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IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS AND BODIES

COURT OF JUSTICE

INFORMATION NOTE

on references from national courts for a preliminary ruling

SUPPLEMENT

following the implementation of the urgent preliminary ruling procedure applicable to references concerning the area of freedom, security and justice

(2008/C 64/01)

1. This note is supplementary to the existing information note on references from national courts for a preliminary ruling ⁽¹⁾, and provides practical information on the new urgent preliminary ruling procedure applicable to references concerning the area of freedom, security and justice. The procedure is governed by Article 23a of the Protocol on the Statute of the Court of Justice and Article 104b of its Rules of Procedure ⁽²⁾.

2. This information is intended to assist national courts proposing to request the application of the urgent preliminary ruling procedure, and to facilitate the Court's handling of that request. In common with the existing information note, it is in no way binding.

Conditions for the application of the urgent preliminary ruling procedure

3. The urgent preliminary ruling procedure is applicable only in the areas covered by Title VI (Articles 29 to 42) of the Treaty on European Union concerning police and judicial cooperation in criminal matters, and Title IV (Articles 61 to 69) of Part Three of the EC Treaty concerning visas, asylum, immigration and other policies related to free movement of persons, including judicial cooperation in civil matters.

4. Although a reference for a preliminary ruling generally calls for the national proceedings to be stayed until the Court has given its ruling, the referring court may still order protective measures to safeguard the interests of the parties pending the judgment of the Court, particularly as regards a national administrative measure based on a Community act which is the subject of a reference for a preliminary ruling on validity.

5. The Court decides whether the urgent procedure is to be applied. Such a decision is generally taken only on a reasoned request from the referring court. Exceptionally, the Court may decide of its own motion to deal with a reference under the urgent preliminary ruling procedure, where that appears to be required.

6. The urgent procedure simplifies the various stages of the proceedings before the Court, but its application entails significant constraints for the Court and for the parties and other interested persons participating in the procedure, particularly the Member States.

⁽¹⁾ See OJ 2005 C 143, pp. 1 to 4.

⁽²⁾ See OJ 2008 L 24, pp. 39 to 43.

7. It should therefore be requested only where it is absolutely necessary for the Court to give its ruling on the reference as quickly as possible. Although it is not possible to provide an exhaustive list of such situations, particularly because of the varied and evolving nature of Community rules governing the area of freedom, security and justice, a national court or tribunal might, for example, consider submitting a request for the urgent procedure to be applied in the following situations: in the case of a person detained or deprived of his liberty, where the answer to the question raised is decisive as to the assessment of that person's legal situation or, in proceedings concerning parental authority or custody of children, where the identity of the court having jurisdiction under Community law depends on the answer to the question referred for a preliminary ruling.

The request for application of the urgent preliminary ruling procedure

8. To enable the Court to decide quickly whether the urgent preliminary ruling procedure should be applied, the request must set out the matters of fact and law which establish the urgency and, in particular, the risks involved in following the normal preliminary ruling procedure.

9. In so far as it is able to do so, the referring court should briefly state its view on the answer to be given to the question(s) referred. Such a statement makes it easier for the parties and other interested persons participating in the procedure to define their positions and facilitates the Court's decision, thereby contributing to the rapidity of the procedure.

10. The request for the urgent preliminary ruling procedure must be submitted in a form that enables the Registry of the Court to establish immediately that the file must be dealt with in a particular way. Accordingly, the request should be submitted in a document separate from the order for reference itself, or in a covering letter expressly setting out the request.

11. As regards the order for reference itself, it should be noted that relevant information is already contained in points 20 to 24 of the information note on references from national courts for a preliminary ruling. It is particularly important in an urgent situation that the order for reference should be succinct, as it helps to ensure the rapidity of the procedure.

Communication between the Court of Justice, the national court and the parties

12. As regards communication with the national court or tribunal and the parties before it, national courts or tribunals which submit a request for an urgent preliminary ruling procedure are requested to state the e-mail address or any fax number which may be used by the Court, together with the e-mail addresses or any fax numbers of the representatives of the parties to the proceedings.

13. A copy of the signed order for reference together with a request for the urgent preliminary ruling procedure can initially be sent to the Court by e-mail (ECJ-Registry@curia.europa.eu) or by fax (+352 43 37 66). Processing of the reference and of the request can then begin upon receipt of the e-mailed or faxed copy. The originals of those documents must, however, be sent to the Registry of the Court as soon as possible.

(2008/C 64/02)

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

OJ C 51, 23.2.2008

Past publications

OJ C 37, 9.2.2008

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

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Second Chamber) of 17 January 2008 — Commission of the European Communities v Federal Republic of Germany

(Case C-152/05) ⁽¹⁾

(Failure of a Member State to fulfil obligations — Articles 18 EC, 39 EC and 43 EC — National legislation — Conditions for the grant of a subsidy for the construction or purchase of a dwelling for personal occupation — Dwelling required to be situated in the territory of the Member State concerned)

(2008/C 64/03)

Language of the case: German

Parties

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

Defendant: Federal Republic of Germany (represented by: M. Lumma and C. Schulze Bahr, Agents)

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 18, 39 and 43 EC — National legislation under which a housing allowance (Eigenheimzulage) for the construction or purchase of a person's dwelling is granted only to persons subject to unlimited taxation in that Member State and only for dwellings situated in that State.

Operative part of the judgment

The Court:

1) Declares that, by excluding in the first sentence of Paragraph 2(1) of the Law on subsidies for owner-occupied dwellings (Eigenheimzulagengesetz), in the version published in 1997, as amended by the ancillary budget law of 2004 (Haushaltsbegleitgesetz 2004), dwellings in another Member State from eligibility for the subsidy for owner-occupied dwellings granted to persons liable to unlimited

taxation on income, the Federal Republic of Germany has failed to fulfil its obligations under Articles 18 EC, 39 EC and 43 EC;

2) Orders the Federal Republic of Germany to pay the costs.

⁽¹⁾ OJ C 132, 28.5.2005.

Judgment of the Court (Second Chamber) of 18 October 2007 — Commission of the European Communities v European Parliament, Council of the European Union

(Case C-299/05) ⁽¹⁾

(Action for annulment — Social security — Regulation (EEC) No 1408/71 — Articles 4(2a) and 10a — Annex IIa — Regulation (EC) No 647/2005 — Special non-contributory benefits)

(2008/C 64/04)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: M.-J. Jonczy, D. Martin and V. Kreuschitz, Agents)

Defendants: European Parliament (represented by: G. Ricci and A. Troupiotis, Agents), Council of the European Union (represented by M. Veiga, J. Leppo and G. Curmi, Agents)

Interveners in support of the defendant: Republic of Finland (represented by: T. Pynnä, J. Heliskoski and E. Bygglin, Agents), Kingdom of Sweden (represented by: A. Kruse and R. Sobocki, Agents), United Kingdom of Great Britain and Northern Ireland (represented by: E. O'Neill and C. Vajda, Agents)

Re:

Annulment of the provisions of point 2 of Annex I to Regulation (EC) No 647/2005 of 13 April 2005 amending Council 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 and Council Regulation (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71 relating to the headings W. Finland (b), X. Sweden (c) and Y. United Kingdom (d), (e) and (f) (OJ 2005 L 117, p. 1) — Special non-contributory cash benefits

Operative part of the judgment

The Court:

1. Annuls the provisions of point 2 of Annex I to Regulation (EC) No 647/2005 of the European Parliament and of the Council of 13 April 2005 amending Council Regulations (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 and (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71 under the headings 'FINLAND', (b), 'SWEDEN', (c), and 'UNITED KINGDOM', (d) to (f);
2. Maintains the effects of the inclusion of the Disability Living Allowance under the heading 'UNITED KINGDOM', (d), of Annex IIa to Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, in the version amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, as amended by Regulation No 647/2005, as regards solely the 'mobility' part of that allowance so that, within a reasonable period, appropriate measures can be taken to include it in that annex;
3. Orders the European Parliament and the Council of the European Union to bear their own costs and to pay, in equal shares, those of the Commission of the European Communities;
4. Orders the Republic of Finland, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland to bear their own costs.

(¹) OJ C 243, 1.10.2005.

Judgment of the Court (Second Chamber) of 22 November 2007 — Cofradía de pescadores 'San Pedro' de Bermeo and Others v Council of the European Union, Commission of the European Communities and the French Republic

(Case C-6/06 P) (¹)

(Appeal — Non-contractual liability of the Community — Principles of relative stability, legal certainty and legitimate expectations — Admissibility — Appeal in part unfounded and in part inadmissible — Cross appeal — Application to set aside part of the judgment of the Court of First Instance inasmuch as it holds that it is not necessary to rule on a plea of inadmissibility brought against an action which it dismissed as unfounded — No legal interest in bringing proceedings — Res judicata)

(2008/C 64/05)

Language of the case: Spanish

Parties

Appellants: Cofradía de pescadores 'San Pedro' de Bermeo and Others (represented by: M. Troncoso Ferrer, abogado)

Other parties to the proceedings: Council of the European Union, (represented by: F. Florindo Gijón and M. Balta, Agents), Commission of the European Communities, (represented by: F. Jimeno Fernández) and the French Republic

Re:

Appeal brought against the judgment of the Court of First Instance (Third Chamber) of 19 October 2005 in Case T-415/03 *Cofradía de pescadores 'San Pedro' de Bermeo and Others v Council* in which the Court dismissed the action for damages to compensate for the loss allegedly suffered by the applicants following the Council's authorisation of the transfer to the French Republic of part of the quota for anchovy allocated to the Portuguese Republic

Operative part of the judgment

The Court:

1. Dismisses the principal appeal, brought by Cofradía de pescadores 'San Pedro' de Bermeo and the other applicants, whose names are set out in the Annex to the judgment of the Court of First Instance of the European Communities of 19 October 2005 in Case T-415/03 *Cofradía de pescadores 'San Pedro' de Bermeo and Others v Council*;
2. Dismisses the cross appeal brought by the Council of the European Union;

3. *Orders Cofradía de pescadores ‘San Pedro’ de Bermeo and the other applicants, whose names are set out in the Annex to the judgment of the Court of First Instance of the European Communities of 19 October 2005 in Case T-415/03 Cofradía de pescadores ‘San Pedro’ de Bermeo and Others v Council, and the Council of the European Union, to bear their own costs;*

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

(¹) OJ C 60, 11.3.2006.

Judgment of the Court (Third Chamber) of 17 January 2008 (reference for a preliminary ruling from the Finanzgericht Hamburg, Germany) — Viamex Agrar Handels GmbH (C-37/06), Zuchtvieh-Kontor GmbH (ZVK) (C-58/06) v Hauptzollamt Hamburg-Jonas

(Joined Cases C-37/06 and C-58/06) (¹)

(Regulation (EC) No 615/98 — Directive 91/628/EEC — Export refunds — Protection of bovine animals during transport — Payment of export refunds for bovine animals subject to compliance with Directive 91/628/EEC — Principle of proportionality — Forfeiture of export refunds)

(2008/C 64/06)

Language of the case: German

Referring court

Finanzgericht Hamburg

Parties to the main proceedings

Applicants: Viamex Agrar Handels GmbH (C-37/06), Zuchtvieh-Kontor GmbH (ZVK) (C-58/06)

Defendant: Hauptzollamt Hamburg-Jonas

Re:

Reference for a preliminary ruling — Finanzgericht Hamburg — Validity of Articles 1 and 5(3) of Commission Regulation (EC) No 615/98 of 18 March 1998 laying down specific detailed rules of application for the export refund arrangements as regards the welfare of live bovine animals during transport (OJ 1998 L 82, p. 19) — Payment of export refunds for bovine animals subject to compliance with the provisions of Council Directive 91/628/EEC of 19 November 1991 on the protection of animals during transport and amending Directives 90/425/EEC and 91/496/EEC (OJ 1991 L 340, p. 17) — Forfeiture

of a refund as a result of a failure to observe prescribed rest periods during the transport of the animals

Operative part of the judgment

1) *Consideration of the first question has disclosed nothing capable of casting doubt on the validity of Article 1 of Commission Regulation (EC) No 615/98 of 18 March 1998 laying down specific detailed rules of application for the export refund arrangements as regards the welfare of live bovine animals during transport.*

2) *Consideration of the second question has disclosed nothing capable of casting doubt on the validity of Article 5(3) of Regulation No 615/98 in the light of the principle of proportionality. It is for the Finanzgericht Hamburg to assess whether the competent authorities have applied the relevant provisions of Regulation No 615/98 in a manner that is consonant with that principle.*

(¹) OJ C 96, 22.4.2006.

Judgment of the Court (First Chamber) of 10 January 2008 — Commission of the European Communities v Portuguese Republic

(Case C-70/06) (¹)

(Failure of a Member State to fulfil obligations — Judgment of the Court establishing the failure of a Member State to fulfil its obligations — Non-compliance — Financial penalty)

(2008/C 64/07)

Language of the case: Portuguese

Parties

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

Defendant: Portuguese Republic (represented by: L. Fernandes, P. Fragoso Martins and J. A. de Oliveira, Agents)

Re:

Failure of a Member State to fulfil obligations — Article 228 EC — Failure to comply with the judgment of the Court of Justice of 14 October 2004 in Case C-275/03 — Imperfect transposition into domestic law of Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (OJ 1989 L 395, p. 33) — Request that a penalty should be fixed

Operative part of the judgment

The Court:

- 1) Declares that, by failing to repeal Decree-Law No 48 051 of 21 November 1967, making the award of damages to persons injured by a breach of Community law relating to public contracts, or the national laws implementing it, conditional on proof of fault or fraud, the Portuguese Republic has failed to adopt the measures necessary to comply with the judgment of 14 October 2004 in Case C-275/03 *Commission v Portugal* and has thereby failed to fulfil its obligations under Article 228(1) EC;
- 2) Orders the Portuguese Republic to pay to the Commission of the European Communities, into the account 'European Community own resources', a penalty payment of EUR 19 392 for every day of delay in implementing the measures necessary to comply with the judgment in Case C-275/03 *Commission v Portugal*, from the day on which the Court of Justice delivers judgment in the present case until the day on which the judgment in Case C-275/03 *Commission v Portugal* is complied with;
- 3) Orders the Portuguese Republic to pay the costs.

⁽¹⁾ OJ C 86, 8.4.2006.

Judgment of the Court (Eighth Chamber) of 24 January 2008
— *Herta Adam v Commission of the European Communities*

(Case C-211/06 P) ⁽¹⁾

(Appeal — Officials — Remuneration — Expatriation allowance — Condition provided for by the second indent of Article 4(1)(a) of Annex VII to the Staff Regulations — Definition of 'work done for another State')

(2008/C 64/08)

Language of the case: French

Parties

Appellant: Herta Adam (represented by: S. Orlandi and J.-N. Louis, avocats)

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

Re:

Appeal against the judgment of the Court of First Instance (First Chamber) of 22 February 2006 in Case T-342/04 *Herta Adam v Commission* dismissing an action seeking the annulment of the Commission decision of 22 September 2003 refusing the applicant the benefit of the expatriation allowance provided for by Article 4 of Annex VII to the Staff Regulations of Officials of the European Communities

Operative part of the judgment

The Court:

1. Dismisses the appeal;
2. Orders Ms Adam to pay the costs.

⁽¹⁾ OJ C 165, 15.7.2006.

Judgment of the Court (Fourth Chamber) of 17 January 2008 (reference for a preliminary ruling from the *Juzgado de lo Social Único de Algeciras* (Spain)) — *Josefa Velasco Navarro v Fondo de Garantía Salarial (Fogasa)*

(Case C-246/06) ⁽¹⁾

(Social policy — Protection of workers in the event of insolvency of their employer — Directive 80/987/EEC amended by Directive 2002/74/EC — Direct effect — Compensation for unfair dismissal agreed under a judicial conciliation settlement — Payment guaranteed by the guarantee institution — Payment conditional upon the adoption of a judicial decision)

(2008/C 64/09)

Language of the case: Spanish

Referring court

Juzgado de lo Social Único de Algeciras

Parties to the main proceedings

Applicant: Josefa Velasco Navarro

Defendant: Fondo de Garantía Salarial (Fogasa)

Re:

Reference for a preliminary ruling — Juzgado de lo Social Único de Algeciras — Interpretation of Council Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer (OJ 1980 L 283, p. 23), as amended by Directive 2002/74/EC of the European Parliament and of the Council of 23 September 2002 (OJ 2002 L 270, p. 10) — Scope of the guarantee offered by the guarantee institution — Compensation on termination of the employment relationship — National rules under which a judgment or administrative decision is required for such compensation — Direct effect of the directive, as amended, as regards a state of insolvency declared between the date of entry into force of Directive 2002/74 and the deadline for its transposition

Operative part of the judgment

1. Where Directive 2002/74/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 80/987/EEC on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer has not been transposed into national law by 8 October 2005, the possible direct effect of the first paragraph of Article 3 of Council Directive 80/987/EEC of 20 October 1980 on the protection of employees in the event of the insolvency of their employer, as amended by Directive 2002/74, cannot, in any event, be relied upon in relation to a state of insolvency which occurred before that date.
2. Where rules of national law fall within the scope of Directive 80/987, as amended by Directive 2002/74, the national courts are bound, as regards a state of insolvency occurring between the date of the entry into force of Directive 2002/74 and the deadline for transposition of that directive into national law, to ensure that the application of those rules of national law is consistent with the principle of non-discrimination, as recognised by the Community legal order.

(¹) OJ C 212, 2.9.2006.

Judgment of the Court (Second Chamber) of 17 January 2008 (reference for a preliminary ruling from the Bundesfinanzhof (Germany)) — Theodor Jäger v Finanzamt Kusel-Landstuhl

(Case C-256/06) (¹)

(Free movement of capital — Articles 73b and 73d of the EC Treaty (now Articles 56 EC and 58 EC) — Inheritance tax — Valuation of assets forming part of the estate — Agricultural and forestry assets in another Member State — Less favourable method of valuation of assets and calculation of the tax payable)

(2008/C 64/10)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Theodor Jäger

Defendant: Finanzamt Kusel-Landstuhl

Re:

Reference for a preliminary ruling — Bundesfinanzhof — Interpretation of Article 56 of the EC Treaty — National inheritance tax legislation — Application of different methods for assessing the value of agricultural land and forestry depending on whether they are on the national territory or in another Member State and a deduction in respect of the acquisition of land on the national territory, resulting in a fiscal charge that is heavier where the assets include agricultural land and forestry in another Member State than where all the assets are on the national territory

Operative part of the judgment

Article 73b(1) of the EC Treaty (now Article 56(1) EC), read in conjunction with Article 73d of the EC Treaty (now Article 58 EC), must be interpreted as precluding legislation of a Member State which, for the purposes of calculating the tax on an inheritance consisting of assets situated in that State and agricultural land and forestry situated in another Member State,

— provides that account be taken of the fair market value of the assets in that other Member State, whereas a special valuation procedure exists for identical domestic assets, the results of which amount on average to only 10 % of that fair market value, and

— reserves application of a tax-free amount to domestic agricultural land and forestry in relation to those assets and takes account of their remaining value in the amount of only 60 % thereof.

(¹) OJ C 224, 16.9.2006.

Judgment of the Court (Second Chamber) of 24 January 2008 (reference for a preliminary ruling from the Corte suprema di cassazione (Italy)) — Roby Profumi Srl v Comune di Parma

(Case C-257/06) (¹)

(Article 28 EC — Directive 76/768/EEC — Protection of health — Cosmetic products — Importation — Communication of information on cosmetic products to the authorities of the State of importation)

(2008/C 64/11)

Language of the case: Italian

Referring court

Corte suprema di cassazione

Parties to the main proceedings

Appellant: Roby Profumi Srl

Respondent: Comune di Parma

Re:

Reference for a preliminary ruling — Corte suprema di cassazione — Interpretation of Article 28 EC and Article 7 of Council Directive 76/768/EEC of 27 July 1976 on the approximation of the laws of the Member States relating to cosmetic products (OJ 1976 L 262, p. 169), as amended by Council Directive 93/35/EEC of 14 June 1993 (OJ 1993 L 151, p. 32) — Ready-for-sale products imported from other Member States — National provisions requiring importers to communicate a full and detailed list of the substances contained in the product

Operative part of the judgment

Article 7 of Council Directive 76/768/EEC of 27 July 1976 on the approximation of the laws of the Member States relating to cosmetic products, as amended by Council Directive 93/35/EEC of 14 June 1993, does not preclude a national provision which, in the interests of prompt and appropriate medical treatment in the event of difficulties, requires the importer of cosmetic products to communicate to the Ministry of Health and to the Region the name or the corporate name of the business, its registered office and that of the manufacturing

plant, and a full and detailed list of the substances used and the substances contained in those products.

(¹) OJ C 212, 2.9.2006.

Judgment of the Court (Grand Chamber) of 29 January 2008 (Reference for a preliminary ruling from the Juzgado de lo Mercantil No 5 de Madrid — Spain) — Productores de Música de España (Promusicae) v Telefónica de España SAU

(Case C-275/06) (¹)

(Information society — Obligations of providers of services — Retention and disclosure of certain traffic data — Obligation of disclosure — Limits — Protection of the confidentiality of electronic communications — Compatibility with the protection of copyright and related rights — Right to effective protection of intellectual property)

(2008/C 64/12)

Language of the case: Spanish

Referring court

Juzgado de lo Mercantil No 5 de Madrid

Parties to the main proceedings

Applicant: Productores de Música de España (Promusicae)

Defendant: Telefónica de España SAU

Re:

Reference for a preliminary ruling — Juzgado de lo Mercantil no 5, Madrid, Spain — Interpretation of Articles 15(2) and 18 of Directive 2001/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (OJ 2000 L 178, p. 1), Article 8 (1) and (2) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ 2001 L 167, p. 10) and Article 8 of Directive 2004/48/EC of the European Parliament and the Council of 29 April 2004 on the enforcement of intellectual property rights (OJ 2004 L 157, p. 45) — Treatment of data generated by communications made in the context of the supply of an information society service — Duty of operators of electronic communications networks and services, providers of telecommunications network access and providers of data storage services to retain and make available such data — Not where civil proceedings are concerned.

Operative part of the judgment

Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'), Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights, and Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) do not require the Member States to lay down, in a situation such as that in the main proceedings, an obligation to communicate personal data in order to ensure effective protection of copyright in the context of civil proceedings. However, Community law requires that, when transposing those directives, the Member States take care to rely on an interpretation of them which allows a fair balance to be struck between the various fundamental rights protected by the Community legal order. Further, when implementing the measures transposing those directives, the authorities and courts of the Member States must not only interpret their national law in a manner consistent with those directives but also make sure that they do not rely on an interpretation of them which would be in conflict with those fundamental rights or with the other general principles of Community law, such as the principle of proportionality.

