent that it seeks full reimbursement of the amounts paid to CEVA under the BIOPAL contract and order the Commission to reimburse that note to CEVA;

— In the very much further alternative, appoint an expert of the Court's choice whose mission will be: to take CEVA's method of calculation; apply that method to the BIOPAL contract and to the reality of the costs in the expenditure accounts; express as a percentage the difference between the amount of the errors in the recording of working time as submitted to the Commission and the amount of that working time as recorded under the method of calculation now applicable to CEVA; carry out an assessment of the direct working time necessary to carry out CEVA's missions in the framework of the BIOPAL contract; state whether that real working time, needed to carry out those missions, could be less than the 5 796,67 direct hours calculated by CEVA.

Pleas in law and main arguments

In the present action, the applicant is seeking the annulment of the debit note whereby the Commission demanded reimbursement of all the payments on account made to the applicant in the framework of BIOPAL contract No QLK5-CT-2002-02431, concerning the key action 'Sustainable Agriculture, Fisheries and Forestry, and Integrated Development of Rural Areas including Mountain Areas', which is part of the 'Quality of Life and management of living resources' ([1])

In support of its application, the applicant puts forward a plea in law alleging an infringement of the rights of the defence inasmuch as the Commission, contrary to the principle of the right to be heard, based the demand for reimbursement on time sheets and conclusions drawn by OLAF of which the applicant had no knowledge.

In the alternative, the applicant contests the Commission's application of Article 26 of Annex II to the contract and its finding that the facts of the case were sufficiently serious to invoke the concept of serious financial irregularity justifying a full reimbursement of the payments on account.

(1) Fifth European Community Framework Programme covering Research, Technological Development and Demonstration activities 1998-2002.

Action brought on 10 December 2007 — Evropaïki Dynamiki v EFSA

(Case T-457/07)

(2008/C 51/87)

Language of the case: English

Parties

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

Defendant: European Food Safety Authority (EFSA)

Form of order sought

— Annul the decision of EFSA to evaluate the applicant's bid as not successful and award the contract to the successful contractor;

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

Pleas in law and main arguments

The applicant submitted a bid in response to the defendant's call for an open tender for the provision of IT consultancy assistance (OJ 2007/S 97-118626). The applicant contests the defendant's decision of 1 October 2007 to reject the applicant's bid and to award the contract to another tenderer.

In support of its application, the applicant submits that EFSA failed to state reasons in accordance with Article 253 EC and, in particular, inform the applicant of the relative merits of the successful tenderer. According to the applicant, EFSA mixed selection criteria with award criteria when evaluating the bids and used evaluation criteria that were not expressly included in the call for tender. Furthermore, the applicant alleges that EFSA committed manifest errors of assessment.

Action brought on 17 December 2007 — Dominio de la Vega v OHIM — Ambrosio Velasco (DOMINIO DE LA VEGA)

(Case T-458/07)

(2008/C 51/88)

Language in which the application was lodged: Spanish

Parties

Applicant: Dominio de la Vega, S.L. (Requena, Spain) (represented by: E. Caballero Oliver, lawyer and A. Sanz-Bernell y Martinéz, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Ambrosio Velasco, S.A. (Dicastillo, Navarra, Spain)

Form of order sought

— Annul the decision of the Board of Appeal of OHIM of 3 October 2007 (Case R 1431/2006-2) and consequently dismiss the opposition filed by Ambrosio Velasco, S.A.;

— Order OHIM to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Dominio de la Vega, S.L.

Community trade mark concerned: Figurative mark 'DOMINIO DE LA VEGA' for goods in Classes 33, 42 and 43 (Application No 2.789.576).

Proprietor of the mark or sign cited in the opposition proceedings: Ambrosio Velasco, S.A.

Mark or sign cited in opposition: Figurative Community trade mark 'PALACIO DE LA VEGA' for goods in Class 33.

Decision of the Opposition Division: Opposition upheld for all those goods, in Class 33, against which it was directed, and rejection of the application for those goods.

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

Pleas in law: Incorrect application of Article 8(1)(b) of Regulation (EC) No 40/94 [1] since there is no likelihood of confusion between the signs in dispute.

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

Action brought on 17 December 2007 — Hangzhou Duralamp Electronics v Council

(Case T-459/07)

(2008/C 51/89)

Language of the case: English

Parties

Applicant: Hangzhou Duralamp Electronics Co., Ltd (Hangzhou City, China) (represented by: M. Gambardella and V. Villante, lawyers)

Defendant: Council of the European Union

Form of order sought

— Annulment of Council Regulation (EC) No 1205/2007 of 15 October 2007 imposing anti-dumping duties on imports of integrated electronic compact fluorescent lamps (CFL-i) originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 384/96 and extending to imports of the same product consigned from the Socialist Republic of Vietnam, the Islamic Republic of Pakistan and the Republic of the Philippines published in OJ L 272/1 of 17 October 2007 in so far as it is applicable to the applicant;

— order the Council to pay the procedural costs.

Pleas in law and main arguments

The applicant, a Chinese company, seeks the annulment of Council Regulation (EC) No 1205/2007 of 15 October 2007 imposing anti-dumping duties on imports of integrated electronic compact fluorescent lamps (CFL-i) originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 384/96 and extending to imports of the same product consigned from the Socialist Republic of Vietnam, the Islamic Republic of Pakistan and the Republic of the Philippines [1] in so far as these measures apply to the applicant.

In support of its application, the applicant contends that the Council's view that all CFL-i were the same product no matter their differences like lifetime, wattage, cover, other integrated devices, length, diameter, diagonal or end user, is incorrect.

The applicant further alleges that the Council committed a manifest error of assessment when calculating the dumping margins, undercutting margins and injury thresholds. The methodology by which data was extrapolated from Eurostat data was, according to the applicant, not explained in the contested regulation and the Council should have provided the parties to the investigation with a non-confidential summary of the methodology used and examples of calculations.

Moreover, the applicant submits that its right to be heard with regard to the choice of the analogue country has been violated, as the applicant was not given the possibility during the investigation leading up to the adoption of the contested regulation to comment on the substitution of Mexico by Korea as the analogue country.

Furthermore, the applicant claims that the Council breached Articles 7, 9 and 21 of the Basic Regulation [2] by imposing anti-dumping duties when the Community interest did not call for intervention.

Finally, the applicant submits that the Council breached Article 5(4) of the Basic Regulation and committed a manifest error of assessment by imposing anti-dumping duties despite the fact that the complaint initiating the investigation was not supported by the Community industry since the part of Community producers opposing the complaint represented more than 50 % of the total Community production of the like product.

[1] OJ 2007 L 272, p. 1.
[2] Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (OJ 1996 L 56, p. 1).

Action brought on 18 December 2007 — Nokia v OHIM — Medion (LIFE BLOG)

(Case T-460/07)

(2008/C 51/90)

Language in which the application was lodged: English

Parties

Applicant: Nokia Oyj (Helsinki, Finland) (represented by: J. Tanhuanpää, lawyer)

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

Other party to the proceedings before the Board of Appeal: Medion AG (Essen, Germany)

Form of order sought

— The decision of 2 October 2007 of the Second Board of Appeal in Case R 141/2007-2 should be set aside in its entirety and the case should be remitted to the OHIM for registration of the applicant's trade mark;

— the respondent should be ordered to pay the costs of the applicant.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The Community word mark 'LIFE BLOG' for goods and services in class 9, 38 and 41 — application No 3 564 366

Proprietor of the mark or sign cited in the opposition proceedings: Medion AG

Mark or sign cited: The national and international word marks 'LIFE' and 'LIFETEC', for goods and services in classes 1, 7, 8, 9, 10, 11, 16, 21, 28, 37, 38, 41 and 42; the national and international word mark 'LIFESAT' for goods in Class 9 and the national word mark 'Lifesign' for goods in Classes 9, 14 and 16

Decision of the Opposition Division: Rejected the application for registration partially

Decision of the Board of Appeal: Upheld the opposition and dismissed the appeal

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

Action brought on 19 December 2007 — Visa Europe and Visa International Service Association v Commission

(Case T-461/07)

(2008/C 51/91)

Language of the case: English

Parties

Applicants: Visa Europe Ltd (London, United Kingdom) and Visa International Service Association (Wilmington, United States) (represented by: S. Morris, QC, H. Davies, Barrister, A. Howard, Barrister, V. Davies, Solicitor and H. Masters, Solicitor)

Defendant: Commission of the European Communities

Form of order sought

— Annul the decision in its entirety; alternatively

— annul Article 2 of the decision in its entirety, or in the alternative, reduce the fine there stated, as appropriate; and

— order the Commission to pay the costs.

Pleas in law and main arguments

By means of their application Visa Europe and Visa International Service Association ('Visa') seek annulment under Article 230 EC of Commission Decision C(2007) 4471 final, dated 3 October 2007 relating to a proceeding under Article 81 EC (Case COMP/D1/37860 — Morgan Stanley/Visa International and Visa Europe) on one hand with regard to the finding that Visa had infringed Article 81 EC and Article 53 EEA, by refusing to admit Morgan Stanley Bank International Limited ('Morgan Stanley') to membership of Visa Europe prior to 22 September 2006, due to the fact that it owned and operated a competing card system and, on the other hand, with regard to the imposition of a fine of EUR 10,2 million to the applicants.

Visa raises three pleas in law in relation to the Commission's finding of infringement. In particular, it submits that the Commission's conclusion that the non-admission of Morgan Stanley to Visa membership constituted an appreciable restriction to competition falling under Article 81(1) EC is vitiated by manifest errors of law and claims that the Commission failed to establish the necessary elements in support of that conclusion.

(a) First, it is submitted that the Commission applied the wrong legal and economic test for the application of the aforementioned provision, namely that there was 'scope for further competition' and reached, thus, the wrong factual and economic assessment regarding the alleged effects of the non-admission of Morgan Stanley. In fact, according to Visa, Morgan Stanley was not prevented from entering the relevant market ('the UK acquiring market').

(b) Second, it is claimed that the Commission infringed an essential procedural requirement by changing its case on restrictive effect at the stage of the decision without giving Visa an opportunity to respond to the new formulation of the case.

(c) Third, even if Morgan Stanley was prevented from entering the UK acquiring market, it is argued that there were no sufficient anti-competitive effects.

In relation to the fine that has been imposed, Visa raises the following pleas in law under Article 229 EC:

(a) In accordance with the application of fundamental principles of Community law to the particular circumstances of the case and the genuine uncertainty that existed as to the illegality of the non-admission of Morgan Stanley, the Commission ought not to have imposed a fine on Visa at all. In fact, Visa considers that there was no justification for the fine imposed, given that the agreement in question had been formally notified to the Commission pursuant to Regulation (EEC) No 17/62 ([1]) and that the power to impose a fine under Regulation (EC) No 1/2003 ([2]) only arose because of the Commission's serious delay in the administrative procedure.

(b) In the alternative, the Commission committed, according to Visa, various errors of law and assessment regarding the level of the fine that it could lawfully impose on the applicants. On that basis, Visa contends that a fine of EUR 10,2 million was manifestly excessive and disproportionate, taking no account of the reasonable doubt as to the illegality of Visa's conduct.

Finally, Visa claims that the Commission was only entitled to impose a fine on Visa for the period for which the evidence was established that Morgan Stanley was prevented from entering the UK acquiring market. Even if Visa's earlier refusal to admit Morgan Stanley to Visa membership could have made a difference to the conditions of competition in the relevant market, this could not have been the case beyond that period and therefore, the Commission, in line with its 1998 Fining Guidelines, should not have applied a duration multiplier.