⁽¹⁾ OJ C 212, 2.9.2006.

Judgment of the Court (Third Chamber) of 24 January 2008 (reference for a preliminary ruling from the Court of Appeal (England and Wales) (Civil Division) (United Kingdom)) — The Queen, on the application of Ezgi Payir, Burhan Akyuz, Birol Ozturk v Secretary of State for the Home Department

(Case C-294/06) ⁽¹⁾

(EEC-Turkey Association Agreement — Freedom of movement for workers — Decision No 1/80 of the Association Council — First indent of Article 6(1) — Worker duly registered as belonging to the labour force — Leave to enter as a student or as an au pair — Effect on the right to remain)

(2008/C 64/13)

Language of the case: English

Referring court

Court of Appeal

Parties to the main proceedings

Applicants: The Queen, on the application of Ezgi Payir, Burhan Akyuz, Birol Ozturk

Defendant: Secretary of State for the Home Department

Re:

Reference for a preliminary ruling — Court of Appeal — Interpretation of Article 6(1) of Decision No 1/80 of the EEC-Turkey Association Council — Concept of a worker duly registered as belonging to the labour force of a Member State — Turkish national employed as an au pair after obtaining leave to remain for two years in order to pursue that activity — Turkish nationals holding leave to remain to follow a course of study and holding permission to work for a maximum of 20 hours per week during term time

Operative part of the judgment

The fact that a Turkish national was granted leave to enter the territory of a Member State as an au pair or as a student cannot deprive him of the status of 'worker' and prevent him from being regarded as 'duly registered as belonging to the labour force' of that Member State within the meaning of Article 6(1) of Decision No 1/80 of the Association Council of 19 September 1980 on the development of the Association. Accordingly, that fact cannot prevent that national from being able to rely on that provision for the purposes of obtaining renewed permission to work and a corollary right of residence.

⁽¹⁾ OJ C 237, 30.9.2006.

Judgment of the Court (Second Chamber) of 10 January 2008 — Commission of the European Communities v Republic of Finland

(Case C-387/06) ⁽¹⁾

(Failure of a Member State to fulfil its obligations — Telecommunications sector — Article 8(1), (2)(b) and 3(c) of Directive 2002/19/EC ('Framework' Directive) — Article 8(1) and (4) of Directive 2002/19/EC ('Access' Directive) — Electronic communications networks and services — Fixed and mobile telephone networks — Termination of calls — Incoming traffic — Limit on the powers of the national authority for communications regulation)

(2008/C 64/14)

Language of the case: Finnish

Parties

Applicant: Commission of the European Communities (represented by: M. Huttunen and M. Shotter, Agents)

Defendant: Republic of Finland (represented by: A. Guimaraes-Purokoski, Agent)

Re:

Failure to fulfil obligations under Article 8(1), (2)(b) and 3(c) 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 (OJ 2002 L 108, p. 33) and under Article 8(1) and (4) of Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities ('Access' Directive) (OJ 2002 L 108, p. 7)

Operative part of the judgment

The Court:

1. Dismisses the action;
2. Orders the Commission of the European Communities and the Republic of France to bear their own costs.

⁽¹⁾ OJ C 294, 2.12.2006.

Judgment of the Court (First Chamber) of 24 January 2008 (reference for a preliminary ruling from the Simvoulis tis Epikratias, Greece) — Emm. G. Lianakis AE, Sima Anonymi Techniki Etairia Meleton kai Epivlepseon, Nikolaos Vlachopoulos v Dimos Alexandroupolis, Planitiki AE, Aikaterini Georgoula, Dimitrios Vasios, N. Loukatos kai Synergates AE Meleton, Eratosthenis Meletitiki AE, A. Pantazis — Pan. Kyriopoulos kai syn/tes OS Filon OE, Nikolaos Sideris

(Case C-532/06) ⁽¹⁾

(Directive 92/50/EEC — Public service contracts — Carrying out of a project in respect of the cadastre, town plan and implementing measure for a residential area — Criteria which may be accepted as 'criteria for qualitative selection' or 'award criteria' — Economically most advantageous tender — Compliance with the award criteria set out in the contract documents or contract notice — Subsequent determination of weighting factors and sub-criteria in respect of the award criteria referred to in the contract documents or contract notice — Principle of equal treatment of economic operators and obligation of transparency)

(2008/C 64/15)

Language of the case: Greek

Referring court

Simvoulis tis Epikratias

Parties to the main proceedings

Applicants: Emm. G. Lianakis AE, Sima Anonymi Techniki Etairia Meleton kai Epivlepseon, Nikolaos Vlachopoulos

Defendants: Dimos Alexandroupolis, Planitiki AE, Aikaterini Georgoula, Dimitrios Vasios, N. Loukatos kai Synergates AE Meleton, Eratosthenis Meletitiki AE, A. Pantazis — Pan. Kyriopoulos kai syn/tes OS Filon OE, Nikolaos Sideris

Re:

Reference for a preliminary ruling — Simvoulis tis Epikratias — Interpretation of Article 36 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) — Criteria for awarding contract — Subsequent fixing of the specific weighting for each criterion when the award procedure was already under way

Operative part of the judgment

Read in the light of the principle of equal treatment of economic operators and the ensuing obligation of transparency, Article 36(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 European Parliament and Council Directive 97/52/EC of 13 October 1997, precludes the contracting authority in a tendering procedure from stipulating at a later date the weighting factors and sub-criteria to be applied to the award criteria referred to in the contract documents or contract notice.

⁽¹⁾ OJ C 56, 10.3.2007.

Judgment of the Court (First Chamber) of 17 January 2008 (reference for a preliminary ruling from the Cour de cassation (France)) — Paul Chevassus-Marche v Groupe Danone, Société Kro beer brands SA (BKSA), Société Evian eaux minérales d'Evian SA (SAEME)

(Case C-19/07) ⁽¹⁾

(Approximation of laws — Directive 86/653/EEC — Self-employed commercial agents — Right of an agent entrusted with a specific geographical area to a commission — Transactions concluded without any action on the part of the principal)

(2008/C 64/16)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Applicant: Paul Chevassus-Marche

Defendants: Groupe Danone, Société Kro beer brands SA (BKSA), Société Evian eaux minérales d'Evian SA (SAEME)

Re:

Reference for a preliminary ruling — Cour de cassation — Interpretation of Article 7(2) of Council Directive 86/653/EEC of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents (OJ 1986 L 382, p. 17) — Termination of the agency contract — Commission owed to a commercial agent entrusted with a specific geographical area or group of persons — Whether there is a right to that commission in the absence of any control, direct or indirect, by the principal over transactions between a third party and a customer belonging to the geographical area entrusted to the agent

Operative part of the judgment

The first indent of Article 7(2) of Directive 86/653/EEC of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents must be interpreted as meaning that a commercial agent entrusted with a specific geographical area does not have the right to a commission for transactions concluded by customers belonging to that area without any action, direct or indirect, on the part of the principal.

⁽¹⁾ OJ C 69, 24.3.2007.

Judgment of the Court (Fourth Chamber) of 17 January 2008 (reference for a preliminary ruling from the Rechtbank van eerste aanleg te Antwerpen, Belgium) — NV Lammers & Van Cleeff v Belgische Staat

(Case C-105/07) ⁽¹⁾

(Freedom of establishment — Free movement of capital — Tax legislation — Corporation tax — Interest paid by a subsidiary on funds lent by the parent company established in another Member State — Reclassification of the interest as taxable dividends — No such reclassification where interest payments are made to a resident company)

(2008/C 64/17)

Language of the case: Dutch

Referring court

Rechtbank van eerste aanleg te Antwerpen

Parties to the main proceedings

Applicant: NV Lammers & Van Cleeff

Defendant: Belgische Staat

Re:

Reference for a preliminary ruling — Rechtbank van eerste aanleg te Antwerpen — Interpretation of Articles 12 EC, 43 EC, 46 EC, 48 EC, 56 EC and 58 EC — National fiscal legislation reclassifying as taxable dividends interest paid by a subsidiary by way of remuneration in respect of loans provided by the parent company established in another Member State, but not reclassifying such interest as taxable dividends when paid to a company established in Belgium

Operative part of the judgment

Articles 43 EC and 48 EC preclude national legislation, such as that at issue in the main proceedings, under which interest payments made by a company resident in a Member State to a director which is a company established in another Member State are reclassified as dividends and are, on that basis, taxable, where, at the beginning of the taxable period, the total of the interest-bearing loans is higher than the paid-up capital plus taxed reserves, whereas, in the same circumstances, where those interest payments are made to a director which is a company established in the same Member State, those payments are not reclassified as dividends and are, on that basis, not taxable.

⁽¹⁾ OJ C 95, 28.4.2007.

Judgment of the Court (Sixth Chamber) of 17 January 2008 — Commission of the European Communities v Hellenic Republic

(Case C-342/07) ⁽¹⁾

(Failure of a Member State to fulfil its obligations — Directive 2002/91/EC — Energy policy — Energy saving — Failure to transpose within the prescribed period)

(2008/C 64/18)

Language of the case: Greek

Parties

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

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

Re:

Failure of a Member State to fulfil obligations — Failure to adopt, within the prescribed period, the measures necessary to comply with Directive 2002/91/EC of the European Parliament and of the Council of 16 December 2002 on the energy performance of buildings (OJ 2003 L 1, p. 65)

Operative part of the judgment

The Court:

1. Declares that by not having adopted, within the prescribed period, the legislative, regulatory and administrative measures necessary to comply with Directive 2002/91/EC of the European Parliament and of the Council of 16 December 2002 on the energy performance of buildings, the Hellenic Republic has failed to fulfil its obligations under that directive;
2. Orders the Hellenic Republic to pay the costs.

⁽¹⁾ OJ C 211, 8.9.2007.

Order of the Court (Third Chamber) of 8 November 2007 (reference for a preliminary ruling from the Consiglio di Stato — Italy) — Fratelli Martini & C. SpA, Cargill Srl v Ministero delle Politiche Agricole e Forestali, Ministero della Salute, Ministero delle Attività Produttive

(Case C-421/06) ⁽¹⁾

(First subparagraph of Article 104(3) of the Rules of Procedure — Judgment of the Court declaring a Community provision invalid — Obligations of the institutions — Animal health and public health requirements — Compound feedingstuffs for animals — Indication, on the label, of the percentages in weight of the raw materials present in the feeding-stuff, with a tolerance of $\pm 15\%$ of the declared value — Prohibition on misleading the consumer)

(2008/C 64/19)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties

Applicants: Fratelli Martini & C. SpA, Cargill Srl

Defendants: Ministero delle Politiche Agricole e Forestali, Ministero della Salute, Ministero delle Attività Produttive

Re:

Reference for a preliminary ruling — Consiglio di Stato — Effects of the judgment of the Court of Justice in Joined Cases C-453/03, C-11/04, C 12/04 and C-194/04 (ABNA and Others) by which Directive 2002/2/EC of the European Parliament and of the Council of 28 January 2002 amending Council Directive 79/373/EEC on the circulation of compound feedingstuffs and repealing Commission Directive 91/357/EEC (OJ 2002 L 63, p. 23) was declared partially invalid — Obligation for the institutions to adopt a new act

Operative part of the order

1. Article 1(4) of Directive 2002/2/EC of the European Parliament and of the Council of 28 January 2002 amending Council Directive 79/373/EEC on the circulation of compound feedingstuffs and repealing Commission Directive 91/357/EEC, which lays down an obligation to indicate, on the labels of compound feedingstuffs for animals, the percentages in weight of the raw materials of which the feedingstuff is composed with a tolerance of $\pm 15\%$ of the declared value as regards those percentages, must be interpreted as meaning that it does not contradict Articles 8 and 16 of Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety, which are intended, *inter alia*, to prevent the labelling and presentation of feedingstuffs for animals from misleading the consumer.
2. Since Article 1(1)(b) of Directive 2002/2 laid down an independent obligation bearing no relation to the obligations laid down by the other provisions of that directive, the Court's declaration, in its judgment of 6 December 2005 in Joined Cases C-453/03, C-11/04, C-12/04 and C-194/04 ABNA and Others, that that provision was invalid did not create a legal vacuum or a situation of inconsistency requiring the Community institutions to adopt the substantive amendments of Directive 2002/2.

In any event, the invalidity of a Community provision results directly from the judgment of the Court declaring that invalidity and it is for the national authorities and courts of the Member States to draw the consequences from that declaration in their national legal order.

⁽¹⁾ OJ C 326, 30.12.2006.

Order of the Court (Seventh Chamber) of 7 December 2007 (reference for a preliminary ruling from the Commissione tributaria regionale di Genova (Italy)) — Agenzia Dogane Circostrizione Doganale di Genova v Euricom SpA

(Case C-505/06) ⁽¹⁾

(First paragraph of Article 104(3) of the Rules of Procedure — Community Customs Code — Inward processing — Association Agreement — Prior export of rice to a non-member country bound by a preferential customs agreement — Article 216 of the Customs Code)

(2008/C 64/20)

Language of the case: Italian

Referring court

Commissione tributaria regionale di Genova (Italy)

Parties

Applicant: Agenzia Dogane Circostrizione Doganale di Genova

Defendant: Euricom SpA

Re:

Reference for a preliminary ruling — Commissione tributaria regionale di Genova Interpretation of Article 114, Article 115(1) and (3) and Article 216 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1) — Rice exported under inward processing arrangements to a third country with which there is an agreement for preferential customs treatment

Operative part of the order

Article 216 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Regulation (EC) No 2700/2000 of the European Parliament and of the Council of 16 November 2000 is applicable to the inward processing operations referred to in Article 115(1)(b) of that regulation in which compensating products have been exported from the Community before importation of the import goods.

⁽¹⁾ OJ C 42, 24.2.2007.

Order of the Court of 29 November 2007 — Eurostrategies SPRL v Commission of the European Communities

(Case C-122/07) ⁽¹⁾

(Appeals — Order for removal from the Register — Discontinuance — Costs)

(2008/C 64/21)

Language of the case: English

Parties

Applicant: Eurostrategies SPRL (represented by: R. Lang and S. Crosby, Solicitors)

Other party to the proceedings: Commission of the European Communities (represented by: P. Costa de Oliveira and I. Hadjiyiannis, Agents)

Re:

Appeal against the order of the President of the Fourth Chamber of the Court of First Instance of 1 December 2006 in Case T-203/06 *Eurostrategies SPRL v Commission of the European Communities* removing the case from the register of the Court of First Instance and ordering the applicant to pay the costs.

Operative part of the order

1. The appeal is dismissed.
2. Eurostrategies SPRL is ordered to pay the costs.

⁽¹⁾ OJ C 95, 28.4.2007.

Order of the Court (Fifth Chamber) of 10 December 2007 (reference for a preliminary ruling from the Sąd Rejonowy w Jaworznie (Republic of Poland)) — Piotr Kawala v Gmina Miasta Jaworzna

(Case C-134/07) ⁽¹⁾

(First subparagraph of Article 104(3) of the Rules of Procedure — Higher national levy for a product imported from another Member State than for a similar product purchased in the relevant Member State — First paragraph of Article 90 EC — Charge on first registration affecting imported second-hand motor vehicles)

(2008/C 64/22)

Language of the case: Polish

Referring court

Sąd Rejonowy w Jaworznie

Partie to the main proceedings

Applicant: Piotr Kawala

Defendant: Gmina Miasta Jaworzna

Re:

Reference for a preliminary ruling — Sąd Rejonowy w Jaworznie — Interpretation of Article 90 EC — Charge levied for the issue of a vehicle registration certificate at the time of the vehicle's first registration in the Member State, the amount of which is significantly greater than that charged for obtaining a duplicate copy of a vehicle registration certificate — Principle of neutrality of domestic charges in light of competition between goods already on the national market and imported goods

Operative part of the order

The first paragraph of Article 90 EC must be interpreted as precluding a charge, such as that provided for in Paragraph 1(1) of the Regulation of the Polish Minister for Infrastructure of 28 July 2003, on the amount of the charge for a vehicle registration certificate which, in practice, is levied on the first registration of a second-hand motor vehicle imported from another Member State and not levied on the purchase of a second-hand vehicle in Poland in so far as the latter is already registered there.

⁽¹⁾ OJ C 95, 28.4.2007.

Appeal brought on 3 April 2007 by Jean Yves Sellier against the judgment of the Court of First Instance (Fourth Chamber) delivered on 15 January 2007 in Case T-276/06 *Sellier v Commission*

(Case C-191/07 P)

(2008/C 64/23)

Language of the case: French

Parties

Appellant: Jean Yves Sellier (represented by: J.Y. Leeman, avocat)

Other party to the proceedings: Commission of the European Communities

By order of 18 September 2007, the Court of Justice (Sixth Chamber) dismissed the appeal and ordered Mr Sellier to bear his own costs.

Appeal brought on 19 November 2007 by Saint-Gobain Glass Deutschland GmbH against the order delivered by the Court of First Instance (Third Chamber) on 11 September 2007 in Case T-28/07 *Fels-Werke GmbH, Saint-Gobain Glass Deutschland GmbH, Spenner-Zement GmbH & Co. KG v Commission of the European Communities*

(Case C-503/07 P)

(2008/C 64/24)

Language of the case: German

Parties

Appellant: Saint-Gobain Deutschland GmbH (represented by: H. Posser and S. Altenschmidt, Rechtsanwälte)

Other parties to the proceedings: Fels-Werke GmbH, Spenner-Zement GmbH & Co. KG, Commission of the European Communities

Form of order sought

- Annul the order of the Third Chamber of the Court of First Instance of 11 September 2007 in Case T-28/07 (*Fels-Werke and Others v Commission of the European Communities*) in so far as it concerns the appellant;
- annul Article 1.2 of the Commission's Decision of 29 November 2006 on the national plan for the allocation of greenhouse gas emission allowances notified by Germany pursuant to Directive 2003/87/EC of the European Parliament and of the Council (document number unpublished), insofar as it declares the allocation guarantees in respect of the first action period described in Chapter 6.2 of Germany's national allocation plan under the heading 'Allocations under Paragraph 8 of the ZuG 2007' to be incompatible with Directive 2003/87/EC;
- annul Article 2.2 of that decision insofar as it issues to the Federal Republic of Germany instructions for the application of the allocation guarantees in respect of the first action period described in Chapter 6.2 of Germany's national allocation plan under the heading 'Allocations under Paragraph 8 of the ZuG 2007' and in so doing also requires the application of the same performance factor as for other comparable existing installations;
- in the alternative, annul the order referred to in the first indent above and refer the case back to the Court of First Instance;
- order the Commission to pay the costs of the proceedings.

Grounds of appeal and main arguments

By the contested order the Court of First Instance ruled that the appellant was not individually concerned and consequently dismissed as inadmissible its action for annulment of parts of the Commission's Decision of 29 November 2006 on the plan notified by Germany for the allocation of greenhouse gas emission allowances.

In support of its appeal the appellant claims that the procedural law which operates in its interests and material Community law, namely the fourth paragraph of Article 230 EC, have been infringed.

First, the Court of First Instance infringed the fundamental rights to a fair hearing and to be heard. It reasoned its finding that the appellant was not individually concerned primarily on the basis that it did not prove that it was a member, as claimed, of a closed class of operators and, in particular, on the basis that it did not submit a list of operators which fall within the application of Paragraph 8(1) of the ZUG 2007. However, at no point in the proceedings did the Court of First Instance request

submission of a list of operators concerned by the allocation guarantee. The relevance of the submission of such a list was also not apparent to the applicant for any other reason since the specific and closed nature of the circle of operators benefiting from the allocation guarantee is already apparent from the mandatory legal structure of the ZUG 2007, as submitted before the Court of First Instance. Furthermore, in requesting the submission of such a list, the Court of First Instance is asking the appellant to do something which it is not actually in a position to do.

Second, the Court of First Instance infringed the fourth paragraph of Article 230 EC in that it wrongly found that the applicant was not individually concerned. The group of persons, to whom the contested decision applies, is not only — in the words of the Court — 'more or less precisely' determined, but is also conclusively defined by operation of law as a result of past events and it is not conceivable how it may be expanded. As regards the operators concerned by the allocation guarantee in Paragraph 8 of the ZuG 2007, the contested decision could, furthermore, also be viewed as a bundle of individual decisions since the continued application of the allocation guarantee has been denied to each and every one of those operators.

Reference for a preliminary ruling from the Juzgado de lo Social No 30 (Madrid) lodged on 3 December 2007 — Evangelina Gómez-Limón Sánchez-Camacho v Instituto Nacional de la Seguridad Social (INSS), Tesorería General de la Seguridad Social (TGSS), Alcampo SA

(Case C-537/07)

(2008/C 64/25)

Language of the case: Spanish

Referring court

Juzgado de lo Social No 30, Madrid

Parties to the main proceedings

Applicant: Evangelina Gómez-Limón Sánchez-Camacho

Defendants: Instituto Nacional de la Seguridad Social (INSS), Tesorería General de la Seguridad Social (TGSS), Alcampo SA

Questions referred

1. Bearing in mind that the granting of parental leave must be a measure intended to promote equality, in the manner and to the extent freely fixed each Member State within the minimum limits imposed by Directive 1996/34/EC ⁽¹⁾, is it possible that the enjoyment of that period of parental leave, in the case of a reduction in the working day and in salary by reason of taking care of children, should affect rights in the process of being acquired by the worker, male or female, taking such parental leave and may individuals rely before the public institutions of a State on the principle of the protection of rights acquired or in the process of being acquired?
2. In particular, does the expression 'rights acquired or in the process of being acquired' in Clause 2(6) of the framework agreement on parental leave ... include only rights related to working conditions and affect only the contractual relationship with the employer or, on the contrary, does it also affect the maintenance of rights acquired or in the process of being acquired in matters of social security, and is the requirement for 'continuity of the entitlements to social security cover under the different schemes' in Clause 2(8) of the framework agreement on parental leave ... satisfied by the formulation under consideration and applied by the national authorities and, if applicable, is the right to continuity of entitlements to social security cover sufficiently certain and precise to be relied upon before the public authorities of a Member State?
3. Are the provisions of Community law compatible with national legislation which, during the period of reduction in the working day by reason of parental leave, reduces the amount of invalidity pension to be paid in relation to what it would have been before that leave and reduces the accrual and consolidation of future benefits in proportion to the reduction in working hours and in salary?
4. Given the duty of the national courts to interpret national law in the light of the obligations imposed by the Directive, in order to enable the objectives of the Community legislation to be achieved to the greatest possible extent, must that requirement apply equally to the continuity of social security entitlements during the period of parental leave and, specifically, in the circumstances of the case to a form of part-time leave or reduction in the working day such as was used on this occasion?
5. In the specific circumstances of the case, does the reduction in the grant and accrual of social security entitlements during the period of parental leave constitute direct or indirect discrimination contrary to the provisions of Directive 79/7/EEC ⁽²⁾ of 19 December 1978 on the principle of

equal treatment and non-discrimination for men and women in matters of social security (OJ 1979 L 6, p. 24) and is it contrary to the requirements of equality and non-discrimination between men and women, in accordance with the tradition common to all the Member States, to the extent that this principle must apply not only to conditions of employment but also to the public activity of social protection of workers?