([1]) EEC Council Regulation No 17: First Regulation implementing Articles 85 and 86 of the Treaty (OJ 13, p. 204).
([2]) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, p. 1).

Action brought on 19 December 2007 — GALP Energia España and Others v Commission

(Case T-462/07)

(2008/C 51/92)

Language of the case: English

Parties

Applicants: GALP Energia España SA (Madrid, Spain), Petróleos de Portugal SA (Lisbon, Portugal) and GALP Energia, SGPS, SA (Lisbon, Portugal) (represented by: M. Slotboom, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Primarily, to set aside the contested decision; or

— alternatively, to set aside Articles 1, 2 and 3 of that decision as far as the applicants are concerned; or

— alternatively, to set aside Article 2 of the decision to the extent that a fine has been imposed on the applicants; or

— alternatively to reduce the fine that has been imposed on the applicants in Article 2 of the decision;

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

Pleas in law and main arguments

By means of their application, the applicants request annulment, in whole or partially, of Commission Decision C(2007) 4441 final of 3 October 2007 relating to a proceeding under Article 81 EC (Case COMP/38710 — Bitumen Spain) by which the Commission found that the applicants, among other undertakings, participated in a complex of agreements and concerted practices in the penetration bitumen business which covered the territory of Spain and which consisted in market sharing agreements and price coordination.

In support of their claims the applicants put forward the following pleas in law:

— the Commission, in violation of the principle of sound administration enshrined in Article 41 of the Charter of Fundamental Rights of the European Union, failed to institute a fair, careful and impartial investigation, substituting its own independent investigation of the relevant facts by vague and incorrect accusations made by other leniency applicants;

— the Commission allegedly breached Article 81 EC and Article 23(2) of Regulation 1/2003 ([1]) through manifest errors of appraisal and misapplication of the law, by finding that GALP Energia España took part in customer allocation, in monitoring and compensation mechanisms, or in any of the price arrangements, as described in the contested decision;

— the Commission further breached Article 81 EC and Article 23(2) of Council Regulation (EC) No 1/2003 through its determination of the duration of the alleged breach of Article 81 EC by concluding that GALP Energia España's involvement in the prohibited practices lasted until October 2002. In addition, the applicants submit that the Commission violated the abovementioned provisions in determining the level of the fine imposed on them;

— finally, since the Commission failed to carry out a careful and independent investigation, there was a defective adduction of evidence and a breach of the principle of the obligation to state reasons, embodied in Article 253 EC.

(1) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, p. 1).

Action brought on 12 December 2007 — Italy v Commission

(Case T-463/07)

(2008/C 51/93)

Language of the case: Italian

Parties

Applicant: Italian Republic (represented by: G. Aiello, Avvocato dello Stato)

Defendant: Commission of the European Communities

Form of order sought

— annul Commission Decision C(2007) 4477 of 3 October 2006, notified on 4 October 2007, in so far as it excludes from Community financing and charges to the budget of the Italian Republic the financial consequences to be applied in connection with clearance of the expenditure financed by the Guarantee Section of the European Agricultural Guidance and Guarantee Fund.

Pleas in law and main arguments

By the present action, the applicant challenges the lawfulness of the contested decision, in so far as it excludes from Community financing and charges to the budget of the Italian Republic the financial consequences to be applied in connection with clearance of the expenditure financed by the Guarantee Section of the European Agricultural Guidance and Guarantee Fund.

The actual expenditure excluded from that financing, which is the subject-matter of the action, relates to premiums for bovines, controls of the mills, the existence of the olive-oil register and the geographical information system for olives, controls of the yield, checks of the destination of the oil and dried fodder.

In support of its claims, the applicant pleads:

— infringement of Articles 15 and 24(1) of Commission Regulation (EC) No 2419/2001 of 11 December 2001 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes established by Council Regulation (EEC) No 3508/92;

— infringement of Articles 9a(1) and (3), 10, 16, 26 and 28(1) of Commission Regulation (EC) No 2366/98 of 30 October 1998 laying down detailed rules for the application of the system of production aid for olive oil for the 1998/99, 1999/2000 and 2000/01 marketing years;

— infringement of Article 11a of Regulation No 136/66/EEC of the Council of 22 September 1966 on the establishment of a common organisation of the market in oils and fats;

— infringement of Article 14(3) of Council Regulation (EEC) No 2261/84 of 17 July 1984 laying down general rules on the granting of aid for the production of olive oil and of aid to olive oil producer organisations;

— infringement of Articles 2, 8, 13 and 14 of Commission Regulation (EC) No 785/95 of 6 April 1995 laying down detailed rules for the application of Council Regulation (EC) No 603/95 on the common organisation of the market in dried fodder.

Action brought on 19 December 2007 — Korsch AG v OHIM (PharmaResearch)

(Case T-464/07)

(2008/C 51/94)

Language in which the application was lodged: German

Parties

Applicant: Korsch AG (Berlin, Germany) (represented by J. Grzam, lawyer)

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

Form of order sought

— annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 18 October 2007 in Case R 924/2007-4 concerning word mark No 5 309 836 'PharmaResearch';

— order the defendant to pay the costs of these proceedings and of the proceedings before the Board of Appeal.

Pleas in law and main arguments

Community trade mark concerned: The word mark 'PharmaResearch' for goods and services in Class 9 (Application No 5 309 836)

Decision of the Examiner: Rejection of the application

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Art 7(1)(b) and (c) of Regulation (EC) No 40/94 ([1]), since there were no grounds for refusal of registration.

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

Action brought on 25 December 2007 — Osram v Council

(Case T-466/07)

(2008/C 51/95)

Language of the case: English

Parties

Applicant: Osram GmbH (Munich, Germany) (represented by: R. Bierwagen, lawyer)

Defendant: Council of the European Union

Form of order sought

— Annul Council Regulation (EC) No 1205/2007 and order that the contested regulation's effects be upheld until a fresh review regulation comes into force.

— Order the defendant to bear the costs of the present proceedings.

Pleas in law and main arguments

The applicant, who is a German producer of a broad range of various types of light bulbs, including integrated electronic fluorescent lamps (CFL-i), seeks the annulment of Council Regulation (EC) No 1205/2007 of 15 October 2007 imposing anti-dumping duties on imports of integrated electronic compact fluorescent lamps (CFL-i) originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 384/96 and extending to imports of the same product consigned from the Socialist Republic of Vietnam, the Islamic Republic of Pakistan and the Republic of the Philippines ([1]), as this regulation only provides for the continuation of the anti-dumping duties for one year instead of the five-year period foreseen in the Basic Regulation ([2]).

In support of its application, the applicant submits, first of all, that the Council committed a manifest error of assessment by holding that two entities of the Philips group are 'Community producers' within the meaning of Article 4(1)(a) of the Basic Regulation.

Secondly, the applicant submits that the Council committed a manifest error of law by applying a Community interest test even though such a test is not foreseen for an expiry review.

Thirdly, the applicant contends that the Council breached Article 11(2) of the Basic Regulation and abused its powers by limiting the duration of the anti-dumping duties to one year.

Finally, the applicant alleges that the Council based the Community interest test on manifestly erroneous factual findings, made an erroneous assessment and failed to state reasons.

([1]) OJ 2007 L 272, p. 1.
([2]) Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (OJ 1996 L 56, p. 1).

Action brought on 21 December 2007 — Du Pont de Nemours (France) and Others v Commission

(Case T-467/07)

(2008/C 51/96)

Language of the case: English

Parties

Applicants: Du Pont de Nemours (France) SAS (Puteaux, France), Du Pont Portugal — Serviços, sociedade unipessoal, Ld.ª (Lisbon, Portugal), Du Pont Ibérica SL (Barcelona, Spain), E.I. du Pont de Nemours & Co (Wilmington, United States), Du Pont de Nemours Italiana SRL (Milan, Italy), Du Pont De Nemours (Nederland) BV (Dordrecht, Netherlands), Du Pont de Nemours (Deutschland) GmbH (Bad Homburg v.d. Höhe, Germany), DuPont Poland sp. z o. o. (Warsaw, Poland), DuPont Romania SRL (Bucharest, Rumania), DuPont International Operations SARL (Le Grand Saconnex, Switzerland), Du Pont de Nemours International SA (Le Grand Saconnex, Switzerland), DuPont Solutions (France) SAS (Puteaux, France), Du Pont Agro Hellas AE (Halandri, Greece) (represented by: D. Waelbroeck and I. Antypas, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Order the annulment of the Commission decision of 19 September 2007 concerning the non-inclusion of methomyl in Annex I to Council Directive 91/414/EEC and the withdrawal of authorisations for plant protection products containing that substance;

— condemn the Community as represented here by the Commission to repair any damage suffered by the applicants as a result of the contested decision and to set the amount of this compensation for the damage suffered by the applicants currently estimated at approximately EUR 52,5 million; or any other amount reflecting the damage suffered or to be suffered by the applicants as further established by them in the course of this procedure especially to take due account of future damage;

— in the alternative, order the parties to produce to the Court within a reasonable period of time of the date of the judgment figures as to the amount of the compensation arrived at by agreement between the parties or, in the absence of agreement, to order the parties to produce to the Court within the same period their conclusions with detailed figures;

— order an interest at the rate set at the time by the European Central Bank for main refinancing operations, plus two percentage points, or any other appropriate rate to be determined by the Court, be paid on the amount payable as from the date of the Court's judgment until actual payment;

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

Pleas in law and main arguments

Council Directive 91/414/EEC concerning the placing of plant protection products on the market ([1]) provides that Member States shall not authorise a plant protection product unless its active substances are listed in Annex I and any conditions laid down therein are fulfilled. The applicants seek the annulment of Commission Decision 2007/628/EC of 19 September 2007 concerning the non-inclusion of methomyl in Annex I to Council Directive 91/414/EEC and the withdrawal of authorisations for plant protection products containing that substance ([2]). The applicants further request compensation for the alleged damages caused by the contested decision.

In support of their application for annulment, the applicants submit that the contested decision is adopted on the basis of an incomplete and manifestly incorrect risk assessment of methomyl, whereby the Commission did not take into account information that was available to it since September 2005.

The applicants allege that the Commission misused its powers and infringed the provisions of Directive 91/414/EEC and the principles of proportionality, sound administration, legal certainty, legitimate expectations and non-discrimination as well as the applicants' right to be heard and the duty to state reasons.

([1]) Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market (OJ 1991 L 230, p. 1).
([2]) OJ 2007 L 255, p. 40.

Action brought on 21 December 2007 — Philips Lighting Poland and Philips Lighting v Council

(Case T-469/07)

(2008/C 51/97)

Language of the case: English

Parties

Applicants: Philips Lighting Poland S.A. (Pila, Poland) and Philips Lighting BV (Eindhoven, Netherlands) (represented by: M. L. Catrain González, lawyer, and E. Wright, Barrister)

Defendant: Council of the European Union

Form of order sought

— Annul the contested regulation in its entirety or in so far as it affects the applicants;

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

Pleas in law and main arguments

The applicants, who are producers of integrated fluorescent lamps (CFL-i) in the Community, seek the annulment of Council Regulation (EC) No 1205/2007 of 15 October 2007 imposing anti-dumping duties on imports of integrated electronic compact fluorescent lamps (CFL-i) originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 384/96 and extending to imports of the same product consigned from the Socialist Republic of Vietnam, the Islamic Republic of Pakistan and the Republic of the Philippines ([1]).