⁽¹⁾ Council Directive 96/34 EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and ETUC (OJ 1996 L 145, p. 4).

⁽²⁾ OJ 1979, L 6, p. 24; EE 05/02, p. 174.

Action brought on 5 December 2007 — Commission of the European Communities v Federal Republic of Germany

(Case C-546/07)

(2008/C 64/26)

Language of the case: German

Parties

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

Defendant: Federal Republic of Germany

Form of order sought

— Declare that the Federal Republic of Germany has infringed its obligations arising from Article 49 EC and the standstill clause in Chapter 2 (Freedom of Movement for Persons), Paragraph 13 of Annex XII (List referred to in Article 24 of the Act of Accession of 16 April 2003) in that:

- (a) in its administrative practice, it interprets the term 'Unternehmen der anderen Seite' (undertakings from the other side) in Paragraph 1(1) of the intergovernmental agreement between Germany and Poland of 31 January 1990 on the posting of workers from Polish undertakings to carry out works contracts as meaning 'German undertakings' and

- (b) with the so-called 'Arbeitsmarktschutzklausel' (the clause protecting the labour market) it widened the regional restrictions for access of workers after 16 April 2003, namely the date the EU Act of Accession: Poland was signed;

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

Pleas in law and main arguments

- A. The posting of Polish workers to carry out works contracts in Germany takes place pursuant to an agreement of 31 January 1990 between the Government of the Federal Republic of Germany and the Polish Government on the posting of workers from Polish undertakings to carry out works contracts. Under German administrative practice, the term 'Unternehmen der anderen Seite' in Paragraph 1(1) of that agreement is interpreted as meaning 'German undertakings'.
- B. The result is that only German undertakings can conclude works contracts under the Agreement. The only alternative for undertakings from other Member States which wish to carry out work in Germany is to establish a subsidiary company in that Member State. Undertakings from other Member States are thus prevented from taking advantage of the freedom to provide services granted to them under Article 49 EC to conclude works contracts, for work to be carried out in the Federal Republic of Germany, with Polish undertakings under the Agreement between Germany and Poland. There is thus direct discrimination of undertakings from Member States other than Germany which is based on the nationality or the location of the registered office of undertakings.
- C. Under Article 46 EC in conjunction with Article 55 EC, discriminatory special rules may only be justified on grounds of public policy, public security or public health. Pursuant to settled case-law, reliance on the justification of public policy, laid down in Article 46 EC, presupposes that the maintaining in force of the discriminatory measure must be necessary to counter a genuine and sufficiently serious threat to one of the fundamental interests of society.
- D. Those conditions are not met in the present case. In order to properly supervise the implementation of the Agreement it is not necessary to impose a requirement that undertakings must have their registered office in Germany since all applications have to be made to the German authorities in any case. As regards the enforcement of the liability of the applicant for payment of social security contributions and penalties for infringements of law, such questions are not specifically related to the agreement on works contracts, but are related to the general provision of services in Germany by undertakings from other Member States. There also appears to be no reason why the opening of the bilateral agreement to undertakings from other Member States should lead to an incorrect application or circumvention of the transitional provisions in the Accession Agreement. Concerns about the incorrect use of the transitional provisions in no way amount to a sufficiently serious threat to public policy or security capable of justifying a discriminatory restriction on the freedom to provide services.
- E. It is apparent from the wording of the standstill clause in Chapter 2, Paragraph 13 of Annex XII (List referred to in Article 24 of the Act of Accession of 16 April 2003) that the standstill obligation is absolute and any restriction on the access of Polish workers with works contracts to the German labour market which places them in a situation which is worse than the one they were in on 16 April 2003 is prohibited. Pursuant to the so-called 'Arbeitsmarktschutzklausel' (the clause protecting the labour market), which is continuously applied in the administrative practice of the Federal Employment Agency, works contracts are not permitted in principle if they are to be concluded in an agency district in which the average unemployment rate over the last 6 months has been at least 30 % above the unemployment rate of the Federal Republic of Germany. The list of the agency districts falling within that rule are updated quarterly. Consequently, the Arbeitsmarktschutzklausel infringes the standstill clause of the Act of Accession since new agency districts have been added to the list of 'blocked' districts after 16 April 2003.

Reference for a preliminary ruling from the Handelsgericht Wien (Austria) lodged on 11 December 2007 — Friederike Wallentin-Hermann v Alitalia — Linee Aeree Italiane SpA

(Case C-549/07)

(2008/C 64/27)

Language of the case: German

Referring court

Handelsgericht Wien

Parties to the main proceedings

Applicant: Friederike Wallentin-Hermann

Defendant: Alitalia — Linee Aeree Italiane SpA

Questions referred

1. Are there extraordinary circumstances within the meaning of Article 5(3) of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 ⁽¹⁾, having regard to the 14th recital in the preamble to the regulation, if a technical defect in the aeroplane, in particular damage to the engine, results in the cancellation of the flight, and must the grounds of excuse under Article 5(3) of the regulation be interpreted in accordance with the provisions of Article 19 of the Montreal Convention?
2. If the answer to the first question is in the affirmative, are there extraordinary circumstances within the meaning of Article 5(3) of Regulation No 261/2004 where air carriers cite technical defects as a reason for flight cancellations with above average frequency, solely on the basis of their frequency?
3. If the answer to the first question is in the affirmative, has an air carrier taken all 'reasonable measures' in accordance with Article 5(3) of Regulation No 261/2004 if it establishes that the minimum legal requirements with regard to maintenance work on the aeroplane have been met and is that sufficient to relieve the air carrier of the obligation to pay compensation in accordance with Article 5 in conjunction with Article 7 of the regulation?
4. If the answer to the first question is in the negative, are extraordinary circumstances within the meaning of Article 5(3) of Regulation No 261/2004 cases of force majeure or natural disasters, which were not due to a technical defect and are thus unconnected with the air carrier?

⁽¹⁾ OJ 2004 L 46, p. 1.

**Reference for a preliminary ruling from the
Verwaltungsgerichtshof (Austria) lodged on 11 December
2007 — Deniz Sahin v Bundesminister für Inneres**

(Case C-551/07)

(2008/C 64/28)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Applicant: Deniz Sahin

Defendant: Bundesminister für Inneres

Questions referred

1. (a) Must Articles 3(1), 6(2) and 7(1)(d) and (2) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC ⁽¹⁾ — 'the Directive' — be interpreted as meaning that they also apply to family members within the meaning of Article 2(2) of the Directive who arrived in the host Member State (Article 2(3) of the Directive) independently of the citizen of the Union and only became a family member or took up family life with the citizen of the Union in that Member State?
- (b) If this is so, does it also depend on whether the family member was lawfully resident in the host Member State at the moment he became a family member or took up family life? If the answer is in the affirmative, can residence be considered lawful if the family member is entitled to stay solely on the basis of his status as an asylum seeker?
- (c) If the answer to Questions 1(a) and (b) is that a family member who arrived in the host Member State independently of the citizen of the Union and became a family member or took up family life with the citizen of the Union only in that Member State does not have a right of residence under the Directive if he is entitled to stay 'merely' on the basis of his status as an asylum seeker: irrespective of the above, do Articles 18 EC and 39 EC, respectively, read in the light of the fundamental right to respect for family life, give rise to a right to residence in circumstances in which the family member has been staying in the host Member State for nearly four years and has been married for a year to a citizen of the Union with whom he has been living for approximately three and a half years and with whom he has a 20-month-old child?
2. Do Articles 9(1) and 10(1) of the Directive preclude a national provision under which family members of a citizen of the Union who are not nationals of a Member State and who, in accordance with Community law, and in particular Article 7(2) of the Directive, have a right of residence, cannot be issued with a residence card ('Residence card of a family member of a Union citizen') only because they are entitled (temporarily) to reside in the host Member State under that State's asylum laws?

⁽¹⁾ OJ L 158, p. 77.

Reference for a preliminary ruling from the Raad van State (Netherlands) lodged on 12 December 2007 — College van burgemeester en wethouders van Rotterdam v M.E.E. Rijkeboer

(Case C-553/07)

(2008/C 64/29)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Appellant: College van burgemeester en wethouders van Rotterdam

Respondent: M.E.E. Rijkeboer

Question referred

Is the restriction, provided for in the Netherlands Law on local-authority personal records, on the communication of data to one year prior to the relevant request compatible with Article 12(a) of Directive 95/46/EC ⁽¹⁾ of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, whether or not read in conjunction with Article 6(1)(e) of that directive and the principle of proportionality?

⁽¹⁾ OJ 1995 L 281, p. 31.

Reference for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 14 December 2007 — LSG-Gesellschaft zur Wahrnehmung von Leistungsschutzrechten GmbH v Tele2 Telecommunication GmbH

(Case C-557/07)

(2008/C 64/30)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: LSG-Gesellschaft zur Wahrnehmung von Leistungsschutzrechten GmbH

Defendant: Tele2 Telecommunication GmbH

Questions referred

1. Is the term 'intermediary' in Article 5(1)(a) and Article 8(3) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society ⁽¹⁾ to be interpreted as including an access provider who merely provides a user with access to the network by allocating him a dynamic IP address but does not himself provide him with any services such as e-mail, FTP or file-sharing services and does not exercise any control, either in law or in fact, over the services which the user makes use of?
2. If the first question is answered in the affirmative:

Is Article 8(3) of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights ⁽²⁾, having regard to Article 6 and Article 15 of Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector, to be interpreted (restrictively) as not permitting the disclosure of personal traffic data to private third parties for the purpose of civil proceedings for alleged infringements of exclusive rights protected by copyright (rights of exploitation and use)?

⁽¹⁾ OJ 2001 L 167, p. 10.

⁽²⁾ OJ 2004 L 157, p. 45.

Reference for a preliminary ruling from the Tallinna Halduskohus (Estonia) lodged on 18 December 2007 — AS Balbiino v EV Põllumajandusministeerium, Maksu- ja Tolliameti Põhja maksu- ja tollikeskus

(Case C-560/07)

(2008/C 64/31)

Language of the case: Estonian

Referring court

Tallinna Halduskohus

Parties to the main proceedings

Applicant: AS Balbiino

Defendants: EV Põllumajandusministeerium, Maksu- ja Tolliameti Põhja maksu- ja tollikeskus

Questions referred

1. Does the law of the European Union, in particular Article 6(1) of Commission Regulation (EC) No 60/2004 ⁽¹⁾, in conjunction with recital 3 in the preamble to Commission Regulation (EC) No 832/2005 ⁽²⁾, and Article 4(1) and (2) of Commission Regulation (EC) No 1972/2003 ⁽³⁾, preclude the ascertainment of the amount of an operator's surplus stock by automatically deducting from the surplus stock (regarded as transitional stock) the average stock as at 1 May of the operator's years of activity preceding 1 May 2004, but not more than four years of activity, multiplied by 1.2?

If the answer is in the affirmative, would the answer be different if in determining the transitional stock and surplus stock it were possible also to take into account the growth of the operator's production, processing or sales volume, the maturation period of the agricultural product, the time when the stocks were built up, and other circumstances independent of the operator?

2. It is compatible with the law of the European Union, in particular the objective of Commission Regulation (EC) No 1972/2003, to regard the entire stock of an agricultural product in the operator's possession as at 1 May 2004 as the operator's surplus stock?
3. If the operator started to deal in the corresponding agricultural product less than one year before 1 May 2004, does the law of the European Union, in particular Article 4 of Commission Regulation (EC) No 1972/2003 and Article 6 of Commission Regulation (EC) No 60/2004, preclude that operator himself having to prove that the amount of the stock of the agricultural product in his possession on 1 May 2004 is equivalent to the amount of the stock of the agricultural product customarily produced, sold, otherwise transferred for payment or without payment or acquired by him?

If the answer is in the affirmative, would the answer be different if, regardless of the operator's obligation to provide proof, the administrative body had an obligation to take into account, on the basis of the declaration of the agricultural product submitted by the operator, in assessing the operator's transitional stock and surplus stock, the growth of the operator's production, processing or sales volume and stock after 1 May 2004?

4. Is it compatible with the objective of Commission Regulation (EC) No 1972/2003 and Commission Regulation (EC) No 60/2004 to levy the surplus stock charge where the operator is found to have a surplus stock as at 1 May 2004 but the operator shows that he has not obtained a real advantage in terms of a price difference from marketing the surplus stock after 1 May 2004?
5. Must the provisions of Article 6(3) of Commission Regulation (EC) No 60/2004, under which account is taken, in

determining surplus quantities of sugar, isoglucose or fructose, *inter alia* of storage capacities, be interpreted as meaning that in a situation in which the operator's storage capacities have increased during the year preceding accession that is a basis for reducing the surplus stock of the agricultural product in the possession of the operator as at 1 May 2004, regardless of the operator's economic activity, the volume of the agricultural product processed and the amount of stocks of the agricultural product in the years of activity preceding 1 May 2004 and during the two years following 1 May 2004?

6. Does Article 10 of Commission Regulation (EC) No 1972/2003 preclude the demanding of a surplus stock charge from an operator by a tax notice in a situation in which the tax notice was indeed drawn up while the regulation was applicable, on 30 April 2007, but according to national law became enforceable against the operator after the final date of application of the Commission regulation, and national law does not establish a time-limit for demanding the stock charge?

⁽¹⁾ Commission Regulation (EC) No 60/2004 of 14 January 2004 laying down transitional measures in the sugar sector by reason of the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia (OJ 2004 L 9, p. 8).

⁽²⁾ Commission Regulation (EC) No 832/2005 of 31 May 2005 on the determination of surplus quantities of sugar, isoglucose and fructose for the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia (OJ 2005 L 138, p. 3).

⁽³⁾ Commission Regulation (EC) No 1972/2003 of 10 November 2003 on transitional measures to be adopted in respect of trade in agricultural products on account of the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia (OJ 2003 L 293, p. 3).

Action brought on 18 December 2007 — Commission of the European Communities v Italian Republic

(Case C-561/07)

(2008/C 64/32)

Language of the case: Italian

Parties

Applicant: Commission of the European Communities (represented by: J. Enegren and L. Pignataro, Agents)

Defendant: Italian Republic

government has none the less maintained that in the present case Article 5(3) of the directive applies.

Form of order sought

— declare that, by maintaining in force the provisions of Article 47(5) and (6) of Law No 428 of 29 December 1990 in the event of corporate crisis according to (c) of the fifth paragraph of Article 2 of Law No 675 of 12 August 1977 so that the rights of employees set out in Articles 3 and 4 of Directive 2001/23/EC are not safeguarded in the event of transfers of undertakings in which a 'situation of crisis' has been ascertained, the Italian Republic has failed to fulfil its obligations under that directive;

— order the Italian Republic to pay the costs.

The Commission has noted in the application that that provision does allow, in the event of a transfer of an undertaking in which the transferor is in a situation of serious economic crisis, to amend the employment conditions of the employees in order to safeguard employment opportunities, ensuring the survival of the undertaking, the business or parts of the undertaking or business. However, that provision entitles the Member State only to allow the transferor and the employees' representatives to agree to amend the employment conditions in certain circumstances and not to exclude, as Article 47(5) and (6) of Law No 428/90 do, the application of Articles 3 and 4 of the directive.

(¹) OJ 2001 L 82, p. 16.

Pleas in law and main arguments

The Commission considers that the provisions of Law No 428/1990 (Article 47(5) and (6)) infringe Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (¹), since the employees of the undertaking admitted to the system of the extraordinary redundancy fund transferred to the acquiror lose the rights provided for by Article 2112 of the Civil Code, except for any guarantees provided for by the union agreement ('the most favoured treatment' set out in Article 47(5)).

That means that the employees of an undertaking admitted to the redundancy fund system (CIGS) for a situation of crisis do not receive, in the event of a transfer of the undertaking, the safeguards provided for in Articles 3 and 4 of the Directive.

So far as concerns Article 47(6), that provides that the employees who do not become employees of the acquiror, the lessee or the new employer are entitled to priority in the recruitment carried out by the latter for a year from the date of the transfer, or for a longer period laid down by collective agreements. Article 2112 of the Civil Code does not apply to those workers who are recruited by the acquiror, lessee or new employer after the transfer of the undertaking.

The Italian Government has not challenged the Commission's analysis on the basis of which the employees of the undertaking admitted to the CIGS system for situation of crisis do not receive, in the event of a transfer of the undertaking, the safeguards laid down in Articles 3 and 4 of the directive. That

Action brought on 19 December 2007 — Commission of the European Communities v Kingdom of Spain

(Case C-562/07)

(2008/C 64/33)

Language of the case: Spanish

Parties

Applicant: Commission of the European Communities (represented by: R. Lyal and I. Martinez del Peral Cagigal, agents)

Defendant: Kingdom of Spain

Form of order sought

— Declare that by treating differently capital gains obtained in Spain by non-residents from those obtained by residents until 31 December 2006, the Kingdom of Spain failed to fulfil its obligations under Articles 39 and 56 EC and Articles 28 and 40 of the EEA Agreement;

— Order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

Under the Spanish legislation in force until 31 December 2006, the taxation of capital gains of non-residents was subject to a proportional rate of 35 %, while that of residents was subject to a progressive schedule if the capital assets remained their property for a period of less than one year, and to a proportional rate of 15 % if the period of ownership exceeded one year. Consequently, the tax burden borne by non-residents if they sold their assets after the lapse of one year following acquisition was always greater. In the event of disposal of assets within the year following acquisition, non-residents also bore a greater tax burden, except when the average rate applied to resident taxpayers exceeded 35 % (which would imply very considerable capital gains).

The Commission considers that there is no objective difference between the situations of those two categories of taxpayers, so that the higher tax burden on non-residents is discrimination which unlawfully restricts freedom of movement for workers and the free movement of capital provided for in Articles 39 and 56 EC and Articles 28 and 40 of the EEA Agreement.

Appeal brought on 31 December 2007 by AMS Advanced Medical Services GmbH against the judgment of the Court of First Instance (Fifth Chamber) delivered on 18 October 2007 in Case T-425/03 *AMS Advanced Medical Services GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* (OHIM)

(Case C-565/07 P)

(2008/C 64/34)

Language of the case: German

Parties

Appellant: AMS Advanced Medical Services GmbH (represented by: S. Schäffler, Rechtsanwältin)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), American Medical Systems, Inc.

Form of order sought

- Set aside the judgment of the Court of First Instance of 18 October 2007.
- Order the defendant and defendant on appeal to pay the costs incurred both at first instance and on appeal.

Pleas in law and main arguments

The appeal is based on an infringement of Community law by the Court of First Instance. It was not until the proceedings before the Board of Appeal that the Court of First Instance refused to uphold the appellant's request for the opponent to prove the use of its mark. The Court of First Instance thereby misconceived the principle of continuity in terms of functions between OHIM departments and infringed Article 43(2) and (3) and Article 74 of Regulation No 40/94.

Pursuant to the principle of continuity in terms of functions between OHIM departments the Board of Appeal should have based its decision on all of the claims made by the appellant both in the proceedings before the Opposition Division and those before the Board of Appeal.

Reference for a preliminary ruling from the Hoge Raad der Nederlanden lodged on 21 December 2007 — *Staatssecretaris van Financiën v Stadeco BV*

(Case C-566/07)

(2008/C 64/35)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Appellant: Staatssecretaris van Financiën

Respondent: Stadeco BV

Questions referred

1. Is Article 21(1)(c) of the Sixth Directive ⁽¹⁾ to be interpreted as meaning that no liability to pay VAT arises in the Member State in which the issuer of the invoice is resident or established if the issuer of that invoice includes in it the VAT in respect of an activity which, according to the common system of value added tax, is deemed to be carried out in another Member State or in a non-member country?
2. If not: if an invoice as referred to in Article 21(1)(c) of the Sixth Directive has been issued to a recipient of services who is not entitled to deduct VAT (and consequently there is no risk of any loss of tax revenues), are the Member States entitled to make the correction of the erroneously invoiced VAT which, according to that provision, is consequently liable to be paid, subject to the requirement that the taxable person subsequently issues a corrected invoice to his customer in which there is no mention of any VAT amount?

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

Reference for a preliminary ruling from the Raad van State (Netherlands), lodged on 27 December 2007 — Minister voor Wonen, Wijken en Integratie v Woningstichting Sint Servatius

(Case C-567/07)

(2008/C 64/36)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Applicant: Minister voor Wonen, Wijken en Integratie

Defendant: Woningstichting Sint Servatius

Questions referred

1. Does the requirement that the Minister give prior authorisation for any cross-frontier activities of an undertaking which is authorised by law to promote the Netherlands'

public housing interests, which may rely on public resources for this purpose, which may operate, by law, solely in those interests, and which in principle has its area of activity within the Netherlands ('authorised institution') constitute a restriction on the free movement of capital, as referred to in Article 56 of the EC Treaty?

- 2.a. Can a Member State's public housing interests be regarded as a public policy interest as referred to in Article 58 of the EC Treaty?
- 2.b. Can a Member State's public housing interests be regarded as an overriding reason in the public interest recognised in the case-law of the Court of Justice?
- 2.c. More specifically, can interest in the effectiveness of the ability to finance a Member State's public housing system be regarded as a public policy interest as referred to in Article 58 of the EC Treaty or as an overriding reason in the public interest recognised in the case-law of the Court of Justice?
- 3.a. Assuming that the requirement of prior authorisation for an authorised institution as referred to in Question 1 constitutes a restriction for which there is justification as referred to in Questions 2.a, 2.b and 2.c, is that requirement necessary and proportionate?
- 3.b. When applying that justification, does a Member State have a wide margin of discretion in determining the scale of the public interest concerned and the manner in which that interest is promoted? Is one of the determinants in this context the fact that the Community has few, if any, powers in the public housing sector?
- 4.a. Besides, or in conjunction with, the overriding reasons in the public interest referred to in Article 58 of the EC Treaty and recognised in the case-law of the Court of Justice, can a Member State rely on Article 86(2) of the EC Treaty to justify a restriction on the free movement of capital, if special rights have been granted to the undertakings concerned and those undertakings are entrusted with the operation of services of general economic interest?
- 4.b. Do the public interests referred to in Article 58 of the EC Treaty and the overriding reasons in the public interest recognised in the case-law of the Court of Justice have the same content as the general economic interest referred to in Article 86(2) of the EC Treaty?
- 4.c. Does reliance by the Member State concerned on Article 86(2) of the EC Treaty, its contention being that the undertakings to which special rights have been granted perform tasks of general economic interest, have additional weight over and above reliance on public interests as referred to in Article 58 of the EC Treaty and the overriding reasons in the public interest recognised in the case-law of the Court of Justice?

5.a. Can undertakings, such as the authorised institutions referred to in Question 1, which, on the one hand, are required to employ all their capital for the benefit of public housing, but which, on the other hand, also undertake commercial activities in respect of public housing, be regarded, for all or some of their tasks, as undertakings entrusted with the operation of services of general economic interest, as referred to in Article 86(2) of the EC Treaty?

5.b. For the answer to Question 5.a to be in the affirmative, is it necessary for the undertakings concerned to keep separate accounts from which it is absolutely clear what costs and receipts are associated with their social activities, on the one hand, and with their commercial activities on the other, and for that obligation to be laid down in national legislation? Should it then be ensured that a Member State's financial resources benefit only the social activities and their continuity?

6.a. If an authorised institution as referred to in Question 1 can be regarded, in respect of all or some of its activities, as an undertaking entrusted with the operation of services of general economic interest as referred to in Article 86(2) of the EC Treaty, can the entrustment of the operation of such services justify the imposition on the authorised institution of a restriction on the free movement of capital as referred to in Article 56 of the EC Treaty?

6.b. When applying that justification, does a Member State have a wide margin of discretion in determining the scale of the general economic interest concerned and the manner in which that interest is promoted? Is one of the determinants in this context the fact that the Community has few, if any, powers in the public housing sector?

7.a. Can the fact that a Member State provides certain undertakings as referred to in Article 86(2) of the EC Treaty with financial resources make it necessary for the territorial scale of their activities to be limited in order to prevent those financial resources from constituting prohibited State aid and the undertakings employing those resources in another Member State from competing with undertakings in that Member State under conditions which do not comply with market rules?

7.b. Can a Member State, in this instance the Netherlands, require authorised institutions as referred to in Question 1 wishing to undertake housing construction activities of a social and commercial nature in another Member State to obtain prior authorisation if there is as yet no legal obligation in the first mentioned Member State to make a distinction between the two types of activity? Is the requirement of prior authorisation in this case a necessary and proportionate means of ensuring compliance with Articles 87 and 88 of the EC Treaty?

Action brought on 21 December 2007 — Commission of the European Communities v Hellenic Republic

(Case C-568/07)

(2008/C 64/37)

Language of the case: Greek

Parties

Applicant: Commission of the European Communities (represented by: G. Zavvos and E. Traversa)

Defendant: Hellenic Republic

Form of order sought

- declare that, by failing to take the necessary measures to comply with the judgment delivered by the Court of Justice on 21 April 2005 in Case C-140/03, the Hellenic Republic has failed to fulfil its obligations under Articles 43 EC and 48 EC;
- order the Hellenic Republic to pay to the Commission a proposed penalty payment of EUR 70 956 for each day of delay in complying with the judgment which was delivered in Case C-140/03, from the day when judgment is delivered in the present case until the day when the judgment delivered in Case C-140/03 has been complied with;
- order the Hellenic Republic to pay to the Commission a lump sum, the amount of which is a daily sum multiplied by the number of the days that the failure to fulfil obligations continues from the day when judgment was delivered in Case C-140/03 until the date on which judgment is delivered in the present case;
- order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

1. In the judgment delivered by it on 21 April 2005 in Case C-140/03 *Commission v Greece* relating to restrictions concerning the opening and operation of opticians' shops in breach of Articles 43 EC and 48 EC, the Court of Justice of the European Communities:

'1. [declared] that by enacting and maintaining in force Law No 971/79 on the exercise of the profession of optician and on shops for the sale of optical articles, which does not permit a qualified optician as a natural person to operate more than one optician's shop, the Hellenic Republic [had] failed to fulfil its obligations under Article 43 EC;

2. [declared] that by enacting and maintaining in force Law No 971/79 and Law No 2646/98 on the development of a national social security system and other provisions, under which the establishment by a legal person of an optician's shop in Greece is subject to the following conditions:
 - authorisation for the establishment and operation of the optician's shop must have been granted to a recognised optician who is a natural person, the person holding the authorisation to operate the shop must hold at least 50 % of the company's share capital and must participate at least to that extent in the profits and losses of the company, and the company must be in the form of a collective or limited partnership, and
 - the optician in question may participate at most in one other company owning an optician's shop, subject to the condition that the authorisation for the establishment and operation of that shop is in the name of another authorised optician,

the Hellenic Republic [had] failed to fulfil its obligations under Articles 43 EC and 48 EC;
3. [ordered] the Hellenic Republic to pay the costs'.
2. Article 228 EC provides that if the Court of Justice finds that a Member State has failed to fulfil an obligation under the Treaty, the State is to be required to take the necessary measures to comply with the judgment of the Court of Justice.
3. By letter of 9 June 2005, the Commission of the European Communities requested the Greek Government to take measures to comply with the abovementioned judgment of the Court. In its letter, it also stated that Law No 3204/2003 could not constitute an adequate response to the Court's judgment, at least as regards the second claim, since under that Law the right to establish and operate an optician's shop continues to fall to a large degree to opticians.
4. The Greek Government replied by letter of 11 August 2005. It stated that many provisions of Law No 971/79 had been amended and Article 27(4) of Law No 2646/98 had been repealed. More specifically, the new Article 6(6) of Law No 971/79 allowed natural persons holding a professional authorisation and companies and firms to operate more than one shop provided that management of the shop was entrusted to an optician possessing the relevant professional authorisation.
5. The new Article 7(1) of Law No 971/79 allows companies and firms, whatever their legal form, to establish opticians' shops provided that: (i) as regards partnerships, the majority of partners and the manager, or the majority of managers, will be opticians possessing authorisation to pursue that profession; (ii) as regards private limited companies, more than half of the shareholders representing more than half of the share capital will be opticians possessing a professional authorisation; and (iii) as regards public limited companies, at least 51 % of the share capital will be owned by opticians who are citizens of countries of the European Union and possess the qualifications laid down by Law No 971/79 and by Presidential Decrees Nos 231/98 and 165/2000 as amended by Presidential Decree No 373/2001.
6. The applicant submits that the new Article 7(1) of Law No 971/79 does not constitute an adequate response to the second claim. That article retains the requirement for opticians' shops to be owned by authorised opticians, inasmuch as they must either constitute the majority of the partners or hold the majority of the share capital.
7. Consequently, there is always a restriction on the freedom of establishment in Greece of companies and firms of other Member States, in so far as they cannot in any event be the sole owners of an optician's shop. That restriction is not justified by the need to ensure a high level of public-health protection. As the Court states in Case C-140/03, this objective 'may be achieved by measures which are less restrictive of the freedom of establishment both for natural and legal persons, for example by requiring the presence of qualified, salaried opticians or associates in each optician's shop, rules concerning civil liability for the actions of others, and rules requiring professional indemnity insurance' (paragraph 35).
8. Consequently, the Commission considers that, with the new Article 7(1) of Law No 971/79, the Hellenic Republic continues to breach its obligations under Articles 43 EC and 48 EC. The provisions enacted by the Hellenic Republic therefore amount to only partial compliance with the Court's judgment referred to in paragraph 1.
9. On the basis of the foregoing, the Commission finds that the Hellenic Republic has not yet taken all the measures that are required for compliance with the Court's judgment in Case C-140/03 *Commission v Greece*, which concerns restrictions relating to the establishment and operation of opticians' shops, in breach of Articles 43 EC and 48 EC.

Reference for a preliminary ruling from the Special Commissioners, London (United Kingdom) made on 24 December 2007 — HSBC Holdings plc, Vidacos Nominees Ltd v The Commissioners of Her Majesty's Revenue & Customs

(Case C-569/07)

(2008/C 64/38)

Language of the case: English

Referring court

Special Commissioners, London

Parties to the main proceedings

Applicants: HSBC Holdings plc, Vidacos Nominees Ltd

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

Questions referred

Does Article 10 or Article 11 of Council Directive 69/335 ⁽¹⁾, as amended by Council Directive 85/303/EEC of 10 June 1985 ⁽²⁾, or Article 43, Article 49 or Article 56 of the EC Treaty or any other provision of European Community law prohibit the levying by one Member State ('the first Member State') of a duty on the transfer or issue of shares into a clearance service of 1,5 % when:

- i. a company ('Company A') established in the first Member State offers to acquire the listed and traded shares in a company ('Company B') established in another Member State ('the second Member State') in return for shares in Company A, to be issued on the stock exchange in the second Member State;
- ii. shareholders in Company B have the option to receive the new shares in Company A either:
 - a. in certificated form; **or**
 - b. in un-certificated form through a settlement system in the first Member State; or
 - c. in un-certificated form through a clearance service in the second Member State;
- iii. the law of the first Member State provides, in summary, that:
 - a. in the event of the issue of shares in certificated form (or in un-certificated form in the settlement system for dematerialised shares of the first Member State), duty shall not be charged on the issue of the shares but on each subsequent sale of the shares, which duty is charged at the rate of 0,5 % of the consideration for the transfer; but

b. on the transfer or issue of un-certificated shares to the operator of a clearance service, duty shall be charged (where the shares are issued) at the rate of 1,5 % of the issue price or (where the shares are transferred for consideration) at the rate of 1,5 % of the amount or value of the consideration or, (in any other case) at the rate of 1,5 % of the value of the shares and, no subsequent charge is thereafter levied on sales of the shares (or of rights to or over the shares) within the clearance service.

c. the operator of a clearance service may, where it receives the approval of the relevant taxation authority, elect that no duty is charged on the transfer or issue of the shares to its clearance service, but that duty is instead charged on each sale of the shares within the clearance service, at the rate of 0,5 % of the consideration. The relevant taxation authority may (and presently does) require, as a condition for its approval of such an election, that the operator of the clearance system seeking to make such an election should make and maintain arrangements (as the taxation authority considers satisfactory) for the collection of the duty within the clearance service and for complying or securing compliance with the regulations in relation to it.

iv. the arrangements in force at the stock exchange in the second Member State require that all shares issued in that jurisdiction must be held in uncertificated form through a single clearance service established in the second Member State, the operator of which has not made the election referred to above?

⁽¹⁾ Council Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital (OJ L 249, p. 25).

⁽²⁾ OJ L 156, p. 23.

Reference for a preliminary ruling from the Tribunale Amministrativo Regionale per la Lombardia (Italy) lodged on 28 December 2007 — Sea Srl v Comune di Ponte Nossa

(Case C-573/07)

(2008/C 64/39)

Language of the case: Italian

Referring court

The Tribunale Amministrativo Regionale per la Lombardia

Parties to the main proceedings

Applicant: Sea Srl

Defendant: Comune di Ponte Nossa

Question referred

Is the direct award of a contract for the collection, transport and disposal of solid urban and similar waste to a wholly publicly owned limited company, the relevant statutes of which — for the purposes of Article 113 of Legislative Decree No 267 of 18 August 2000 — are set out in the grounds of this order, compatible with Community law and, in particular, with the freedom of establishment or freedom to provide services, the prohibition of discrimination and the obligations relating to equal treatment, transparency and free competition, as referred to in Articles 12 EC, 43 EC, 45 EC, 46 EC, 49 EC and 86 EC?

Reference for a preliminary ruling from the Corte suprema di cassazione (Italy) lodged on 2 January 2008 — Athesia Druck Srl v Ministero delle Finanze, Agenzia delle Entrate

(Case C-1/08)

(2008/C 64/40)

Language of the case: Italian

Referring court

Corte suprema di cassazione

Parties to the main proceedings

Applicant: Athesia Druck Srl

Defendants: Ministero delle Finanze, Agenzia delle Entrate

Question referred

Where — for VAT purposes, and in accordance with Article 9(2)(e) of the Sixth Council Directive 77/388/EEC ⁽¹⁾ 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 — is the place of supply in the case of an advertising service which is supplied by an

entity established in the territory of a Member State of the European Community to a customer which is established outside the Community but has a tax representative in the territory of a Member State? And, in particular, is it (i) the location of the recipient of the advertising message, or (ii) the place of establishment of the company which is the non-Community company's tax representative for Italy, or (iii) the place of establishment of the non-Community company purchasing the advertising service, or (iv) the place of establishment of the non-Community company's client?

⁽¹⁾ OJ L 145, p. 1.

Reference for a preliminary ruling from the Højesteret (Denmark) lodged on 4 January 2008 — Infopaq International A/S v Danske Dagblades Forening

(Case C-5/08)

(2008/C 64/41)

Language of the case: Danish

Referring court

Højesteret (Supreme Court)

Parties to the main proceedings

Applicant: Infopaq International A/S

Defendant: Danske Dagblades Forening (Danish Daily Newspaper Publishers' Association)

Questions referred

- (i) Can the storing and subsequent printing out of a text extract from an article in a daily newspaper, consisting of a search word and the five preceding and five subsequent words, be regarded as acts of reproduction which are protected (see Article 2 of the Infosoc Directive ⁽¹⁾)?
- (ii) Is the context in which temporary acts of reproduction take place relevant to whether they can be regarded as 'transient' (see Article 5(1) of the Infosoc Directive)?

- (iii) Can a temporary act of reproduction be regarded as 'transient' where the reproduction is processed, for example, by the creation of a text file on the basis of an image file or by a search for text strings on the basis of a text file?
- (iv) Can a temporary act of reproduction be regarded as 'transient' where part of the reproduction, consisting of one or more text extracts of 11 words, is stored?
- (v) Can a temporary act of reproduction be regarded as 'transient' where part of the reproduction, consisting of one or more text extracts of 11 words, is printed out?
- (vi) Is the stage of the technological process at which temporary acts of reproduction take place relevant to whether they constitute 'an integral and essential part of a technological process' (see Article 5(1) of the Infosoc Directive)?
- (vii) Can temporary acts of reproduction be an 'integral and essential part of a technical process' if they consist of manual scanning of entire newspaper articles whereby the latter are transformed from a printed medium into a digital medium?
- (viii) Can temporary acts of reproduction constitute an 'integral and essential part of a technological process' where they consist of printing out part of the reproduction, comprising one or more text extracts of 11 words?
- (ix) Does 'lawful use' (see Article 5(1) of the Infosoc Directive) include any form of use which does not require the copyright holder's consent?
- (x) Does 'lawful use' (see Article 5(1) of the Infosoc Directive) include the scanning by a commercial business of entire newspaper articles, subsequent processing of the reproduction, and the storing and possible printing out of part of the reproduction, consisting of one or more text extracts of 11 words, for use in the business's summary writing, even where the rightholder has not given consent to those acts?
- (xi) What criteria should be used to assess whether temporary acts of reproduction have 'independent economic significance' (see Article 5(1) of the Infosoc Directive) if the other conditions laid down in the provision are satisfied?
- (xii) Can the user's efficiency gains from temporary acts of reproduction be taken into account in assessing whether the acts have 'independent economic significance' (see Article 5(1) of the Infosoc Directive)?
- (xiii) Can the scanning by a commercial business of entire newspaper articles, subsequent processing of the reproduction, and the storing and possible printing out of part of the reproduction, consisting of one or more text extracts of 11 words, without the rightholder's consent be regarded as constituting 'certain special cases which do not conflict with a normal exploitation' of the newspaper articles and 'not unreasonably [prejudicing] the legitimate interests of the rightholder' (see Article 5(5))?
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- (¹) Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ L 167, p. 10).
-
- Appeal brought on 2 January 2008 by U.S. Steel Košice, s.r.o. against the order of the Court of First Instance (Third Chamber) delivered on 1 October 2007 in Case T-27/07: U.S. Steel Košice, s.r.o. v Commission of the European Communities**
- (Case C-6/08 P)**
- (2008/C 64/42)**
- Language of the case: English*
- Parties**
- Appellant:** US Steel Košice, s.r.o. (represented by: C. Thomas, Solicitor, E. Vermulst, advocaat)
- Other party to the proceedings:** Commission of the European Communities

Form of order sought

The applicant claims that the Court should:

- annul the order of the Court of First Instance of 1 October 2007 in Case T-27/07 U.S. Steel Košice, s.r.o. v. Commission
- refer the case back to the Court of First Instance for judgment on the substance;
- order the Commission to pay the appellant's costs

Pleas in law and main arguments

The appellant submits that the appeal is based on errors of law committed by the Court of First Instance in relation to its application of the principles guiding the admissibility of actions and in the interpretation of Directive 2003/87 ⁽¹⁾, as well as the distortion (denaturation) of the contested decision by the Court.

1. The Court of First Instance wrongly failed to recognise that the contested decision rejected the plan of the Slovak Government to grant a specified amount of allowances to the appellant.
2. The Court of First Instance wrongly failed to recognise that the contested decision inevitably led to and indeed explicitly required a reduction in the appellant's allowances.
3. The Court of First Instance wrongly failed to recognise the procedural similarity of the contested decision with a State aid or merger control decision;
 - the fundamental aspects of the procedure under Article 9(3) of Directive 2003/87 are similar to State aid and merger control;
 - the contested decision in fact made a State aid appraisal of the appellant's allowances.
4. The Court of First Instance wrongly identified a 'discretion' in the 'implementation' of the contested decision.

In short, the appellant maintains that it is directly concerned by the contested decision which rejected a formal plan to grant emissions allowances to the appellant, inevitably reduced the allowances that the appellant would be allocated, and indeed explicitly required those allowances to be reduced.

⁽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 (Text with EEA relevance) (OJ L 275, p. 32).

**Reference for a preliminary ruling from the Kamarrätten i Stockholm (Sweden) lodged on 21 January 2008 —
Migrationsverket v Edgar Petrosian, Nelli Petrosian,
Svetlana Petrosian, David Petrosian, Maxime Petrosian**

(Case C-19/08)

(2008/C 64/43)

Language of the case: Swedish

Referring court

Kammarrätten i Stockholm

Parties to the main proceedings

Applicant: Migrationsverket

Defendants: Edgar Petrosian, Nelli Petrosian, Svetlana Petrosian, David Petrosian, Maxime Petrosian

Question referred

Are Article 20(1)(d) and Article 20(2) of Council Regulation (EC) No 343/2003 (the Dublin Regulation) ⁽¹⁾ to be interpreted as meaning that responsibility for the examination of an application for asylum passes to the Member State where the application was lodged if the transfer is not carried out within six months after a temporary decision has been made to suspend the transfer and irrespective of when the final decision is made on whether the transfer is to be carried out?

⁽¹⁾ OJ L 50, 25.2.2003, p. 1.

Appeal brought on 22 January 2008 by Sunplus Technology Co. Ltd against the judgment of the Court of First Instance (Fifth Chamber) delivered on 15 November 2007 in Case T-38/04: Sunplus Technology Co. Ltd v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case C-21/08 P)

(2008/C 64/44)

Language of the case: English

Parties

Appellant: Sunplus Technology Co. Ltd (represented by: H. Eichmann, G. Barth, U. Blumenröder, C. Niklas-Falter, M. Kinkeldey, K. Brandt, A. Franke, U. Stephani, B. Allekotte, K. Lochner, B. Ertle, C. Neuhierl, S. Prückner, Rechtsanwälte)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), Sun Microsystems, Inc.

Form of order sought

The appellant claims that the Court should:

- annul the judgment under appeal;
- annul the contested decision;
- order OHIM to bear costs of the proceeding.

Pleas in law and main arguments

The appellant submits that the Court of First Instance erred in its application and interpretation of Article 8(1)(b) of Regulation No 40/94 ⁽¹⁾ by comparing single parts of the two trademarks and not assessing their overall impression on the consumer.

According to the appellant the Court of First Instance distorted facts and evidence when it stated that the device part of the trademark applied for contains a stylized sun rather than a 'star' symbol and when it omitted to take the letter 'S' into account when comparing the overall impression of the trademarks.

The appellant also maintains that the reasoning of the Court of First Instance is contradictory in that, at paragraph 39 of the judgment, it states that the additional components create differences between the trademarks but fails to consider those components when comparing the trademarks phonetically.

Finally the appellant submits that the Court of First Instance erred in not taking into account the category of goods and services in question and the circumstances in which they are marketed when assessing the likelihood of confusion.

⁽¹⁾ Council Regulation (EC) of 20 December 1993 on the Community trade mark (JO L 11, p. 1).

Order of the President of the Fourth Chamber of the Court of 20 November 2007 (reference for a preliminary ruling from the Finanzgericht Düsseldorf — Germany) — Metro International GmbH v Hauptzollamt Düsseldorf

(Case C-245/05) ⁽¹⁾

(2008/C 64/45)

Language of the case: German

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

⁽¹⁾ OJ C 205, 20.8.2005.

Order of the President of the Court of 21 November 2007 (reference for a preliminary ruling from the Raad van State — Netherlands) — Minister voor Vreemdelingenzaken en Integratie v I. Günes

(Case C-296/05) ⁽¹⁾

(2008/C 64/46)

Language of the case: Dutch

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

⁽¹⁾ OJ C 296, 26.11.2005.

Order of the President of the First Chamber of the Court of 11 December 2007 — Tesco Stores Ltd v MIP Metro Group Intellectual Property GmbH & Co. KG, Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-493/06 P) ⁽¹⁾

(2008/C 64/47)

Language of the case: English

The President of the First Chamber 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 12 December 2007 — Commission of the European Communities v Hellenic Republic

(Case C-345/07) ⁽¹⁾

(2008/C 64/49)

Language of the case: Greek

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

⁽¹⁾ OJ C 211, 8.7.2007.

Order of the President of the Court of 8 November 2007 — Commission of the European Communities v Kingdom of Spain

(Case C-210/07) ⁽¹⁾

(2008/C 64/48)

Language of the case: Spanish

The President 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 13 December 2007 — Commission of the European Communities v Hellenic Republic

(Case C-346/07) ⁽¹⁾

(2008/C 64/50)

Language of the case: Greek

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

⁽¹⁾ OJ C 211, 8.9.2007.

COURT OF FIRST INSTANCE

**Judgment of the Court of First Instance of 30 January 2008
— Strack v Commission**

(Case T-85/04) ⁽¹⁾

(Staff Cases — Officials — Staff reporting — Career development report — 2001/2002 appraisal procedure — Lawfulness of the staff reporting procedure)

(2008/C 64/51)

Language of the case: German

Parties

Applicant: Guido Strack (Wasserliesch, Germany) (represented initially by J. Mosar, then by F. Gengler and P. Georgen, lawyers)

Defendant: Commission of the European Communities (represented by: H. Krämer and A. Manville, Agents)

Re:

Application for annulment of the 2001/2002 appraisal procedure in so far as it concerns the applicant and of the decision which adopted his career development report for that procedure

Operative part of the judgment

The Court:

1. Annuls the decision adopting the career development report of Mr Guido Strack for the 2001/2002 appraisal procedure.
2. Orders the Commission to pay the costs.