In support of their application, the applicants submit that the Council violated Articles 3(1), 9(4) and 11(2) of the Basic Regulation ([2]) by imposing anti-dumping duties where it has not been demonstrated that the expiry of the measures would be likely to lead to a continuation or recurrence of injury to the Community industry.

The applicants further allege that the Council committed an error of law in relying on Article 9(1) of the Basic Regulation in a situation that does not fall within the scope of that article, as the complaint leading to the investigation had not been withdrawn.

Finally, the applicants invoke a violation of Article 253 EC in that the contested regulation is inadequately reasoned in respect of the level of support from Community producers and the conclusion on Community interest.

(1) OJ 2007 L 272, p. 1.
(2) Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (OJ 1996 L 56, p. 1).

Action brought on 21 December 2007 — Wella v OHIM (TAME IT)

(Case T-471/07)

(2008/C 51/98)

Language of the case: English

Parties

Applicant: Wella AG (Darmstadt, Germany) (represented by: B. Klingberg, K. Sandberg, lawyers)

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

Form of order sought

— That the decision of the Second Board of Appeal of 24 October 2007 in Case R 713/2007-2 be annulled;

— that the defendant be ordered to bear the costs of the proceedings including the costs of the appeal proceedings.

Pleas in law and main arguments

Trade mark concerned: The international word mark 'TAME IT' for goods in Class 3 (international registration No 879 186) — request for EC territorial extension of protection in accordance with the Madrid Protocol

Decision of the examiner: Refusal on absolute grounds for all the goods applied for

Decision of the Board of Appeal: Partly upheld the appeal and allowed the EC territorial extension of the protection of international registration No 879 186 to proceed in part

Pleas in law: Infringement of Article 7(1)(b) and 7(1)(c) of Council Regulation 40/94.

According to the applicant, the Board of Appeal based its decision on a purely theoretical philological analysis of the mark applied for with regard to grammar, composition and spelling rules as well as structure and syntax of the trade mark applied for, completely leaving aside the overall impression of the mark to the average consumer.

Action brought on 21 December 2007 — Dow AgroSciences and Others v Commission

(Case T-475/07)

(2008/C 51/99)

Language of the case: English

Parties

Applicants: Dow AgroSciences Ltd (Hitchin, United Kingdom), Makhteshim-Agan Holding BV (Rotterdam, Netherlands), Makhteshim Agan International Coordination Center (Brussels, Belgium), Dintec Agroquímica — Produtos Químicos Ld.ª (Funchal, Portugal), Finchimica SpA (Manerbio, Italy), Dow Agrosciences BV (Rotterdam, Netherlands), Dow AgroSciences Hungary kft (Budapest, Hungary), Dow AgroSciences Italia Srl (Milano, Italy), Dow AgroSciences Polska sp. z o.o. (Warszawa, Poland), Dow AgroSciences Iberica SA (Madrid, Spain), Dow AgroSciences s.r.o. (Prague, Czech Republic), Dow AgroSciences LLC (Indianapolis, United States), Dow AgroSciences GmbH (Stade, Germany), Dow AgroSciences Export SAS (Mougins, France), Dow AgroSciences SAS (Mougins, France), Dow AgroSciences Danmark A/S (Lyngby-Taarbæk, Denmark), Makhteshim-Agan Poland sp. z o.o. (Warszawa, Poland), Makhteshim-Agan (UK) Ltd (London, United Kingdom), Makhteshim-Agan France SARL (Sevres, France), Makhteshim-Agan Italia Srl (Bergamo, Italy), Alfa Agricultural Supplies SA (Halandri, Greece) (represented by: C. Mereu and K. Van Maldegem, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Annul the contested decision.

— Order the Commission to take such measures as are necessary to comply with the annulment of the contested decision in accordance with Article 233 EC, including, but not limited to, ordering it to request the Member State competent authorities to reinstate the relevant national trifluralin registrations withdrawn as a result of the contested decision, and extend any relevant deadlines as required to comply with the judgment of the Court.

— Declare the illegality, and inapplicability to the applicants, of Article 3(3) of Regulation (EC) No 850/2004 of the European Parliament and of the Council of 29 April 2004 on persistent organic pollutants and amending Directive 79/117/EEC.

— Order the Commission to pay the costs of these proceedings, including interest at 8 %.

— Take such other or further measures as justice may require.

Pleas in law and main arguments

Council Directive 91/414 concerning the placing of plant protection products on the market ([1]) provides that Member States shall not authorise a plant protection product unless its active substances are listed in Annex I and any conditions laid down therein are fulfilled. The applicants seek the annulment of Commission Decision 2007/629/EC of 20 September 2007 concerning the non-inclusion of trifluralin in Annex I to Council Directive 91/414/EEC and the withdrawal of authorisations for plant protection products containing that substance ([2]).

In support of their application, the applicants submit that the Commission failed to base its decision on the report from the European Food Safety Authority (EFSA) and thereby misused its powers.

The applicants further contend that the contested decision contains manifest errors of appraisal in that the Commission:

— failed to take all the available scientific evidence into account as required by Article 5(1) of Directive 91/414;

— failed to extend the relevant deadlines although the circumstances and criteria for the assessment of trifluralin changed during the review process;

— did not have a scientific justification for its findings;

— lacked competence to assess trifluralin under Regulation 850/2004 ([3]) and, in any event, erred in its assessment.

Moreover, the applicants allege that the contested decision does not comply with the applicable legislative procedures and that the Commission and EFSA infringed Article 8(7) and (8) of Regulation 451/2000 ([4]) by not complying with the procedural deadlines, which according to the applicants amounts to a breach of an essential procedural requirement.

Finally, the applicants submit that the contested decision is inadequately reasoned in violation of Article 253 EC and that it infringes the principles of proportionality, legal certainty, non-retroactivity, the protection of the applicants' legitimate expectations and their right to be heard.