⁽¹⁾ OJ C 106, 30.4.2004.

**Judgment of the Court of First Instance (Third Chamber) of
30 January 2008 — Ioannis Terezakis v Commission of the
European Communities**

(Case T-380/04) ⁽¹⁾

(Access to documents — Regulation (EC) No 1049/2001 — Documents relating to the construction of the new Athens International Airport at Spata — Refusal of access — Exception relating to the protection of commercial interests — Exception relating to the protection of the purpose of audits — Partial access)

(2008/C 64/52)

Language of the case: English

Parties

Applicant: Ioannis Terezakis (Brussels, Belgium) (represented by: initially, L. Defalque, G. Xanthoulis, A. Tsamis, A. Georgiadis, E. Stefanakis, É. Koeune and G. Stylianakis, lawyers, and subsequently, G. Stylianakis, B. Keane, Solicitor, and P. Koutsoukos, lawyer)

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

Re:

Annulment of the Commission's decision of 12 July 2004 refusing the applicant access to certain documents relating to the construction of the new Athens International Airport at Spata

Operative part of the judgment

The Court:

1. Annuls the Commission's decision of 12 July 2004 in so far as it concerns the refusal of access to the contract of 14 June 1996 signed between Athens International Airport SA and a consortium of companies led by Hochtief AG;

2. Dismisses the remainder of the action;
3. Orders Mr Ioannis Terezakis to bear one half of his own costs;
4. Orders the Commission to bear its own costs and pay one half of the costs incurred by Mr Terezakis.

(¹) OJ C 300, 4.12.2004.

**Judgment of the Court of First Instance of 30 January 2008
— Strack v Commission**

(Case T-394/04) (¹)

(Civil service — Officials — Promotion — 2003 promotion procedure — Allocation of priority points — Refusal of promotion)

(2008/C 64/53)

Language of the case: German

Parties

Applicant: Guido Strack (Wasserliesch, Germany) (represented by: first J. Mosar, then F. Gengler and P. Goergen, lawyers)

Defendant: Commission of the European Communities (represented by: G. Berscheid and H. Krämer, Agents)

Re:

Application for annulment of the promotion procedure carried out in respect of the applicant for 2003, of the allocation of points made in the context of that procedure and the subsequent decision not to promote the applicant

Operative part of the judgment

The Court of First Instance hereby:

1. Annuls the decision concerning the number of priority points allocated to Guido Strack in the 2003 promotion procedure and the decision not to promote him through that procedure.
2. Orders the Commission to pay the costs.

(¹) OJ C 300, 4.12.2004.

**Judgment of the Court of First Instance of 30 January 2008
— Commission v Environmental Management Consultants**

(Case T-46/05) (¹)

(Arbitration clause — Reimbursement of amounts paid — Default interest — Default procedure)

(2008/C 64/54)

Language of the case: Greek

Parties

Applicant: Commission of the European Communities (represented by: D. Triantafyllou, Agent, and N. Korogiannakis, lawyer)

Defendant: Environmental Management Consultants (Nicosia, Cyprus)

Re:

Action brought by the Commission pursuant to Article 238 EC seeking to obtain reimbursement in the sum of EUR 31 965,28 which it paid in the context of the performance of contract IC18-CT98-0273, plus statutory interest

Operative part of the judgment

The Court of First Instance hereby:

1. Orders Environmental Management Consultants Ltd to repay to the Commission of the European Communities the amount of EUR 31 965,28, plus interest:
 - at the rate of 9,26 % per annum from 1 to 31 August 2001;
 - at the rate of 8,62 % per annum from 1 September to 31 December 2001;
 - at the rate of 10,57 % per annum from 1 January to 30 June 2002;
 - at the rate of 10,47 % per annum from 1 July to 31 December 2002;
 - at the rate of 9,97 % per annum from 1 January to 30 June 2003;
 - at the rate of 9,22 % per annum from 1 July to 31 December 2003;
 - at the rate of 9,14 % per annum from 1 January to 30 June 2004;
 - at the rate of 9,13 % per annum from 1 July to 31 December 2004;
 - at the rate of 9,21 % per annum from 1 January to 31 January 2005;

— at the statutory rate, calculated in accordance with Article 288 of the *Bürgerliches Gesetzbuch* (German Civil Code) without that rate exceeding 9,21 % from 1 February 2005 until the discharge of the debt.

2. Orders Environmental Management Consultants to pay the costs.

⁽¹⁾ OJ C 108, 6.5.2006.

Judgment of the Court of First Instance of 24 January 2008
— **Dorel Juvenile Group v OHIM (SAFETY 1ST)**

(Case T-88/06) ⁽¹⁾

(Community trade mark — Application for the Community word mark SAFETY 1ST — Absolute ground for refusal — Lack of distinctive character — Article 7(1)(b) of Regulation (EC) No 40/94)

(2008/C 64/55)

Language of the case: English

Parties

Applicant: Dorel Juvenile Group, Inc. (Canton, United States of America) (represented by: G. Simon, lawyer)

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

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 11 January 2006 (Case R 616/2004-2) relating to an application for registration of the word mark SAFETY 1ST as a Community trade mark

Operative part of the judgment

The Court:

1. Dismisses the action;
2. Orders Dorel Juvenile Group, Inc. to pay the costs.

⁽¹⁾ OJ C 108, 6.5.2006.

Judgment of the Court of First Instance of 31 January 2008
— **Federación de Cooperativas Agrarias de la Comunidad Valenciana v CPVO**

(Case T-95/06) ⁽¹⁾

(Plant varieties — Appeal to the Board of Appeal of the Community Plant Variety Office — Inadmissibility — Lack of individual concern — Effective judicial protection — Obligation to state reasons)

(2008/C 64/56)

Language of the case: Spanish

Parties

Applicant: Federación de Cooperativas Agrarias de la Comunidad Valenciana (Valencia, Spain) (represented by: S. Roig Girbes, R. Ortega Bueno and M. Delgado Echevarría, lawyers)

Defendant: Community Plant Variety Office (CPVO) (represented by: M. Ekvad, acting as Agent, assisted by D. O'Keefe, Solicitor, J. Rivas de Andrés and M. Canal Fontcuberta, lawyers)

Other party to the proceedings before the Board of Appeal of CPVO intervening before the Court of First Instance: Nador Cott Protection SARL (Saint-Raphaël, France) (represented by: M. Fernández Mateos, S. González Malabia and M. Marín Bataller, lawyers)

Re:

Action brought against the decision of the Board of Appeal of CPVO of 8 November 2005 (Case A 001/2005) concerning the grant of a Community plant variety right in regard to the mandarin variety Nadorcott.

Operative part of the judgment

The Court:

1. Dismisses the action;
2. Orders the Federación de Cooperativas Agrarias de la Comunidad Valenciana to pay the costs.

⁽¹⁾ OJ C 131, 3.6.2006.

Judgment of the Court of First Instance of 23 January 2008
— Demp v OHIM — BAU HOW (BAU HOW)

(Case T-106/06) ⁽¹⁾

(Community trade mark — Opposition proceedings — Application for Community figurative mark BAU HOW — Earlier figurative marks BAUHAUS — Relative ground for refusal — No likelihood of confusion — Article 8(1)(a) and (b), and Article 73 of Regulation (EC) No 40/94)

(2008/C 64/57)

Language of the case: German

Parties

Applicant: Demp BV, formerly Demp Holding BV (Maastricht, Netherlands) (represented by: R.-D. Härer, C. Schultze, J. Ossing and C. Weber, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: BAU HOW GmbH (Hattersheim/Okriftel, Germany)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 31 January 2006 (Case R 92/2004-4) on opposition proceedings between Demp BV and BAU HOW GmbH.

Operative part of the judgment

1. *The action is dismissed;*
2. *Demp BV is ordered to pay the costs.*

⁽¹⁾ OJ C 143 of 17.6.2006.

Judgment of the Court of First Instance of 30 January 2008
— Japan Tobacco v OHIM — Torrefacção Camelo (CAMELO)

(Case T-128/06) ⁽¹⁾

(Community trade mark — Opposition procedure — Application for the Community figurative mark CAMELO — Earlier national figurative mark CAMEL — Relative ground for refusal — No risk of profit derived unduly from, and no risk of detriment to, the distinctive character and reputation of the earlier mark — Article 8(5) of Regulation (EC) No 40/94 — No infringement of the rules of the appeal procedure — Article 74 of Regulation No 40/94)

(2008/C 64/58)

Language of the case: French

Parties

Applicant: Japan Tobacco, Inc. (Tokyo, Japan) (represented by: A. Ortiz López, S. Ferrandis González and E. Ochoa Santamaría, 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 intervening before the Court of First Instance: Torrefacção Camelo L^{da} (Campo Maior, Portugal) (represented by: A. De Sampaio, I. Cavalho Franco and C. de Almeida Carvalho, lawyers)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 22 February 2006 (Case R 669/2003-2) concerning opposition proceedings between Japan Tobacco, Inc. and Torrefacção Camelo L^{da}.

Operative part of the judgment

The Court:

1. *Dismisses the action;*
2. *Orders Japan Tobacco, Inc. to bear its own costs and to pay those of the Office for Harmonisation in the Internal Market (Trade Marks and Designs)(OHIM);*
3. *Orders Torrefacção Camelo L^{da} to bear its own costs.*

⁽¹⁾ OJ C 154, 1.7.2006.

Judgment of the Court of First Instance of 29 January 2008
— Foshan Shunde Yongjian Housewares and Hardware v
Council

(Case T-206/07) ⁽¹⁾

(Anti-dumping — Importation of ironing boards originating in the People's Republic of China and Ukraine — Undertaking with market economy status — Rights of the defence — Articles 2(7)(c) and 20(5) of Regulation (EC) No 384/96)

(2008/C 64/59)

Language of the case: French

Parties

Applicant: Foshan Shunde Yongjian Housewares & Hardware Co. Ltd (Foshan, China) (represented by: J.-F. Bellis, avocat and G. Vallera, barrister)

Defendant: Council of the European Union (represented by: J.-P. Hixs, Agent assisted initially by B. O'Connor, solicitor and P. Vergano, avocat, and subsequently by B. O'Connor, solicitor, and E. McGovern, barrister)

Interveners in support of the defendant: Commission of the European Communities (represented by: H. van Vliet and K. Talabér-Ricz, Agents); Vale Mill (Rochdale) Ltd (Rochdale, United Kingdom); Pirola SpA (Mapello, Italy); Colombo New Scal SpA (Rovagnate, Italy) (represented by: G. Berrisch and G. Wolf, avocats); and the Italian Republic (represented by: I. Braguglia, Agent assisted by W. Ferrante, avvocato dello Stato)

Re:

Action for annulment of Council Regulation (EC) No 452/2007 of 23 April 2007 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of ironing boards originating in the People's Republic of China and Ukraine (OJ 2007 L 109, p. 12) inasmuch as it imposes an anti-dumping duty on imports of ironing boards produced by the applicant

Operative part of the judgment

The Court:

1. Dismisses the action;
2. Orders Foshan Shunde Yongjian Housewares & Hardware Co. Ltd to bear its own costs and to pay those of the Council, Vale Mill (Rochdale) Ltd, Pirola SpA and Colombo New Scal SpA;
3. Orders the Commission and the Italian Republic to bear their own costs.

⁽¹⁾ OJ C 170, 21.7.2007.

Order of the Court of First Instance of 7 January 2008 —
Marmara Import-Export v OHIM — Marmara Zeytin Tarim
Satis (marmara)

(Case T-403/03) ⁽¹⁾

(Community trade mark — Opposition — Withdrawal of opposition — No need to adjudicate)

(2008/C 64/60)

Language of the case: German

Parties

Applicant: Marmara Import-Export GmbH (Düsseldorf, Germany) (represented by: A. von Arnswaldt and G. Rother, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance: Marmara Zeytin Tarim Satis Kooperatifleri Birliği (Bursa, Turkey) (represented by: A. Andorfer-Erhard, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 1 October 2003 (Case R 515/2002-1) concerning opposition proceedings between Marmara Import-Export GmbH and Marmara Zeytin Tarim Satis Kooperatifleri Birliği.

Operative part of the judgment

The Court orders:

1. There is no need to adjudicate on the action.
2. The applicant and the intervener shall bear their own costs and pay one half each of the defendant's costs.

⁽¹⁾ OJ C 71, 20.3.2004.

Order of the Court of First Instance of 20 December 2007
— **Dascalu v Commission**

(Case T-430/03) ⁽¹⁾

(Staff cases — Officials — Interlocutory judgment — No need to adjudicate)

(2008/C 64/61)

Language of the case: French

Parties

Applicant: Iosif Dascalu (Kraainem, Belgium) (represented by: N. Lhoëst, lawyer)

Defendant: Commission of the European Communities (represented by: C. Berardis-Kayser and L. Lozano Palacios, originally, and subsequently by C. Berardis-Kayser and H. Krämer, Agents)

Re:

First, application for annulment of the Commission's decisions of 23 December 2002 and 14 April 2003 altering the applicant's classification in grade, in so far as they fix his classification in step on recruitment in step 1 of Grade A6, and fix 5 October 1995 as the date on which the decisions were to have pecuniary effect, and did not re-establish the applicant's career grade and, in so far as necessary, an application for annulment of the decisions rejecting the applicant's complaints and, second, an application for compensation for the damage allegedly caused by those decisions

Operative part of the order

1. *There is no longer any need to adjudicate on this action.*
2. *The Commission shall pay all the costs.*

⁽¹⁾ OJ C 47, 21.2.2004.

Order of the Court of First Instance of 12 December 2007
— **Atlantic Container Line and Others v Commission**

(Case T-113/04) ⁽¹⁾

(Enforcement of a judgment of the Court of First Instance — Repayment of the costs of bank guarantees provided in order to defer payment of a fine imposed by the Commission and subsequently annulled by the Court of First Instance — Action for annulment and damages — Non-contractual liability of the Community — No direct causal link between the allegedly unlawful conduct of the institution and the damage claimed)

(2008/C 64/62)

Language of the case: English

Parties

Applicants: Atlantic Container Line AB (Göteborg, Sweden); Transportación Marítima Mexicana SA de CV (Mexico, Mexico); Hanjin Shipping Co. Ltd (Seoul, South Korea); Hyundai Merchant Marine Co. Ltd (Seoul); Mediterranean Shipping Co. SA (Geneva, Switzerland); Neptune Orient Lines Ltd (Singapore, Singapore); Orient Overseas Container Line (UK) Ltd (Suffolk, United Kingdom); P & O Nedlloyd Container Line Ltd (London, United Kingdom); Sea-Land Service, Inc. (Jacksonville, Florida, United States) (represented initially by J. Pheasant, M. Levitt and K. Nicholson, and subsequently by M. Levitt and K. Nicholson, solicitors)

Defendant: Commission of the European Communities (represented by P. Oliver, acting as Agent)

Re:

Application, first, for annulment of the Commission letter of 6 January 2004 refusing to repay the costs of the bank guarantees which the applicants entered into following the imposition of fines by Commission Decision 1999/243/EC of 16 September 1998 relating to a proceeding pursuant to Articles 85 and 86 of the EC Treaty (now Articles 81 EC and 82 EC) (Case No IV/35.134 — Trans Atlantic Conference Agreement) (OJ 1999 L 95, p. 1), annulled by judgment of the Court of First Instance of 30 September 2003 in Joined Cases T-191/98 and T-212/98 to T-214/98 Atlantic Container Line and Others v Commission [2003] ECR II-3275, and, second, for damages seeking repayment of the costs of the bank guarantees.

Operative part of the order

1. *The action is dismissed.*

2. The applicants are ordered to pay the costs.

(¹) OJ C 118, 30.4.2004.

**Order of the Court of First Instance of 8 January 2008 —
Commission v Lior and Others**

(Case T-245/04) (¹)

**(Arbitration clause — Jurisdiction of the Court of First
Instance — Action against a European Economic Interest
Grouping and its members and former members — Partial
jurisdiction)**

(2008/C 64/63)

Languages of the case: French and Greek

Parties

Applicant: Commission of the European Communities (represented by: first H. Støvlbæk, Agent, and M. Bra, lawyer, then H. Støvlbæk and M. Konstantinidis, Agents, and B. Wägenbaur, lawyer)

Defendants: Lior GEIE (Brussels, Belgium); Lior International NV (Hoeilaart, Belgium); Deira SA (Hoeilaart); Eutec Srl (Forlì, Italy); Mindshare BVBA (Sint-Martens-Latem, Belgium); Società politecnica italiana ricerche e progetti Srl (Città di Castello, Italy); RPA Spa (Perugia, Italy); Carmen eV (Straubing, Germany); (represented by: V. Marien, lawyer); University College Dublin — Energy Research Group (Dublin, Ireland) (represented by: F. Herbert and L. Demeyere, lawyers); Benepoint SA (Brussels); Europe Information Service SA (Brussels); Managium SPRL (Brussels) (represented by: J.-P. Brusseleers, lawyer); and Aris Hellas EPE (Kifissia, Greece) (represented by: K. Sakellariadis, lawyer)

Re:

Action pursuant to Article 238 EC seeking an order against all the defendants jointly to repay the amounts paid by the Community in accordance with six contracts concluded in the framework of the Thermie programme and one contract concluded in the framework of the Altener II programme.

Operative part of the order

1. The action is dismissed as inadmissible in so far as it relates to Deira SA, Eutec Srl, Mindshare BVBA, Società politecnica italiana ricerche e progetti Srl, RPA Spa, Carmen eV, University College

Dublin — Energy Research Group, Benepoint SA, Europe Information Service SA, Managium SPRL and Aris Hellas EPE.

2. The Commission shall bear its own costs with regard to the action brought against Deira, Eutec, Mindshare, Società politecnica italiana ricerche e progetti, RPA, Carmen, University College Dublin — Energy Research Group, Benepoint, Europe Information Service, Managium and Aris Hellas, and pay the costs of Deira, Eutec, Mindshare, Società politecnica italiana ricerche e progetti, RPA, Carmen, University College Dublin — Energy Research Group, Benepoint, Europe Information Service and Managium.

3. Aris Hellas shall bear its own costs.

(¹) OJ C 213, 6.9.2003 (formerly Case C-280/03).

**Order of the President of the Court of First Instance of
7 January 2008 — Pellegrini v Commission**

(Case T-375/07 R)

(Interim measures — Non-contractual liability of the Commission — Commission's failure to act — Provisional payment of damages sought in main proceedings — No prima facie case)

(2008/C 64/64)

Language of the case: Italian

Parties

Applicant: Rosario Maria Pellegrini (Genoa, Italy) (represented by: L. Sulfaro, lawyer)

Defendant: Commission of the European Communities

Re:

Request that the Commission be ordered to pay compensation, on a provisional basis, for the financial damage allegedly suffered by the applicant because of the Commission's failure to ensure full application and correct interpretation of the provisions of Community law governing the activities of financial intermediaries.

Operative part of the order

1. The application for interim measures is dismissed.

2. The costs are reserved.

Action brought on 16 November 2007 — DJEBEL v Commission

(Case T-422/07)

(2008/C 64/65)

Language of the case: Portuguese

Parties

Applicant: DJEBEL SGPS, SA (Funchal, Portugal) (represented by: M. Andrade Neves and S. Castro Caldeira)

Defendant: Commission of the European Communities

Form of order sought

- annulment of the decision of the Commission of the European Communities of 10 May 2007, published in the Official Journal of the European Union of 24 August 2007, on State aid C 4/2006 (ex N 180/2005) — Portugal — Aid to Djebel (notified under document number C(2007) 1959) (OJ 2007 L 219, p. 30);
- recognition by the Court of First Instance that:
 - the aid requested was and is essential in order to carry out the investment project consisting of acquiring capital in RASH and the consequent purchase of the Hotel Rio Atlântico;
 - the aid was requested before the investment was made;
 - DJEBEL's project was Grupo Pestana's first actual experience of internationalisation;
 - carrying out that project did not alter the conditions of competition for European undertakings, either for those established in the territory of the Community or for those operating abroad;
 - carrying out the project did not place Grupo Pestana in any situation of advantage that might have put it in a position to distort trade between Member States;
 - the aid requested by Djebel presents the same features as that which was requested for Vila Galé and which was approved by the Commission by its decision of 15 October 2003;
- a declaration that the grant of aid to Djebel, in the terms and on the grounds indicated, is not incompatible with any provision of the EC Treaty whatsoever or with any legislative provision implementing the Treaty;
- an order amending the decision adopted by the Commission on 10 May 2007 with regard to the aid requested by Djebel so as to authorise the grant of aid in the terms proposed by Djebel and the Portuguese authorities.

Pleas in law and main arguments

The State aid requested by the applicant is not incompatible with the applicable provisions of the EC Treaty.

Djebel fulfilled the legal conditions for having its candidature included in the SIME and the Commission is required to abide by the conditions for the admissibility of the candidature laid down by the law of the Portuguese Republic applicable to the matter.

The applicable Portuguese legislation provided that in respect of candidatures submitted before 31 January 2001 investment expenditure incurred after 1 July 1999 could be counted as reimbursable.

The State aid at issue was intended to provide incentives for and to support the internationalisation of Grupo Pestana and was requested before the investment was made.

The applicant is not to suffer loss by reason of the dilatoriness of the responsible authorities in evaluating the project.

The aid requested by the applicant cannot be assessed in the light of the present economic and financial situation.

Without the aid at issue, the applicant would not have made the investment corresponding to the project in question.

Grupo Pestana's first experience of internationalisation consists of the purchase made by the applicant in connection with the investment plan.

In 1999 Grupo Pestana did not possess the financial means to carry out by itself the investment in Brazil.

Making that investment made no significant impact on trading conditions in the EU.

There is no link whatsoever between the purchase made by the applicant in Brazil and Grupo Pestana's expansion in Portugal.

The investment project submitted by the applicant and the aid granted it are compatible with the rules of the EC Treaty, in particular with Article 87(3)(c) EC.

The aid granted to the applicant facilitated the development of an economic activity, so falling within the scope of the exception provided for in Article 83(3)(c) of the EC Treaty.

There has been no infringement whatsoever of the provisions of the EC Treaty or of secondary legislation thereunder and no distorting effect on competition in the common market.

In accordance with the principle of equal treatment, the applicant maintains that, given that the investment project in question presents all the features presented by the Vila Galé project — the subject of the Commission's decision of 15 October 2003 — the Commission's decision on State aid C 4/2006 ought to have been the same as the former decision.

Action brought on 20 December 2007 — Salej and Technologie Buczek v Commission

(Case T-465/07)

(2008/C 64/66)

Language of the case: Polish

Parties

Applicants: Emilian Salej, acting as receiver for Technologie Buczek S.A. (Sosnowiec, Poland), and Technologie Buczek S.A. (Sosnowiec, Poland) (represented by: D. Szlachetko-Reiter, legal adviser)

Defendant: Commission of the European Communities

Form of order sought

- declare invalid Articles 1, 3(1) and 3(3) of the Commission decision of 23 October 2007 in Case No C 23/2006 (ex NN 35/2006) concerning State aid granted by Poland to the steel producer Grupa Technologie Buczek;
- declare invalid Articles 4 and 5 of the Commission decision of 23 October 2007 in Case No C 23/2006 (ex NN 35/2006) concerning State aid granted by Poland to the steel producer Grupa Technologie Buczek in so far as those provisions concern the recovery of the aid mentioned in Article 1 of the decision;
- order the Commission to pay the costs of the proceedings.

Pleas in law and main arguments

In support of the form of order sought, the applicants put forward pleas in law identical to those raised by the applicant in Case T-440/07 *Huta Buczek v Commission* ⁽¹⁾.

⁽¹⁾ OJ 2008 C 22, p. 50.

Action brought on 19 December 2007 — Dow Agrosciences BV and Others v Commission

(Case T-470/07)

(2008/C 64/67)

Language of the case: English

Parties

Applicants: Dow Agrosciences BV (Rotterdam, Netherlands), Dow AgroSciences Ltd (Hitchin, United Kingdom), Dow AgroSciences SAS (Mougins, France), Dow AgroSciences Export SAS (Mougins, France), Dow AgroSciences Italia Srl (Milan, Italy), Dow AgroSciences Iberica SA (Madrid, Spain), Dow AgroSciences Vertriebsgesellschaft mbH (Neusiedl am See, Austria), Dow AgroSciences LLC (Indianapolis, United States) (represented by: K. Van Maldegem, C. Mereu, lawyers)

Defendant: Commission of the European Communities

Form of order sought

- To order the annulment of Commission Decision 2007/619/EC;
- to order the defendant to pay all costs and expenses in these proceedings.

Pleas in law and main arguments

The applicants seek the annulment of Commission Decision 2007/619/EC of 20 September 2007 concerning the non-inclusion of 1,3-dichloropropene in Annex I to Council Directive 91/414/EEC ⁽¹⁾ ('Directive 91/414') and the withdrawal of authorisations for plant protection products containing that substance.

According to the applicants, the contested decision is unlawful because of the following reasons:

- (a) it infringes essential procedural requirements, as it is based on a report from the European Food Safety Authority ('EFSA') that allegedly infringes Article 8(7) of Commission Regulation 451/2000 ⁽²⁾; as the defendant infringed Article 8(8) of the above-mentioned regulation and as the contested decision fails to comply with the applicable legislative procedure, infringing thus, Articles 5 EC, 7 EC and Article 5 of Decision 1999/468 ⁽³⁾;

- (b) it contains manifest errors of appreciation because it decides on the non-inclusion of 1,3-dichloropropene in Annex I to Council Directive 91/414/EEC without it being established that the substance poses an unacceptable risk to human health or the environment and does not meet the requirements of Article 5(1) and 5(2) of Directive 91/414 for inclusion in Annex I;
- c) it breaches general principles of Community law and, in particular, (i) the principles of legal certainty and legitimate expectations, (ii) the principle of proportionality, (iii) the principle of equal treatment, (iv) the principle of sound administration, and (v) the applicants' right to defence and right to a fair hearing;
- (d) it infringes the EC Treaty and the rule of law related to its application, and in particular, (i) Article 13 of Directive 91/414, as well as (ii) Article 95 EC and Articles 4 and 5 of the above-mentioned directive.

The applicants also raise a plea of illegality pursuant to Article 241 EC against Article 20 of Commission Regulation 1490/2002 ⁽⁴⁾ which, according to their allegations, substantially altered their legal rights of expectations through the amendment of Regulation 451/2000 so as to provide mandatory involvement of EFSA in the review of the substance concerned.

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- ⁽¹⁾ Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market (OJ L 230, p. 1).
 - ⁽²⁾ 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 L 55, p. 25).
 - ⁽³⁾ Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (OJ L 184, p. 23).
 - ⁽⁴⁾ Commission Regulation (EC) No 1490/2002 of 14 August 2002 laying down further detailed rules for the implementation of the third stage of the programme of work referred to in Article 8(2) of Council Directive 91/414/EEC and amending Regulation (EC) No 451/2000 (Text with EEA relevance) (OJ L 224, p. 23).

Appeal brought on 21 December 2007 by Commission of the European Communities against the judgment of the Civil Service Tribunal delivered on 10 October 2007 in Case F-107/06, Berrisford v Commission

(Case T-473/07 P)

(2008/C 64/68)

Language of the case: French

Parties

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

Other party to the proceedings: Michael Berrisford (Brussels, Belgium)

Form of order sought by the appellant

- set aside the judgment of the Civil Service Tribunal of 10 October 2007 in Case F-107/06 in so far as it holds, following the examination of the first part of the second plea, alleging failure to take any account of the fact that he had reached the promotion threshold two times but had not been promoted during the earlier exercises at first instance, that the Appointing Authority has therefore vitiated the consideration of the applicant's comparative merits at first instance with an error of law and, therefore, in this case, a manifest error of assessment;
- refer the case back to the Civil Service Tribunal;
- reserve the costs.

Pleas in law and main arguments

By this appeal, the Commission seeks partial annulment of the judgment of 10 October 2007 in Case F-107/06 *Berrisford v Commission*, by which the Civil Service Tribunal (CST) annulled its decision not to include the applicant's name on the list of officials promoted in the 2005 promotion procedure and dismissed the action with respect to the remainder of the applicant's forms of order.

In support of its appeal the Commission first puts forward two pleas alleging errors of law which it claims the CST committed in the contested judgment.

First, the Commission claims that the CST has infringed Article 45(1) of the Staff Regulations in so far as it laid down an obligation for the Appointing Authority to take account, by awarding extra points during the consideration of the applicant's merits, of the fact that he was put forward on two occasions by his directorate general in the procedure for 'reserve officials'.

The second error of law that the Commission complains of in the contested decision is an infringement of Article 13(1) and (3)(b) of General Implementing Provisions in that the CST failed to recognise that the applicant's situation in 2003 and 2004 had been implicitly taken into consideration when the AIPN awarded points as a merit aspect related to the length of time in his grade.

Finally, the Commission relies on a plea alleging that the reasoning of the contested decision is contradictory.

— order the Commission to pay the costs.

Pleas in law and main arguments

The pleas and main arguments are similar to those relied on in Case T-417/07 *Lodato Gennaro & Co.*

Action brought on 17 December 2007 — Cofra v Commission

(Case T-477/07)

(2008/C 64/69)

Language of the case: Italian

Parties

Applicant: Cofra srl (Barletta, Italy) (represented by: A. Calabrese, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— annul Decision SG/E/3/MIB/mbp D(2007) 8992 of the Commission of 17 October 2007;

— order the Commission to pay the costs.

Pleas in law and main arguments

The pleas and main arguments are similar to those relied on in Case T-417/07 *Lodato Gennaro & Co.*

Action brought on 17 December 2007 — Nuova Agricast v Commission

(Case T-479/07)

(2008/C 64/70)

Language of the case: Italian

Parties

Applicant: Nuova Agricast srl (Cerignola, Italy) (represented by: A. Calabrese, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— annul Decision SG/E/3/MIB/mbp D(2007) 8992 of the Commission of 17 October 2007;

Action brought on 17 December 2007 — SIMSA v Commission

(Case T-480/07)

(2008/C 64/71)

Language of the case: Italian

Parties

Applicant: Società imballaggi metallici Salerno Srl SIMSA (Salerno, Italy) (represented by: A. Calabrese, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— annul Decision SG/E/3/MIB/mbp D(2007) 8992 of the Commission of 17 October 2007;

— order the Commission to pay the costs.

Pleas in law and main arguments

The pleas and main arguments are similar to those relied on in Case T-417/07 *Lodato Gennaro & Co.*

Action brought on 21 December 2007 — Deltalinqs and SVZ v Commission of the European Communities

(Case T-481/07)

(2008/C 64/72)

Language of the case: Dutch

Parties

Applicants: Deltalinqs and SVZ, Havenondernemersvereniging Rotterdam (Rotterdam, Netherlands) (represented by: M. Meulenbelt, lawyer)

Defendant: Commission of the European Communities

Form of order sought

- Annul the Commission's decision;
- Order the Commission to pay the costs.

Pleas in law and main arguments

The applicants challenge the Commission's decision of 10 May 2007 (OJ 2007 C 227, p. 4) concerning the Flemish rules on support for inter-modal transport via inland waterways (Aid measure N 682/2006 — Belgium). In the contested decision the Commission regards the support measure as compatible with the common market and decides not to raise any objection.

In support of their application, the applicants claim that there has been an infringement of the principle of non-discrimination laid down in Council Regulation (EEC) No 1107/70 of 4 June 1970 on the granting of aids for transport by rail, road and inland waterway (OJ English Special Edition, 1970(II), p. 362) and Articles 12 and 73 EC. They state that the subsidy is available on the transshipment of containers in Flemish inland ports when the containers enter or leave the European Union via a Flemish sea port but not when a sea port is in another Member State. They claim that this constitutes discrimination on grounds of nationality.

They also argue that the subsidy leads to a distortion of competition, as it seriously disadvantages all ports in north-west Europe which trade with the Flemish hinterland, and particularly the port of Rotterdam.

They also plead infringement of the obligation to investigate and state reasons. They maintain that the Commission has failed to investigate the consequences for competition and to explain why an economic investigation was not necessary.

Action brought on 20 December 2007 — Cabel Hall Citrus v OHIM — Casur (EGLÉFRUIT)

(Case T-488/07)

(2008/C 64/73)

*Language in which the application was lodged: English***Parties**

Applicant: Cabel Hall Citrus Ltd (Grand Cayman, Cayman Islands) (represented by: C. Rogers, Barrister)

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

Other party to the proceedings before the Board of Appeal: Casur S. Coop. Andaluza (Viator, Spain)

Form of order sought

- Annul the decision of 19 September 2007 of the First Board of Appeal of OHIM in Case R 293/2007-1;
- direct the relevant Cancellation Division of OHIM to declare invalid Community trade mark registration No 3 517 431 EGLÉFRUIT;
- order the defendant to pay the costs.

Pleas in law and main arguments

Registered Community trade mark subject of the application for a declaration of invalidity: The word mark 'EGLÉFRUIT' for goods and services in classes 29, 30 and 31 — Community trade mark No 3 517 431

Proprietor of the Community trade mark: Casur S. Coop. Andaluza

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 Community and national word and figurative marks 'UGLI' for goods in classes 29, 31 and 32

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

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 52(1)(a) of Council Regulation No 40/94 because the Board of Appeal misapplied the test of likelihood of confusion between the conflicting trade marks.

Action brought on 21 December 2007 — Insight Direct USA v OHIM — Net Insight (Insight)

(Case T-489/07)

(2008/C 64/74)

*Language in which the application was lodged: English***Parties**

Applicant: Insight Direct USA, Inc. (Tempe, United States) (represented by: M. Gilbert and M. Moore, Solicitors)

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

Other party to the proceedings before the Board of Appeal: Net Insight AB (Stockholm, Sweden)

Form of order sought

- The decision of the Second Board of Appeal dated 20 September 2007 in Case R 1428/2006-2 shall be annulled and the rejection of the application for all services in classes 37 and 42 and the rejected services in class 35 be overturned and the application be allowed to proceed in respect of all of the services for which the application was published.
- The Office and other parties shall bear their own costs and pay those of the applicant.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The figurative mark 'Insight' for services in classes 35, 36, 37 and 42 — application No 3 309 002

Proprietor of the mark or sign cited in the opposition proceedings: Net Insight AB

Mark or sign cited: The Community and national word mark 'NET INSIGHT' for goods and services in classes 9, 37 and 41

Decision of the Opposition Division: Opposition partially upheld and partially rejected

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: According to the applicant, the Board of Appeal wrongly identified the dominant and distinctive elements of the earlier mark and did not give consideration to all the relevant factors in assessing the similarity of the relevant goods and services. Furthermore, the Board of Appeal failed to consider all the relevant factors in relation to the global appreciation test when determining the likelihood of confusion between the conflicting marks.

Action brought on 21 December 2007 — Notartel v OHIM — SAT.1 SatellitenFernsehen (R.U.N.)

(Case T-490/07)

(2008/C 64/75)

Language in which the application was lodged: Italian

Parties

Applicant: Notartel SpA — (Notaries' information technology company) (Rome, Italy) (represented by: M. Bosshard and M. Balestrieri, avvocati)

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

Other party to the proceedings before the Board of Appeal of OHIM: SAT.1 SatellitenFernsehen GmbH (Berlin, Germany)

Form of order sought

The applicant claims that the Court should:

- Primarily, annul, in part, the decision of OHIM's Fourth Board of Appeal of 22 October 2007 in Case R 1267/2006-4, in so far as it upheld the opposition;
- Alternatively, annul, in part, the decision of OHIM's Fourth Board of Appeal of 22 October 2007 in Case R 1267/2006-4, in so far as it upheld the opposition in respect of the mark sought for Class 38;
- In any event, reject any possible future contrary application or claim, by way of confirming the decision in so far as it is not impugned in this case;
- Order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant.

Community trade mark concerned: Word mark 'R.U.N.' (Community trade mark application No 1,069,863 for services in Classes 35, 38 and 42, as regards these proceedings).

Proprietor of the mark or sign cited in the opposition proceedings: SAT.1 SatellitenFernsehen GmbH.

Mark or sign cited in opposition: Community and national word mark 'ran', for goods and services in Classes 9, 35, 38, 41 and 42.

Decision of the Opposition Division: Opposition rejected.

Decision of the Board of Appeal: Appeal allowed in part, in respect of some services in Classes 38 and 42.

Pleas in law: The contested decision is vitiated by a logical contradiction which consists in enunciating a series of correct legal principles stated to be mandatory in the assessment of the similarity between signs and goods/services for the purposes of establishing the ground of refusal under the first part of Article 73 of the Community trade mark regulation, whilst however applying different criteria in evaluating the actual case in point. Such logical contradiction therefore gives rise either to an error of law, by the application of legal principles different to those (correct) ones stated in the legal basis of the decision, or to inconsistency and insufficiency in the reasoning.

Action brought on 27 December 2007 — CB v Commission

(Case T-491/07)

(2008/C 64/76)

Language of the case: French

Parties

Applicant: Groupement des Cartes Bancaires (CB) GIE (Paris, France) (represented by: A. Georges, J. Ruiz Calzado, É. Barbier de La Serre, lawyers)

Defendant: Commission of the European Communities

Form of order sought

- annul the contested decision in its entirety;
- order the Commission to pay the costs.

Pleas in law and main arguments

By this action, the applicant seeks annulment of Commission Decision C(2007) 5060 final of 17 October 2007 relating to a proceeding under Article 81 EC (Case COMP/D1/38606 — GROUPEMENT DES CARTES BANCAIRES 'CB'), concerning tariff measures for membership of the Groupement applicable to new members and the 'sleeper member fee' applicable to members of the Groupement which have not developed significant business in banking cards since becoming members.

In support of its application, the applicant puts forward six pleas in law.

The first plea alleges infringement of Article 81 EC, the principle of equal treatment and a failure to state reasons on account of alleged defects in the method of analysis of the measures and the markets adopted by the Commission, in that it failed to take account of either the overall context, all the relevant information, or the specific circumstances in which they were adopted and in which their effects are felt.

Second, the applicant puts forward a plea alleging infringement of Article 81(1) EC on account of errors of law, fact and assessment that the Commission made during the examination of the purpose of the measures which were notified to it. The applicant takes the view that the Commission has failed to comply with the obligation to examine the purpose of a decision by an association of undertakings and has not established that that purpose is anticompetitive.

By the third plea, the applicant claims that the contested decision infringes Article 81(1) EC also because of errors of law, fact and assessment that the Commission made during the examination of the effect of the measures notified to it.

In the alternative, the applicant argues that the Commission infringed Article 81(3) EC in the examination of the applicability of the four conditions required in order to obtain an exemption.

The fifth plea relied on by the applicant alleges infringement of the principle of sound administration resulting from supposed omissions, contradictions and distortions of a number of its arguments in the contested decision.

The final plea alleges infringement of the principles of proportionality and legal certainty.

Appeal brought on 28 December 2007 by Carlos Sanchez Ferriz and Others against the judgment of the Civil Service Tribunal delivered on 17 October 2007 in Case F-115/06, *Sanchez Ferriz and Others v Commission*

(Case T-492/07 P)

(2008/C 64/77)

Language of the case: French

Parties

Appellants: Carlos Sanchez Ferriz (Brussels, Belgium), Isabelle Chantraine (Brussels), José De Viana Costa Ribeiro (Meise, Belgium), Brigitte Housiaux (Ramillies, Belgium), Chantal Vellemans (Brussels), Sylvie Schaack (Remich, Grand Duchy of Luxembourg), Andrea Losito (Sandweiler, Grand Duchy of Luxembourg), Marie-Josée Gaspar-Lis (Luxembourg, Grand Duchy of Luxembourg), Otálka Ferreira-Nielsen (Gostingen, Grand Duchy of Luxembourg) (represented by F. Frabetti, lawyer)

Other party to the proceedings: Commission of the European Communities

Form of order sought by the appellant

- Annul the order of the Civil Service Tribunal of 17 October 2007 in Case F-115/06;
- Grant the claims of the applicants at first instance and, accordingly, declare the action in Case F-115/06 admissible and well-founded;
- In the alternative, refer the matter back to the Civil Service Tribunal;
- Rule on the costs and order the Commission to pay the costs.

Pleas in law and main arguments

In their appeal, the appellants seek the annulment of the order of the Civil Service Tribunal rejecting as inadmissible their action for, principally, annulment of the list of officials promoted in the 2005 promotion year, in that that list does not include the names of the appellants, and, as a subsidiary plea, annulment of the decisions attributing priority points to them for that year.

In support of their appeal, the appellants submit that, contrary to the findings in the contested order, the general implementing provisions of 26 April 2002, whose unlawfulness was raised at first instance, are directly connected in law to the present dispute.

Furthermore, they claim that the Tribunal erred in law in declaring the complaint alleging breach of the GIP 45 of 23 December 2004 inadmissible because it was raised late at

the stage of the reply. They submit that that complaint had already been mentioned in the claim and in the application, and that the reply merely contains its amplification.

Finally, the appellants submit that, contrary to the findings of the Civil Service Tribunal, they are affected in a concrete manner and individually by the breach of the first paragraph of Article 6 and of Article 10 (2) of Annex XIII to the Staff Regulations and that accordingly their interest in bringing proceedings is clear.

Action brought on 28 December 2007 — Italy v Commission

(Case T-494/07)

(2008/C 64/78)

Language of the case: Italian

Parties

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

Defendant: Commission of the European Communities

Form of order sought

- annul Memorandum No 011140 of 18 October 2007 of the European Commission, Directorate General for Regional Policy — Programmes and projects in Cyprus, Greece, Hungary, Italy, Malta and the Netherlands — concerning payments made by the Commission which differ from the amount requested. Ref: DOCUP Toscana Ob. 2 (No CCI 2000 IT 16 2DO 001);
- annul Memorandum No 011538 of 29 October 2007 of the European Commission, Directorate General for Regional Policy — Programmes and projects in Cyprus, Greece, Hungary, Italy, Malta and the Netherlands — concerning payments made by the Commission which differ from the amount requested. Ref: Programma Operativo Regionale 'Campania' 2000-2006 (No CCI 1999 IT 16 1PO 007);
- annul Memorandum No 011869 of 8 November 2007 of the European Commission, Directorate General for Regional Policy — Programmes and projects in Cyprus, Greece, Hungary, Italy, Malta and the Netherlands — concerning payments made by the Commission which differ from the amount requested. Ref: DOCUP Piemonte 2000-2006 (No CCI 2000 IT 16 2DO 007);

- annul Memorandum No 011871 of 8 November 2007 of the European Commission, Directorate General for Regional Policy — Programmes and projects in Cyprus, Greece, Hungary, Italy, Malta and the Netherlands — concerning payments made by the Commission which differ from the amount requested. Ref: DOCUP Ob 2 ‘Lazio’ 2000-2006 (No CCI 2000 IT 16 2DO 009);
- annul Memorandum No 012137 of 15 November 2007 of the European Commission, Directorate General for Regional Policy — Programmes and projects in Cyprus, Greece, Hungary, Italy, Malta and the Netherlands — concerning certification and declaration of intermediate expenses and request for payment. Ref: DOCUP Veneto Ob 2 2000-2006 (No CCI 2000 IT 16 2DO 005);
- annul Memorandum No 012139 of 15 November 2007 of the European Commission, Directorate General for Regional Policy — Programmes and projects in Cyprus, Greece, Hungary, Italy, Malta and the Netherlands — concerning payments made by the Commission which differ from the amount requested. Ref: Programma Operativo Regionale ‘Campania’ 2000-2006 (No CCI 1999 IT 16 1PO 007);
- annul Memorandum No 012212 of 16 November 2007 of the European Commission, Directorate General for Regional Policy — Programmes and projects in Cyprus, Greece, Hungary, Italy, Malta and the Netherlands — concerning payments made by the Commission which differ from the amount requested. Ref: PON Sviluppo Imprenditoriale Locale 2000-2006 (No CCI 1999 IT 16 1PO 002);
- annul Memorandum No 012567 of 26 November 2007 of the European Commission, Directorate General for Regional Policy — Programmes and projects in Cyprus, Greece, Hungary, Italy, Malta and the Netherlands — concerning payments made by the Commission which differ from the amount requested. Ref: Programma Operativo Regionale ‘Sardegna’ 2000-2006 (No CCI 1999 IT 16 1PO 010); and
- annul all related and prior acts and, accordingly, order the Commission of the European Communities to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are those invoked in Case T-345/04 *Italian Republic v Commission* ⁽¹⁾.

⁽¹⁾ OJ C 262 of 23.10.2004, p. 55.

Action brought on 20 December 2007 — Productos Asfálticos (Proas) v Commission

(Case T-495/07)

(2008/C 64/79)

Language of the case: Spanish

Parties

Applicant: Productos Asfálticos (Proas), SA (Madrid, Spain) (represented by: C Fernandez Vicién, P Carmona Botana and A. Pereda Miquel, lawyers)

Defendant: Commission of the European Communities

Form of order sought

- Annul the Commission Decision [C(2007) 4441], or alternatively, reduce the fine imposed on Productos Asfálticos SA, and
- Order the Commission to pay all the costs of these proceedings.