([1]) Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market (OJ 1991 L 230, p. 1).
([2]) OJ 2007 L 255, p. 42.
([3]) Regulation (EC) No 850/2004 of the European Parliament and of the Council of 29 April 2004 on persistent organic pollutants and amending Directive 79/117/EEC (OJ 2004 L 158, p. 7).
([4]) Commission Regulation (EC) No 451/2000 of 28 February 2000 laying down the detailed rules for the implementation of the second and third stages of the work programme referred to in Article 8(2) of Council Directive 91/414/EEC (OJ 2000 L 55, p. 25).

Action brought on 13 December 2007 — Evropaïki Dynamiki v Frontex

(Case T-476/07)

(2008/C 51/100)

Language of the case: English

Parties

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

Defendant: European Agency for the Management of Operational Cooperation at the External Borders (FRONTEX)

Form of order sought

— Annul the decision of FRONTEX to evaluate the applicant's bid as not successful and award the contract to the successful tenderer;

— order FRONTEX to pay the applicant's damages suffered on account of the tendering procedure in question for an amount of 500 000 EUR;

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

Pleas in law and main arguments

The applicant submitted a bid in response to the defendant's call for an open tender for the provision of informatics services and hardware and software licences (OJ 2007/S 114-139890). The applicant contests the defendant's decision of 3 October 2007 rejecting the applicant's bid and informing the applicant that the contract will be awarded to another tenderer.

In support of its application, the applicant submits that the defendant failed to state reasons in accordance with Article 253 EC and used evaluation criteria that were not expressly included in the call for tender. Furthermore, the applicant alleges that the defendant committed manifest errors of assessment.

Action brought on 20 December 2007 — Nynäs Petroleum and Nynas Petróleo v Commission

(Case T-482/07)

(2008/C 51/101)

Language of the case: English

Parties

Applicants: AB Nynäs Petroleum (Stockholm, Sweden) and Nynas Petróleo, SA (Madrid, Spain) (represented by: D. Beard, Barrister and M. Dean, Solicitor)

Defendant: Commission of the European Communities

Form of order sought

— Annulment of Article 1 of the decision insofar as it applies to Nynas for the period 1991-1996;

— annulment of Article 1 of the decision insofar as it applies to Nynas in respect of price coordination;

— annulment of Article 2 of the decision insofar as it imposes fines of EUR 10 642 500 on Nynas SA and EUR 10 395 000 on AB Nynäs or, in the alternative, reduce that fine as appropriate;

— order that the Commission pays the costs of the appeal.

Pleas in law and main arguments

By means of this application partial annulment is sought, pursuant to Article 230 EC, of Commission Decision C(2007) 4441 final of 3 October 2007 relating to a proceeding under Article 81 EC (Case COMP/38.710 — Bitumen — Spain) by which the Commission found that the applicants, Nynäs Petroleum and Nynas Petróleo (together 'Nynas'), among other undertakings, participated in a set of agreements and concerted practices in the penetration bitumen business which covered the territory of Spain and which consisted in market sharing agreements and price coordination; as well as/or reduction of the fine imposed on the applicant, pursuant to Article 229 EC.

The grounds of the appeal are based on the following pleas:

(i) It is claimed that the Commission erred in its assessment of the duration of the involvement of Nynas in the alleged market allocation arrangements, in particular, by holding that Nynas has participated in the alleged infringement between 1991 and 1996.

(ii) It is further submitted that the Commission erred in its finding that Nynas were involved in the alleged pricing infringements.

(iii) Finally, the applicants contend that the Commission erred in its assessment of the degree of involvement by Nynas in aspects to the infringements and in setting the appropriate level of the fine to be imposed on Nynas.

Action brought on 22 December 2007 — Romania v Commission of the European Communities

(Case T-483/07)

(2008/C 51/102)

Language of the case: Romanian

Parties

Applicant: Romania (represented by: Aurel Ciobanu-Dordea, Agent, Emilia Gane and Dumitra Mereuță, Advisers)

Defendant: Commission of the European Communities

Forms of order sought

The applicant claims that the Court of First Instance should:

— Annul the Commission's decision (C(2007) 5240 final) of 26 October 2007 concerning the national allocation plan for greenhouse gas emission certificates for the year 2007, notified by Romania pursuant to Directive 2003/87/EC of the European Parliament and of the Council;

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

Pleas in law and main arguments

By the contested decision, the Commission rejected in part the national allocation plan for greenhouse gas emission certificates for the year 2007, notified by Romania pursuant to Directive 2003/87/EC [1], reducing by 9,080765 million tonnes of CO_2, equivalent per year the overall number of certificates that will be allocated for the Community scheme and establishing that the average overall annual volume covered by the emission quotas that may be allocated will not exceed 74,836235 million tonnes.

In support of its action, the applicant submits as follows:

— the Commission has failed to comply with Article 9(1) and (3) and Article 11(1) of Directive 2003/87/EC, in that it has established, with binding force, on the basis of a method of its own, the overall volume of the emission quotas that can be allocated by Romania, thus encroaching upon the latter's sphere of competence;

— the Commission has applied a method wholly lacking in transparency for the purposes of determining the overall volumes of the emission quotas, thus infringing not only Article 9(1) of Directive 2003/87/EC, but also Article 9(3) thereof;

— in applying its own method, the Commission has infringed the principle of non-discrimination;

— the Commission has failed to comply with Article 9(3) of Directive 2003/87/EC and Article 253 EC, in that it has failed to give adequate reasons for decision C(2007) 5240 final.