Pleas in law and main arguments

The action is directed against Commission Decision C(2007) 4441 final of 3 October 2007 in the Case COMP/38710 — Bitumen Spain. In the contested decision, the Commission declared that the applicant, together with other companies, had infringed Article 81 EC by having taken part, over a certain period, in a set of agreements and concerted practices in the market for penetration bitumen, namely agreements for sharing the market and coordinating prices. In respect of those infringements the Commission imposed a fine for which the applicant and another company are jointly and severally liable.

In support of its claims, the applicant first alleges that the Commission erred in the assessment of the facts. In that context, the applicant considers that the Commission incorrectly assessed the seriousness of the infringement and the position of the applicant in the cartel, with particular reference to its specific weight in the market and the assessment that it was co-leader of the cartel.

Secondly, the applicant complains that the Commission infringed the applicable law. The applicant claims that the contested decision infringes the principle of equal treatment by incorrectly applying the Notice on cooperation of 2002 ⁽¹⁾, infringes the principle of sound administration by not having completed the procedure within a reasonable time and sets a fine which is above the lawful limit established in Regulation (EC) No 1/2003 ⁽²⁾, thereby infringing the principle of proportionality.

In addition, the applicant considers that the Commission infringed the obligation to state reasons.

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- ⁽¹⁾ Commission notice on immunity from fines and reduction of fines in cartel cases (OJ 2002, C 45, p. 3).
⁽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 2003 L 1, p. 1).

Action brought on 18 December 2007 — Repsol YPF Lubricantes y especialidades and Others v Commission

(Case T-496/07)

(2008/C 64/80)

Language of the case: Spanish

Parties

Applicants: Repsol YPF Lubricantes y especialidades SA (Madrid, Spain) Repsol Petróleo, SA (Madrid, Spain), Repsol YPF, SA (Madrid, Spain) (represented by: L. Ortiz Blanco, J. Buendía Sierra and M. Muñoz de Juan, lawyers)

Defendant: Commission of the European Communities

Form of order sought

- Annul the Decision [C(2007) 4441] to the extent that it
 - Attributes joint and several liability for the infringement to Repsol Petróleo, SA;
 - Attributes joint and several liability and affiliate liability to Repsol YPF, SA;
 - Determines the basic amount in a manner contrary to the principle of proportionality by not taking into

account either the restricted geographic extent and economic value of the market affected or the effects on the market (which failing, the slight impact);

- applies incorrectly the Notice on leniency, in particular in relation to the percentage reduction of the fine granted to Repsol; and
- treats leadership as an aggravating factor
- Reduce the fine imposed on Repsol in the exercise of the Court's unlimited jurisdiction to an appropriate amount;
- order the Commission to pay the costs of these proceedings.

Pleas in law and main arguments

The action is directed against Commission Decision C(2007) 4441 final of 3 October 2007 in the Case COMP/38710 — Bitumen Spain. In the contested decision, the Commission declared that the applicant, together with other companies, had infringed Article 81 EC by having taken part, over a certain period, in a set of agreements and concerted practices in the market for penetration bitumen, namely agreements for sharing the market and coordinating prices. In respect of those infringements the Commission imposed a fine for which the applicants are jointly and severally liable.

In support of their claims, the applicants allege first an error of assessment of the facts and an error of law in the incorrectly attribution of responsibility for the infringement to the parent companies of Repsol YPF Lubricantes y especialidades SA. In that context, the applicants consider that the attribution of affiliate liability contravenes Community law.

Secondly, the applicants allege that the Commission infringed the principle of proportionality in calculating the initial amount.

Thirdly, the applicants allege a manifest error of assessment or alternatively an infringement of the general principles of protection of legitimate expectations, proportionality and equal treatment in determining the percentage reduction of the fine in accordance with the Notice on cooperation of 2002 ⁽¹⁾.

Lastly, the applicants consider that the Commission committed a manifest error of assessment in relation to the evaluation leadership of the cartel jointly with another company as an aggravating factor.

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- ⁽¹⁾ Commission notice on immunity from fines and reduction of fines in cartel cases (OJ 2002, C 45, p. 3).

Action brought on 20 December 2007 — Compañía Española de Petróleos (Cepsa) v Commission

(Case T-497/07)

(2008/C 64/81)

Language of the case: Spanish

Parties

Applicant: Compañía Española de Petróleos (Cepsa) (Madrid, Spain) (represented by: P. Pérez-Llorca Zamora, O.Armengol i Gasull and A. Pascual Morillo, lawyers)

Defendant: Commission of the European Communities

Form of order sought

- Annul Articles 1 to 4 of the Commission Decision [C(2007) 4441] to the extent that they declare respectively that Compañía Española de Petróleos SA has infringed Article 81 EC, impose a fine on it, order it immediately to cease the infringement and include it as an addressee of the Decision
- Alternatively, reduce the fine imposed on Compañía Española de Petróleos SA, and
- Order the Commission to pay the costs of these proceedings.

Pleas in law and main arguments

The action is directed against Commission Decision C(2007) 4441 final of 3 October 2007 in the Case COMP/38710 — Bitumen Spain. In the contested decision, the Commission declared that the applicant, together with other companies, had infringed Article 81 EC by having taken part, over a certain period, in a set of agreements and concerted practices in the market for penetration bitumen, namely agreements for sharing the market and coordinating prices. In respect of those infringements the Commission imposed a fine for which the applicant and another company are jointly and severally liable.

In support of its claims, the applicant alleges first that there is an error of law in attributing to the applicant the infringement committed by another company by applying the case-law on 'economic unit'. Further the applicant considers that the Commission made a manifest error of assessment of the facts by rejecting the evidence produced by the applicant in proof of the independence of the company which committed the infringement and by considering that there were many factors indicating that the latter company was not autonomous. In that context, the applicant also considers that the Commission infringed the obligation to state reasons by rejecting without foundation the arguments of the applicant on the independence of the company which committed the infringement.

Alternatively, in respect of the amount of the fine, the applicant complains that the Commission infringed the principle of sound administration and the right of the applicant to a procedure without undue delays by not adopting the statement of objections in a reasonable time in light of the information available, infringed the principle of proportionality and made a manifest error of assessment by not taking into account that the applicant implemented a programme of compliance.

Action brought on 27 December 2007 — Republic of Bulgaria v Commission of the European Communities

(Case T-499/07)

(2008/C 64/82)

Language of the case: Bulgarian

Parties

Applicant: Republic of Bulgaria (represented by: Anani Anaviev, Daniela Drambozova and Elina Petranova)

Defendant: Commission of the European Communities

Form of order sought

- on the basis of Article 230 EC, to annul in its entirety Commission Decision C(2007) 5255 final of 26 October 2007 concerning the national allocation plan for the period from 2008 to 2012 for the allocation of greenhouse gas emissions allowances, which was adopted by Bulgaria pursuant to Directive 2003/87/EC of the European Parliament and of the Council,

alternatively,

- on the basis of Article 230 EC, to annul Commission Decision C(2007) 5255 final of 26 October 2007 concerning the national allocation plan for the period from 2008 to 2012 for the allocation of greenhouse gas emissions allowances, which was adopted by Bulgaria pursuant to Directive 2003/87/EC of the European Parliament and of the Council, to the extent that that decision specifies the total number of allowances to be allocated,
- to order the Commission of the European Communities to bear the costs incurred by the Republic of Bulgaria in connection with the proceedings.

Pleas in law and main arguments

The applicant claims that the contested Commission Decision C(2007) 5255 final of 26 October 2007 concerning the national allocation plan for the period from 2008 to 2012 for the allocation of greenhouse gas emissions allowances should be annulled in whole or in part for the following reasons:

Substantial procedural irregularities

The Commission rejected the Bulgarian national allocation plan, without providing adequate reasons for doing so, on the basis that the plan failed to satisfy criteria 1, 2, 3 and 10 of Annex III to Directive 2003/87/EC⁽¹⁾. In so doing, it infringed Article 253 EC.

The contested decision was adopted after the expiry of the period laid down in Article 9(3) of Directive 2003/87/EC.

Prior to the adoption of the decision, the Commission did not give Bulgaria the opportunity to present its objections to the national allocation plan being assessed on the basis of the latest version of the PRIMES model. In so doing, it infringed the right to a fair hearing.

Infringement of the EC Treaty or of a rule of law relating to its application

Article 9(1) and (3), together with Article 11(1), of Directive 2003/87/EC provides for the Member States to have sole competence to determine the total quantity of emissions allowances. The Commission is to monitor the application of the criteria set out in Annex III to the Directive, but is, however, not entitled to determine the total quantity of the allowances without reference to the national allocation plan produced by the Member States. The Commission exceeded its powers of review under the directive, since it substituted for the methodology adopted by Bulgaria, which satisfied the criteria laid down in Annex III, a methodology which was unsuited to assessing the Bulgarian economy and failed to comply with some of the criteria.

The Commission assessed the Bulgarian national allocation plan on the basis of the latest version of the PRIMES model, the data for which were made available to Bulgaria only after the adoption of the contested decision. The Commission accordingly infringed the principle of loyal cooperation.

In assessing the national allocation plan under the PRIMES model, the Commission did not investigate the Bulgarian national allocation plan with reference to the objectives of Directive 2003/87/EC. In applying the PRIMES model to the assessment of the Bulgarian national allocation plan, the Commission wrongly concluded that the plan was incompatible with criteria 1, 2 and 3 of Annex III to the directive. The rejection of the plan and the reduction of the total quantity of allowances to be allocated by 37 % has led to a position where Bulgarian operators of installations are not put in the same position as other operators in the Community's trading system. The

Commission accordingly infringed the principles of proportionality and equal treatment.

Having regard to the judgment of the Court of First Instance in Case T-374/04, the Commission infringed the principles of the protection of legitimate expectations and of legal certainty, since it did not apply the instruments adopted by it pursuant to Directive 2003/87/EC to their full extent in assessing the Bulgarian national allocation plan. The principle of the protection of legitimate expectations was infringed because the Bulgarian national allocation plan was assessed by reference to the latest version of the PRIMES model, the data for which were made available to Bulgaria only after the adoption of the contested decision.

The principle of legal certainty was infringed because the Commission had recourse to a private document when assessing the Bulgarian national allocation plan.

The principle of sound administration was infringed because, in assessing the Bulgarian national allocation plan in relation to its compatibility with criteria 1, 2, and 3 laid down in Annex III to Directive 2003/87/EC, the Commission did not attentively and objectively investigate all relevant economic and ecological factors.

The Commission unlawfully applied the instruments which it adopted pursuant to Directive 2003/87/EC in assessing the Bulgarian national allocation plan. In so doing, it infringed criteria 1, 2, 3, 4, 6 and 10 of Annex III to Directive 2003/87/EC.

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

Action brought on 27 December 2007 — Republic of Bulgaria v Commission of the European Communities

(Case T-500/07)

(2008/C 64/83)

Language of the case: Bulgarian

Parties

Applicant: Republic of Bulgaria (represented by: Anani Anaviev, Daniela Drambozova and Elina Petranova)

Defendant: Commission of the European Communities

Form of order sought

- on the basis of Article 230 EC, to annul in its entirety Commission Decision C(2007) 5256 final of 26 October 2007 concerning the national allocation plan for 2007 for the allocation of greenhouse gas emissions allowances, which was adopted by Bulgaria pursuant to Directive 2003/87/EC of the European Parliament and of the Council, alternatively,
- on the basis of Article 230 EC, to annul Commission Decision C(2007) 5256 final of 26 October 2007 concerning the national allocation plan for 2007 for the allocation of greenhouse gas emissions allowances, which was adopted by Bulgaria pursuant to Directive 2003/87/EC of the European Parliament and of the Council, to the extent that that decision specifies the total number of allowances to be allocated,
- to order the Commission of the European Communities to bear the costs incurred by the Republic of Bulgaria in connection with the proceedings.

Pleas in law and main arguments

The applicant claims that the contested Commission Decision C(2007) 5256 final of 26 October 2007 concerning the national allocation plan for 2007 for the allocation of greenhouse gas emissions allowances should be annulled in whole or in part for the following reasons:

Substantial procedural irregularities

The Commission rejected the Bulgarian national allocation plan, without providing adequate reasons for doing so, on the basis that the plan failed to satisfy criteria 1, 2, 3 and 10 of Annex III to Directive 2003/87/EC⁽¹⁾. In so doing, it infringed Article 253 EC.

The contested decision was adopted after the expiry of the period laid down in Article 9(3) of Directive 2003/87/EC.

Prior to the adoption of the decision, the Commission did not give Bulgaria the opportunity to present its objections to the national allocation plan being assessed on the basis of the latest version of the PRIMES model. In so doing, it infringed the right to a fair hearing.

Infringement of the EC Treaty or of a rule of law relating to its application

Article 9(1) and (3), together with Article 11(1), of Directive 2003/87/EC provides for the Member States to have sole competence to determine the total quantity of emissions allowances. The Commission is to monitor the application of the criteria set out in Annex III to the Directive, but is, however, not entitled to determine the total quantity of the allowances without reference to the national allocation plan produced by the Member States. The Commission exceeded its powers of review under the directive, since it substituted for the methodology adopted by Bulgaria, which satisfied the criteria laid down in Annex III, a methodology which was unsuited to assess-

ing the Bulgarian economy and failed to comply with some of the criteria.

The Commission assessed the Bulgarian national allocation plan on the basis of the latest version of the PRIMES model, the data for which were made available to Bulgaria only after the adoption of the contested decision. The Commission accordingly infringed the principle of loyal cooperation.

In assessing the national allocation plan under the PRIMES model, the Commission did not investigate the Bulgarian national allocation plan with reference to the objectives of Directive 2003/87/EC. In applying the PRIMES model to the assessment of the Bulgarian national allocation plan, the Commission wrongly concluded that the plan was incompatible with criteria 1, 2 and 3 of Annex III to the directive. The rejection of the plan and the reduction of the total quantity of allowances to be allocated by 20 % has led to a position where Bulgarian operators of installations are not put in the same position as other operators in the Community's trading system. The Commission accordingly infringed the principles of proportionality and equal treatment.

Having regard to the judgment of the Court of First Instance in Case T-374/04, the Commission infringed the principles of the protection of legitimate expectations and of legal certainty, since it did not apply the instruments adopted by it pursuant to Directive 2003/87/EC to their full extent in assessing the Bulgarian national allocation plan. The principle of the protection of legitimate expectations was infringed because the Bulgarian national allocation plan was assessed by reference to the latest version of the PRIMES model, the data for which were made available to Bulgaria only after the adoption of the contested decision.

The principle of legal certainty was infringed because the Commission had recourse to a private document when assessing the Bulgarian national allocation plan.

The principle of sound administration was infringed because, in assessing the Bulgarian national allocation plan in relation to its compatibility with criteria 1, 2, and 3 laid down in Annex III to Directive 2003/87/EC, the Commission did not attentively and objectively investigate all relevant economic and ecological factors.

The Commission unlawfully applied the instruments which it adopted pursuant to Directive 2003/87/EC in assessing the Bulgarian national allocation plan. In so doing, it infringed criteria 1, 2, 3, 4, 6 and 10 of Annex III to Directive 2003/87/EC.

⁽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 24 December 2007 — RS Arbeitsschutz v OHIM — RS Components (RS)

(Case T-501/07)

(2008/C 64/84)

*Language in which the application was lodged: English***Parties***Applicant:* R. S. Arbeitsschutz Bedarfshandelsgesellschaft mbH (Kaltenkirchen, Germany) (represented by: M. Ivens, lawyer)*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs)*Other party to the proceedings before the Board of Appeal:* RS Components Ltd (Corby, United Kingdom)**Form of order sought**

— Annul the decision of the Second Board of Appeal of 16 October 2007, notified to the applicant on 26 October 2007 in Case R 531/2007-2 and of the decision of the Opposition Division of 13 February 2007 ruling on Opposition No B 902 660.

Pleas in law and main arguments*Applicant for the Community trade mark:* The applicant*Community trade mark concerned:* The Community figurative trade mark composed of a device of a stylised glove or hand and the bold capital letters 'RS' for goods in class 9, 17 and 25 — application No 4 113 981*Proprietor of the mark or sign cited in the opposition proceedings:* RS Components Ltd*Mark or sign cited:* The Community figurative trade mark 'RS' for goods in class 9, 17 and 25*Decision of the Opposition Division:* Upheld the opposition in its entirety*Decision of the Board of Appeal:* Dismissed the appeal*Pleas in law:* Infringement of Article 8(1)(b) of Council Regulation (EC) No 40/94.**Action brought on 8 January 2008 — Buczek Automotive v Commission**

(Case T-1/08)

(2008/C 64/85)

*Language of the case: Polish***Parties***Applicant:* Buczek Automotive sp. z o.o. (Sosnowiec, Poland) (represented by: T. Gackowski, legal adviser)*Defendant:* Commission of the European Communities**Form of order sought**

- declare invalid Articles 1, 3(1) and 3(3) of the Commission decision of 23 October 2007 in Case No C 23/2006 (ex NN 35/2006) concerning State aid granted by Poland to the steel producer Grupa Technologie Buczek;
- in the alternative, declare invalid Articles 1, 3(1) and 3(3) of the Commission decision of 23 October 2007 in Case No C 23/2006 (ex NN 35/2006) concerning State aid granted by Poland to the steel producer Grupa Technologie Buczek in so far as the Commission orders recovery of PLN 7 183 528 from the company Buczek Automotive sp. z o.o.;
- declare invalid Articles 4 and 5 of the Commission decision of 23 October 2007 in Case No C 23/2006 (ex NN 35/2006) concerning State aid granted by Poland to the steel producer Grupa Technologie Buczek in so far as those provisions concern the effecting of recovery from Buczek Automotive sp. z o.o.;
- order the Commission to pay the costs of the proceedings.

Pleas in law and main arguments

In support of the form of order which it seeks, the applicant puts forward pleas in law which overlap with those raised by the applicant in Case T-440/07 *Huta Buczek v Commission* ⁽¹⁾.

⁽¹⁾ OJ 2008 C 22, p. 50.

Action brought on 2 January 2008 — Landesanstalt für Medien Nordrhein-Westfalen v Commission

(Case T-2/08)

(2008/C 64/86)

Language of the case: German

Parties

Applicant: Landesanstalt für Medien Nordrhein-Westfalen (LfM) (Düsseldorf, Germany) (represented by: A. Rosenfeld and G.-B. Lehr, lawyers)

Defendant: Commission of the European Communities

Form of order sought

- Annulment of Commission Decision C(2007) 5109 final of 23 October 2007 on the State Aid which the Federal Republic of Germany wishes to grant for the introduction of digital terrestrial television (DVB-T) in Nordrhein-Westfalen;
- the Commission to be ordered to pay the costs

Pleas in law and main arguments

The applicant is challenging Commission Decision C (2007) 5109 final of 23 October 2007 on State aid C 34/2006 (ex N 29/2005 and ex CP 13/2004), in which the Commission decided that the State aid which the Federal Republic of Germany wishes to grant to commercial service broadcasters in the context of the introduction of digital terrestrial television in Nordrhein-Westfalen, and which was notified to the Commission, is not compatible with the common market.

In support of its action the applicant submits, first, that the contested decision infringes Article 87(1) EC as the measure was wrongly found to amount to State aid. In this connection it is also submitted that there was infringement of Article 253 EC.

In addition it is submitted that an unlawful method of assessment was used in the context of the assessment under Article 87(3)(c) EC. In that regard, the applicant also maintains that there were errors of judgment and assessment and that there was infringement of Article 253 EC.

As a result of errors of judgment and assessment it is further submitted that there was infringement of Article 87(3)(b) and (d) EC.

Lastly, the applicant claims that the measure concerned is in any event covered by the exception in Article 86(2) EC. It is also submitted here that there was infringement of Article 253 EC.

Action brought on 2 January 2008 — Coedo Suárez v Council

(Case T-3/08)

(2008/C 64/87)

Language of the case: French

Parties

Applicant: Angel Coedo Suárez (Brussels, Belgium) (represented by: S. Rodrigues and C. Bernard-Glanz, lawyers)

Defendant: Council of the European Union

Form of order sought

- declare this application admissible;
- annul the Council's decision of 30 October 2007 in so far it refuses to grant the applicant the access sought to several Council documents relating to, and arising from, an incident between the applicant and one of his colleagues on 19 February 2004 (minutes of internal meetings, investigation findings and a report of the security service);
- order the defendant to pay the costs.

Pleas in law and main arguments

By this action, the applicant seeks the annulment of the decision of 30 October 2007, adopted by DG F of the General Secretariat of the Council of the European Union, rejecting his formal request for access to documents relating to an incident between the applicant and one of his colleagues.

In support of his action, the applicant relies on two pleas.

The first plea alleges infringement of Article 4(1)(b) of Regulation No 1049/2001 ⁽¹⁾ and infringement of the obligation to state reasons for applying that provision.

The second plea alleges infringement of Article 5 of Regulation No 45/2001 ⁽²⁾ and a manifest error in the application of that regulation.

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

⁽²⁾ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ 2001 L 8, p. 1)

Action brought on 4 January 2008 — Nestlé v OHIM — Master Beverage Industries (Golden Eagle)

(Case T-5/08)

(2008/C 64/88)

Language in which the application was lodged: English

Parties

Applicant: Société des Produits Nestlé SA (Vevey, Switzerland) (represented by: A. von Mühlendahl, lawyer)

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

Other party to the proceedings before the Board of Appeal: Master Beverage Industries Pte Ltd (Singapore, Singapore)

Form of order sought

- Annul the decision of the defendant's Second Board of Appeal of 1 October 2007, Case R 563/2006-2 (CTM 3 157 005);
- decide that the contested CTM application No 3 157 005 RED MUG device with 'Golden Eagle' and eagle design must be rejected;
- order the defendant to pay the costs of the proceedings, including those incurred by the applicant before the Board of Appeal;

- order Master Beverage, the other party to the proceedings before the Board of Appeal, to pay the costs of the proceedings; including those incurred by the applicant before the Board of Appeal, in case it should become an intervening party in this case.

Pleas in law and main arguments

Applicant for the Community trade mark: Master Beverage Industries Pte Ltd

Community trade mark concerned: The figurative mark 'Golden Eagle' for goods in class 30 — application No 3 157 005

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

Mark or sign cited: The Community, international and national figurative marks and word marks 'Red Cup', 'Gold Blend' and representations of a cup for, *inter alia*, coffee

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 8(5) of Council Regulation No 40/94, as the conflicting trade marks have a high degree of visual similarity because of an identical arrangement of nine elements present in both the trade mark applied for and in most of the earlier marks, which are inherently distinctive.