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

Action brought on 22 December 2007 — Romania v Commission of the European Communities

(Case T-484/07)

(2008/C 51/103)

Language of the case: Romanian

Parties

Applicant: Romania (represented by: Aurel Ciobanu-Dordea, Agent, Emilia Gane and Dumitra Mereuță, Advisers)

Defendant: Commission of the European Communities

Forms of order sought

The applicant claims that the Court of First Instance should:

— Annul the Commission's decision (C(2007) 5253 final) of 26 October 2007 concerning the national allocation plan for greenhouse gas emission certificates for the period 2008-2012, notified by Romania pursuant to Directive 2003/87/EC of the European Parliament and of the Council;

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

Pleas in law and main arguments

By the contested decision, the Commission rejected in part the national allocation plan for greenhouse gas emission certificates for the period 2008-2012, notified by Romania pursuant to Directive 2003/87/EC (1), reducing by 19,754248 million tonnes of CO_2, equivalent per year the overall number of certificates that will be allocated for the Community scheme and establishing that the average overall annual volume covered by the emission quotas that may be allocated will not exceed 75,944352 million tonnes.

In support of its action, the applicant submits as follows:

— the Commission has failed to comply with Article 9(1) and (3) and Article 11(2) of Directive 2003/87/EC, in that it has established, with binding force, on the basis of a method of its own, the overall volume of the emission quotas that can be allocated by Romania, thus encroaching upon the latter's sphere of competence;

— the Commission has applied a method wholly lacking in transparency for the purposes of determining the overall volumes of the emission quotas, thus infringing not only Article 9(1) of Directive 2003/87/EC, but also Article 9(3) thereof;

— in applying its own system, the Commission has infringed the principle of non-discrimination;

— the Commission has failed to comply with Article 9(3) of Directive 2003/87/EC and Article 253 EC, in that it has failed to give adequate reasons for decision C(2007) 5253 final.

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

Action brought on 21 December 2007 — Olive Line International v OHIM — Knopf (o-live)

(Case T-485/07)

(2008/C 51/104)

Language in which the application was lodged: English

Parties

Applicant: Olive Line International, SL (Madrid, Spain) (represented by: P. Koch Moreno, lawyer)

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

Other party to the proceedings before the Board of Appeal: Reinhard Knopf (Malsch, Germany)

Form of order sought

— Declare that the decision dated 26 September 2007 of the Second Board of Appeal of the OHIM dismissing the appeal against the granting of Community trade mark No 3 219 193 does not comply with EC Regulation 40/94 on Community trade marks;

— order that the costs of the proceedings be paid by the defendant and, if appropriate, by the contributing party.

Pleas in law and main arguments

Applicant for the Community trade mark: Reinhard Knopf

Community trade mark concerned: The figurative mark 'o-live' for goods in classes 29, 30, 31 and 33 — application No 3 219 193

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

Mark or sign cited: The national trade name 'Olive lines' for the activities of a business dedicated to being a trade intermediary

Decision of the Opposition Division: Rejection of the opposition in its entirety

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Violation of Article 8(1)(b) and (4) of Council Regulation No 40/94, as there is a risk of confusion between the earlier non-registered trade mark, which has more than just a local significance, and the trade mark applied for.

Action brought on 21 December 2007 — Ford Motor v OHIM — Alkar Automotive (CA)

(Case T-486/07)

(2008/C 51/105)

Language in which the application was lodged: English

Parties

Applicant: Ford Motor Co. (Dearborn, United States) (represented by: R. Ingerl, lawyer)

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

Other party to the proceedings before the Board of Appeal: Alkar Automotive SA (Derio, Spain)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 25 October 2007 (Case R 85/2006-4);

— annul the decision of the Opposition Division of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 22 November 2005 (Opposition No B 684052);

— order OHIM to pay the costs incurred by the applicant.

Pleas in law and main arguments

Applicant for the Community trade mark: Alkar Automotive SA

Community trade mark concerned: The figurative mark 'CA' for, *inter alia*, goods in classes 9, 11 and 12 — application No 3 186 764

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

Mark or sign cited: The Community word and figurative marks 'KA' for goods and services in classes 9, 12, 14, 16, 18, 20, 21, 27, 32 and 37

Decision of the Opposition Division: Rejection of the opposition in its entirety

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 40/94, as there is a likelihood of confusion between the conflicting trade marks due to the phonetic and visual similarity between 'KA' and 'CA', the identity of the goods and the enhanced distinctiveness of the earlier marks.

Action brought on 21 December 2007 — Imperial Chemical Industries v OHIM (FACTORY FINISH)

(Case T-487/07)

(2008/C 51/106)

Language of the case: English

Parties

Applicant: Imperial Chemical Industries (ICI) plc (London, United Kingdom) (represented by: S. Malynicz, Barrister)

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

Form of order sought

— The decision of the Fourth Board of Appeal dated 24 October 2007 in Case R 668/2007-4 shall be annulled.

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

Pleas in law and main arguments

Community trade mark concerned: The word mark 'FACTORY FINISH' for goods in class 2 — application No 4 538 518

Decision of the examiner: Refusal of the application

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Violation of Article 7(1)(c) of Council Regulation No 40/94, as 'FACTORY FINISH' is not descriptive, but an unusual juxtaposition of words resulting in a lexical invention, and violation of Article 7(1)(b) of Council Regulation No 40/94, as the mark applied for is not devoid of distinctive character.

Action brought on 28 December 2007 — GlaxoSmithKline v OHIM — Serono Genetics Institute (FAMOXIN)

(Case T-493/07)

(2008/C 51/107)

Language in which the application was lodged: English

Parties

Applicant: GlaxoSmithkline SpA (Verona, Italy) (represented by: G. Richard, lawyer)

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

Other party to the proceedings before the Board of Appeal: Serono Genetics Institute SA (Evry, France)

Form of order sought

— Annul the decision of the First Board of Appeal of 14 September 2007 in Case R 8/2007-1 and declare the request for invalidation brought by the applicant to be well founded;

— the applicant invites the Board to annul all cost orders made against the applicant by the Office for Harmonisation in the Internal Market, and to order the later to bear the costs of the applicant.

Pleas in law and main arguments

Registered Community trade mark subject of the application for a declaration of invalidity: The Community word mark 'FAMOXIN' for goods and services in Class 5 — Application No 2 491 298

Proprietor of the Community trade mark: Serono Genetics Institute SA

Party requesting the declaration of invalidity of the Community trade mark: The applicant

Trade mark right of the party requesting the declaration of invalidity: The national word mark 'LANOXIN' for goods in Class 5

Decision of the Cancellation Division: Rejected the application for invalidation in its entirety

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Articles 8(1)(b) and 52 of Regulation (EC) No 40/94.

Action brought on 31 December 2007 — IIC-Intersport International Corporation v OHIM — McKenzie Corporation (McKENZIE)

(Case T-502/07)

(2008/C 51/108)

Language in which the application was lodged: English

Parties

Applicant: IIC-Intersport International Corporation GmbH (Ostermundigen, Switzerland) (represented by: P.J.M. Steinhauser, lawyer)

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

Other party to the proceedings before the Board of Appeal: The McKenzie Corporation Ltd (Newcastle Upon Tyne, United Kingdom)

Form of order sought

— Annul the appealed decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market of 15 October 2007 in Case R 1425/2006-2 and confirm the decision of the Opposition Division of the Office for Harmonisation in the Internal Market of 6 September 2006 by which the opposition of Intersport has been received in respect of certain of the goods concerned.

Pleas in law and main arguments

Applicant for the Community trade mark: The McKenzie Corporation Ltd

Community trade mark concerned: The Community figurative mark 'McKENZIE' for goods and services in Classes 18, 25, 36 and 37

Proprietor of the mark or sign cited in the opposition proceedings: IIC-Intersport International Corporation GmbH

Mark or sign cited: The earlier Community figurative mark 'MCKINLEY' for goods and services in Classes 18, 20, 22, 25 and 28 and the earlier Community word mark 'MCKINLEY' for goods and services in Classes 12, 18, 20, 22, 25 and 28.

Decision of the Opposition Division: Upheld the opposition partially

Decision of the Board of Appeal: Rejected the opposition in its entirety and allowed registration to proceed

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

Order of the Court of First Instance of 13 December 2007 — Estancia Piedra v OHIM — Franciscan Vineyards (ESTANCIA PIEDRA)

(Case T-159/06) ([1])

(2008/C 51/109)

Language of the case: English

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

([1]) OJ C 190, 12.8.2006

Order of the Court of First Instance of 13 December 2007 — Estancia Piedra v OHIM — Franciscan Vineyards (ESTANCIA PIEDRA)

(Case T-160/06) ([1])

(2008/C 51/110)

Language of the case: English

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

([1]) OJ C 190, 12.8.2006.

Order of the Court of First Instance of 13 December 2007 — Select Appointments v OHIM — Manpower (TELESELECT)

(Case T-202/06) ([1])

(2008/C 51/111)

Language of the case: English

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

([1]) OJ C 294, 2.12.2006.

Order of the Court of First Instance of 13 December 2007 — Borco-Marken-Import Matthiesen v OHIM — Tequilas del Señor (TEQUILA GOLD Sombrero Negro)

(Case T-182/07) ([1])

(2008/C 51/112)

Language of the case: English

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

([1]) OJ C 170, 21.7.2007.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Order of the Civil Service Tribunal (First Chamber) of 14 December 2007 — Steinmetz v Commission

(Case F-131/06) ([1])

(Staff cases — Officials — Amicable settlement — Performance of an agreement — Refusal to reimburse expenditure in connection with a mission — Manifest inadmissibility — No legal interest in bringing proceedings — Apportioning costs — Unreasonable and vexatious costs)

(2008/C 51/113)

Language of the case: French

Parties

Applicant: Robert Steinmetz (Luxembourg, Luxembourg) (represented by: J. Choucroun, lawyer)

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

Re:

Application for annulment of the Commission's decision of 21 February 2005 not to give full effect to the amicable settlement reached between the parties in Case T-155/05, which was brought before the Court of First Instance of the European Communities.

Operative part of the order

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

2. *Mr Steinmetz is ordered to bear his own costs, with the exception of an amount of EUR 500.*

3. *In addition to its own costs, the Commission of the European Communities is ordered to bear Mr Steinmetz's costs in the sum of EUR 500.*

([1]) OJ C 326, 30.12.2006, p. 86.

Order of the Civil Service Tribunal (First Chamber) of 19 December 2007 — Marcuccio v Commission

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

(Staff cases — Officials — Social security — Sickness insurance — Repayment of medical expenses — Express rejection of the application)

(2008/C 51/114)

Language of the case: Italian

Parties

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

Defendant: Commission of the European Communities (represented by: J. Currall and C. Berardis-Kayser, Agents, and A. Dal Ferro, lawyer)

Re:

First, application for annulment of a number of Commission decisions refusing to grant the applicant 100 % reimbursement of his medical expenses and, second, a claim for damages

Operative part of the order

1. *The Civil Service Tribunal declines jurisdiction in Case F-20/07 Marcuccio v Commission in order that the Court of First Instance of the European Communities may hear and determine that case.*

2. *The costs are reserved.*

([1]) OJ C 223, 22.9.2007, p. 19.

Order of the Civil Service Tribunal (First Chamber) of 14 December 2007 — Marcuccio v Commission

(Case F-21/07) ([1])

(Staff cases — Officials — Action for damages — Allegedly unlawful processing of medical information — Inadmissibility — Failure to bring a claim for damages within a reasonable time)

(2008/C 51/115)

Language of the case: Italian

Parties

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

Defendant: Commission of the European Communities (represented by: J. Currall and C. Berardis-Kayser, Agents, and A. Dal Ferro, lawyer)

Re:

Application for compensation for the damage allegedly suffered by the applicant as a result of a series of unlawful acts on the part of a number of Commission officials, in particular, when processing medical information concerning the applicant.

Operative part of the order

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

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

([1]) OJ C 223, 22.9.2007, p. 20.