Action brought on 4 January 2008 — Nestlé v OHIM — Master Beverage Industries (Golden Eagle Deluxe)

(Case T-6/08)

(2008/C 64/89)

Language in which the application was lodged: English

Parties

Applicant: Société des Produits Nestlé SA (Vevey, Switzerland) (represented by: A. von Mühlendahl, lawyer)

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

Other party to the proceedings before the Board of Appeal: Master Beverage Industries Pte Ltd (Singapore, Singapore)

Form of order sought

- Annul the decision of the defendant's Second Board of Appeal of 1 October 2007, Case R 568/2006-2 (CTM 3 156 924);
- decide that the contested CTM application No 3 156 924 RED MUG device with 'Golden Eagle Deluxe' must be rejected;
- order the defendant to pay the costs of the proceedings, including those incurred by the applicant before the Board of Appeal;
- order Master Beverage, the other party to the proceedings before the Board of Appeal, to pay the costs of the proceedings, including those incurred by the applicant before the Board of Appeal, in case it should become an intervening party in this case.

Pleas in law and main arguments

Applicant for the Community trade mark: Master Beverage Industries Pte Ltd

Community trade mark concerned: The figurative mark 'Golden Eagle Deluxe' for goods in class 30 — application No 3 156 924

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

Mark or sign cited: The Community, international and national figurative marks and word marks 'Red Cup', 'Gold Blend' and representations of a cup for, *inter alia*, coffee

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 8(5) of Council Regulation No 40/94, as the conflicting trade marks have a high degree of visual similarity because of an identical arrangement of nine elements present in both the trade mark applied for and in most of the earlier marks, which are inherently distinctive.

Action brought on 4 January 2008 — Nestlé v OHIM — Master Beverage Industries (Golden Eagle Deluxe)

(Case T-7/08)

(2008/C 64/90)

Language in which the application was lodged: English

Parties

Applicant: Société des Produits Nestlé SA (Vevey, Switzerland) (represented by: A. von Mühlendahl, lawyer)

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

Other party to the proceedings before the Board of Appeal: Master Beverage Industries Pte Ltd (Singapore, Singapore)

Form of order sought

- Annul the decision of the defendant's Second Board of Appeal of 1 October 2007, Case R 1312/2006-2 (CTM 3 157 534);
- decide that the contested CTM application No 3 157 534 RED MUG device with 'Golden Eagle Deluxe' must be rejected;
- order the defendant to pay the costs of the proceedings, including those incurred by the applicant before the Board of Appeal;
- order Master Beverage, the other party to the proceedings before the Board of Appeal, to pay the costs of the proceedings, including those incurred by the applicant before the Board of Appeal, in case it should become an intervening party in this case.

Pleas in law and main arguments

Applicant for the Community trade mark: Master Beverage Industries Pte Ltd

Community trade mark concerned: The figurative mark 'Golden Eagle Deluxe' for goods in class 30 — application No 3 157 534

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

Mark or sign cited: The Community, international and national figurative marks and word marks 'Red Cup', 'Gold Blend' and representations of a cup for, *inter alia*, coffee

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 8(5) of Council Regulation No 40/94, as the conflicting trade marks have a high degree of visual similarity because of an identical arrangement of nine elements present in both the trade mark applied for and in most of the earlier marks, which are inherently distinctive.

Pleas in law: Infringement of Articles 4 and 7(1)(e) of Regulation (EC) No 40/94 on the Community trade mark, as well as misconstruction of a number of provisions of Directive 89/104/EEC to approximate the laws of the Member States relating to trade marks. It is asserted, in that regard, that both Article 2 of Directive 89/104/EEC and Article 4 of Regulation (EC) No 40/94 acknowledge, expressly and unambiguously, the intrinsic distinctiveness, not only of the packaging of goods, but also of the very shape of those goods.

Action brought on 2 January 2008 — Piccoli v OHIM (Representation of a shell)

(Case T-8/08)

(2008/C 64/91)

Language of the case: Italian

Parties

Applicant: G.M. Piccoli Srl (Alzano Lombardo, Italy) (represented by S. Giudici, lawyer)

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

Form of order sought

The applicant claims that the Court should:

- Annul or vary the decision of the First Board of Appeal of 28 September 2007, notified on 23 October 2007, to allow the registration of Community three-dimensional trade mark No 4522892 consisting in the stylised shape of a (scallop) shell, also to distinguish ‘brioches, brioches filled with creams or custards, jams, chocolate or honey’;
- Order the defendant to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: Three-dimensional mark representing a shell from four different perspectives (Registration Application No 4.522.892 for goods in Class 30).

Decision of the Examiner: Rejection of the application for registration in respect of ‘preparations made from cereals, pastry, confectionery and ices’.

Decision of the Board of Appeal: Appeal dismissed.

Action brought on 7 January 2008 — Volkswagen v OHIM (CAR SILHOUETTE III)

(Case T-9/08)

(2008/C 64/92)

Language in which the application was lodged: German

Parties

Applicant: Volkswagen AG (Wolfsburg, Germany) (represented by H.-P. Schrammek, C. Drzymalla, S. Risthaus, R. Jepsen, lawyers)

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

Form of order sought

- Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 6 November 2007, notified on 9 November 2007, in appeal case R 1306/2007-4;
- Order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

Community trade mark concerned: The international figurative mark ‘CAR SILHOUETTE III’ for goods in Class 12 (international registration, designating the European Community, No W 878 349).

Decision of the Examiner: Refusal of protection.

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

Pleas in law:

- Infringement of Article 74(1) of Regulation (EC) No 40/94 ⁽¹⁾ due to an incorrect examination of the facts by the Office of its own motion;
- Infringement of Article 73 of Regulation No 40/94, namely the right to a fair hearing;
- Infringement of Article 7(1)(b) of Regulation No 40/94 in finding the mark to be devoid of any distinctive character.

⁽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 7 January 2008 — Kwang Yang Motor v OHIM — Honda Giken Kogyo (Representation of an internal-combustion engine)

(Case T-10/08)

(2008/C 64/93)

Language in which the application was lodged: English

Parties

Applicant: Kwang Yang Motor Co. Ltd (Kaohsiung City, Taiwan) (represented by: P. Rath and W. Festl-Wietek, lawyers)

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

Other party to the proceedings before the Board of Appeal: Honda Giken Kogyo Kabushiki Kaisha Co. Ltd (Tokyo, Japan)

Form of order sought

- Annulment of the decision of the Third Board of Appeal of the OHIM of 8 October 2007 served to the representatives of the applicant on 30 October 2007, in Case R 1337/2006-3;
- order the OHIM to pay the costs of the proceedings before the Court and Board of Appeal.

Pleas in law and main arguments

Registered Community design subject of the application for a declaration of invalidity: Registered Community design for an 'internal-

combustion engine' — Community Design No 000 163 290 — 0001

Proprietor of the Community design: The applicant

Party requesting the declaration of invalidity of the Community design: Honda Giken Kogyo Kabushiki Kaisha Co. Ltd

Design of the party requesting the declaration of invalidity: Registered US design in respect for an 'internal-combustion engine' — Patent No D 367 070

Decision of the Invalidity Division: Rejected the application for invalidity in its entirety

Decision of the Board of Appeal: Annulled the decision of the Invalidity Division and declared the design invalid

Pleas in law: Infringement of Articles 4 and 6 of Council Regulation (EC) No 6/2002 on Community Designs.

Action brought on 7 January 2008 — Kwang Yang Motor v OHIM — Honda Giken Kogyo (Representation of an internal-combustion engine)

(Case T-11/08)

(2008/C 64/94)

Language in which the application was lodged: English

Parties

Applicant: Kwang Yang Motor Co. Ltd (Kaohsiung City, Taiwan) (represented by: P. Rath and W. Festl-Wietek, lawyers)

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

Other party to the proceedings before the Board of Appeal: Honda Giken Kogyo Kabushiki Kaisha Co. Ltd (Tokyo, Japan)

Form of order sought

- Annulment of the decision of the Third Board of Appeal of the OHIM of 8 October 2007 served to the representatives of the applicant on 30 October 2007, in Case R 1380/2006-3;
- order the OHIM to pay the costs of the proceedings before the Court and Board of Appeal.

Pleas in law and main arguments

Registered Community design subject of the application for a declaration of invalidity: Registered Community design for an 'internal-combustion engine' — Community Design No 000 163 290 — 0002

Proprietor of the Community design: The applicant

Party requesting the declaration of invalidity of the Community design: Honda Giken Kogyo Kabushiki Kaisha Co. Ltd

Design of the party requesting the declaration of invalidity: Registered US design in respect for an 'internal-combustion engine' — Patent No D 282 071

Decision of the Invalidity Division: Rejected the application for invalidity in its entirety

Decision of the Board of Appeal: Annulled the decision of the Invalidity Division and declared the design invalid

Pleas in law: Infringement of Articles 4 and 6 of Council Regulation (EC) No 6/2002 on Community Designs

The applicant claims that the freedom of designers of combustion engines is narrowed to designs which fulfil the requirement of functionality. In addition, the industry's state of art being nearly exhausted, it is even more difficult for designers in this field to provide an alternative offering a totally different overall impression without reducing the design's functionality. Hence, according to the applicant, even the slightest details have to be taken into consideration when assessing the individual character of the design.

The applicant further submits that it nevertheless succeeded to maintain functionality as well as technical features of the challenged design, while giving its essential components an individual character.

Appeal brought on 4 January 2008 by M against the order of the Civil Service Tribunal delivered on 19 October 2007 in Case F-23/07, M v EMEA

(Case T-12/08 P)

(2008/C 64/95)

Language of the case: French

Parties

Appellant: M (Broxbourne, United Kingdom) (represented by S. Orlandi, A. Coolen, J.-N. Louis and E. Marchal, lawyers)

Other party to the proceedings: European Medicines Agency (EMA)

Form of order sought by the appellant

- set aside the order of the Civil Service Tribunal of 19 October 2007 in M v European Medicines Agency in Case F-23/07;
- annul the decision of the EMA of 25 October 2006 in so far as it dismisses the request of 8 August to consult the Invalidity Committee;
- annul the decision of the EMA dismissing the request for compensation;
- order the defendant to pay the costs at first instance and on appeal.

Pleas in law and main arguments

In his appeal, the appellant asks the Court to set aside the order of the Civil Service Tribunal dismissing, on the ground that it is inadmissible, the action for annulment of the decision of 25 October 2006 by which the European Medicines Agency dismissed his request to set up an Invalidity Committee.

In support of his appeal, the appellant puts forward a single plea alleging infringement of Community law. He claims that the Civil Service Tribunal has committed an error of interpretation with respect to the scope of his action at first instance and, therefore, it gave a ruling *ultra petita*. He also claims that the Civil Service Tribunal infringed Article 33(1) and (2) of the Conditions of Employment of Other Servants of the Communities.

Action brought on 11 January 2008 — Perfetti Van Melle v OHIM — Cloetta Fazer (CENTER SHOCK)

(Case T-16/08)

(2008/C 64/96)

Language in which the application was lodged: English

Parties

Applicant: Perfetti Van Melle SpA (Linate, Italy) (represented by: P. Perani and P. Pozzi, lawyers)

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

Other party to the proceedings before the Board of Appeal: Cloetta Fazer AB (Ljungsbro, Sweden)

Appeal brought on 14 January 2008 by Marta Andreasen against the judgment of the Civil Service Tribunal delivered on 8 November 2007 in Case F-40/05, *Andreasen v Commission*

(Case T-17/08 P)

(2008/C 64/97)

Language of the case: French

Form of order sought

- Totally alter the decision of the OHIM Fourth Board of Appeal, Case R 149/2006-4, rendered on 7 November 2007 and notified on 9 November 2007;
- annul the decision of the OHIM Cancellation Division, rendered on 24 November 2005, ruling on cancellation action No 941 C 973 065;
- confirm the validity of Perfetti's CTM registration No 973 065 CENTER SHOCK;
- order the defendants to bear the costs of the present proceeding, as well as those of the OHIM invalidity and appeal proceedings.

Parties

Appellant: Marta Andreasen (Barcelona, Spain) (represented by B. Marthoz, lawyer)

Other party to the proceedings: Commission of the European Communities

Pleas in law and main arguments

Registered Community trade mark subject of the application for a declaration of invalidity: The word mark 'CENTER SHOCK' for goods in class 30 — Community trade mark No 973 065

Proprietor of the Community trade mark: The applicant

Party requesting the declaration of invalidity of the Community trade mark: Cloetta Fazer AB

Trade mark right of the party requesting the declaration of invalidity: The national word marks 'CENTER' and 'CLOETTA CENTER' for goods in, *inter alia*, class 30

Decision of the Cancellation Division: Declaration of invalidity of the Community trade mark

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 52(1)(a) of Council Regulation No 40/94, as the conflicting trade marks are globally different in sound, meaning and overall impression, although they have a common element. Furthermore, Cloetta and Perfetti operate, according to the applicant, in different markets, since their products address different needs and different consumers.

Form of order sought by the appellant

- set aside the judgment of the Civil Service Tribunal of 8 November 2007 in Case F-40/05, rule on the dispute and grant the form of order sought by the appellant at first instance, including the claim for damages;
- order the defendant in the appeal to pay the costs;
- order the European Commission to pay all the costs and expenses;
- in the alternative, set aside the judgment of the Civil Service Tribunal of 8 November 2007 in Case F-40/05, refer the case back to the Civil Service Tribunal and reserve the costs.

Pleas in law and main arguments

In her appeal, the appellant claims that the judgment of the Civil Service Tribunal dismissing the action, first, for the annulment of the decision of 30 October 2004 by which the Commission removed her from her post as a disciplinary measure without any reduction of her pension rights and, second, the claim for damages should be set aside.

In support of her appeal, the appellant puts forward five pleas.

First of all, she claims that the Civil Service Tribunal infringed Article 10 of Annex IX to the Staff Regulations, in that it did not carry out a review of the legality and of the proportionality of the decision contested at first instance in relation to the application of that provision in the light of the circumstances of the present case and the appellant's particular situation owing to the nature of the tasks which she performed.

The second plea is based on the alleged infringement of the principles of the legality of Community acts, of the temporal application of Community acts and of legal certainty in that the Civil Service Tribunal did not state grounds for its judgment on the issues relating to the application, in the present case, of the rules contained in the old and new Staff Regulations.

Further, the appellant alleges that the Civil Service Tribunal misinterpreted the facts submitted for its assessment.

She also pleads an error of assessment and an infringement by the Civil Service Tribunal of Articles 11, 12, 17 and 21 of the Staff Regulations in that it did not provide adequate grounds in law for its judgment to the extent that it approved the application of those provisions as effected by the decision contested at first instance.

Lastly, the appellant claims that the Civil Service Tribunal also infringed the principles recognised in Articles 6(1) and 13 of the European Convention on Human Rights and Articles 41 and 47 of the Charter of Fundamental Rights of the European Union.

Action brought on 8 January 2008 — Evets v OHIM (DANELECTRO)

(Case T-20/08)

(2008/C 64/98)

Language of the case: English

Parties

Applicant: Evets Corporation (Irvine, United States) (represented by: S. Ryan, Solicitor)

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

Form of order sought

- That the decision R 603/2007 — 4 of the Fourth Board of Appeal of 5 November 2007 be set aside;
- that an order be substituted that the application for *restitutio in integrum* was brought within the time-limits as prescribed by Article 78(2);
- that the matter be referred back to the Fourth Board of Appeal for them to deal with the substantive issue as to

whether all due care was taken to renew the trade mark concerned;

- that the costs be borne by the defendant.

Pleas in law and main arguments

Community trade mark concerned: The Community word mark 'DANELECTRO' for goods and services in classes 9 and 15 — application No 117 937

Decision of the Administration of Trade Marks and Legal Division: Refused the request for *restitutio in integrum* and declared the trade mark as deemed to have been cancelled

Decision of the Board of Appeal: Dismissed the appeal and declared the *restitutio in integrum* request as deemed not to have been filed

Pleas in law: Infringement of Article 78(2) of Council Regulation (EC) No 40/94.

The applicant claims that the question of compliance with the two month time-limit set by the abovementioned provision for the filing of the application for renewal of trade mark registrations and payment of the renewal fee was not part of the appeal. Should the Court decide that the Board was entitled to examine this issue, the applicant alternatively argues that the time-limit was calculated in an incorrect fashion.

Action brought on 8 January 2008 — Evets v OHIM (QWIK TUNE)

(Case T-21/08)

(2008/C 64/99)

Language of the case: English

Parties

Applicant: Evets Corporation (Irvine, United States) (represented by: S. Ryan, Solicitor)

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

Form of order sought

- That the decision R 604/2007– 4 of the Fourth Board of Appeal of 5 November 2007 be set aside;

- that an order be substituted that the application for *restitutio in integrum* was brought within the time-limits as prescribed by Article 78(2);
- that the matter be referred back to the Fourth Board of Appeal for them to deal with the substantive issue as to whether all due care was taken to renew the trade mark concerned;
- that the costs be borne by the defendant.

Pleas in law and main arguments

Community trade mark concerned: The figurative Community trade mark 'QWIK TUNE' for goods and services in classes 9 and 15 — application No 117 994

Decision of the Administration of Trade Marks and Legal Division: Refused the request for *restitutio in integrum* and declared the trade mark as deemed to have been cancelled

Decision of the Board of Appeal: Dismissed the appeal and declared the *restitutio in integrum* request as deemed not to have been filed

Pleas in law: The pleas in law and main arguments relied on by the applicant are identical or similar to those relied on in Case T-20/08, *Evets/OHIM (DANELECTRO)*.

Action brought on 16 January 2008 — Weldebräu v OHIM — Kofola Holding (Shape of a bottle)

(Case T-24/08)

(2008/C 64/100)

Language in which the application was lodged: German

Parties

Applicant: Weldebräu GmbH & Co. KG (Plankstadt, Germany) (represented by W. Göpfert, lawyer)

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

Other party to the proceedings before the Board of Appeal: Kofola Holding a.s. (Ostrava, Czech Republic)

Form of order sought

- annulment of the decision of the Fourth Board of Appeal of 15 November 2007 in Case R 1096/2006-4;
- the defendant to be ordered to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Kofola Holding a.s.

Community trade mark concerned: the three-dimensional mark 'shape of a bottle' for goods in Classes 30, 32 and 33 (Application No 3 367 539)

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

Mark or sign cited in opposition: the three-dimensional mark 'shape of a bottle' for goods in Classes 21, 32 and 33 (Community trade mark No 690 016)

Decision of the Opposition Division: Rejection of the opposition

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 8(1)(b) of Regulation (EC) No 40/94 ⁽¹⁾, as there is a likelihood of confusion between the marks in opposition.

⁽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 11 January 2008 — Katjes Fassin v OHIM (Yoghurt-Gums)

(Case T-25/08)

(2008/C 64/101)

Language in which the application was lodged: German

Parties

Applicant: Katjes Fassin GmbH & Co. KG (Emmerich, Germany) (represented by R. Uecker, 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 25 October 2007 (Case R 1322/2006-4);
- Order the defendant to pay the costs of the action, including those incurred during the appeal proceedings.

Pleas in law and main arguments

Community trade mark concerned: The figurative mark 'Yoghurt-Gums' for goods in Classes 29, 30 and 32 (Application No 4 929 808).

Decision of the Examiner: Partial refusal to register.

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

Pleas in law: Infringement of Article 7(1)(b) and (c) of Regulation (EC) No 40/94 ⁽¹⁾ in relation to the goods in Class 30 which are still at issue in the proceedings.

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

Order of the Court of First Instance (Seventh Chamber) of 14 January 2008 — Fédération Internationale des Maisons de l'Europe v Commission of the European Communities

(Case T-417/03) ⁽¹⁾

(2008/C 64/102)

Language of the case: French

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

⁽¹⁾ OJ C 59, 6.3.2004.

Order of the Court of First Instance (Fourth Chamber) of 27 November 2007 — Microsoft Corporation v Commission of the European Communities

(Case T-313/05) ⁽¹⁾

(2008/C 64/103)

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 257, 15.10.2005.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

**Order of the Civil Service Tribunal (Second Chamber) of
12 December 2007 — Kerelov v Commission**

(Case F-109/07)

**(Officials — Manifest inadmissibility — Article 44(1)(c) of
the Rules of Procedure of the Court of First Instance)**

(2008/C 64/104)

Language of the case: French

Parties

Applicant: Georgi Kerelov (Pazardzhik, Bulgaria) (represented by:
A. Kerelov, lawyer)

Defendant: Commission of the European Communities

Re:

Application for the annulment of EPSO's decision of 2 February 2007 not to transmit to the applicant information and documents relating to a competition and for compensation for the damage he has suffered.

Operative part of the order

1. *The application is dismissed as manifestly inadmissible.*
2. *Each party shall bear its own costs.*

**Order of the Civil Service Tribunal (Second Chamber) of
12 December 2007 — Kerelov v Commission**

(Case F-110/07)

**(Officials — Manifest inadmissibility — Article 44(1)(c) of
the Rules of Procedure of the Court of First Instance)**

(2008/C 64/105)

Language of the case: French

Parties

Applicant: Georgi Kerelov (Pazardzhik, Bulgaria) (represented by:
A. Kerelov, lawyer)

Defendant: Commission of the European Communities

Re:

Application for the annulment of EPSO's decision of 7 February 2007 not to transmit to the applicant information and documents relating to a competition and for compensation for the damage he has suffered.

Operative part of the order

1. *The application is dismissed as manifestly inadmissible.*
2. *Each party shall bear its own costs.*

**Order of the Civil Service Tribunal (Second Chamber) of
12 December 2007 — Kerelov v Commission**

(Case F-111/07)

**(Officials — Manifest inadmissibility — Article 44(1)(c) of
the Rules of Procedure of the Court of First Instance)**

(2008/C 64/106)

Language of the case: French

Parties

Applicant: Georgi Kerelov (Pazardzhik, Bulgaria) (represented by:
A. Kerelov, lawyer)

Defendant: Commission of the European Communities

Re:

Application for the annulment of EPSO's decision of 14 December 2006 not to ask the applicant to fill out an application form with a view to his possible admission to a competition and for compensation for the damage he has suffered.

authority, infringement of several provisions of the Staff Regulations of Officials of the European Communities and infringement of Article 19 of the European Code of Good Administrative Behaviour, infringement of the principles applicable to the rights of the defence and to good administration and infringement of the Parliament's duty to have regard for the welfare of officials.

Operative part of the order

1. *The application is dismissed as manifestly inadmissible.*
2. *Each party shall bear its own costs.*

Action brought on 25 October 2007 — Marcuccio v Commission

(Case F-122/07)

(2008/C 64/108)

Language of the case: Italian

Action brought on 8 October 2007 — Tomas v Parliament

(Case F-116/07)

(2008/C 64/107)

Language of the case: Lithuanian

Parties

Applicant: Stanislovas Tomas (Kerkrade, Netherlands) (represented by: M. Michalaukas, lawyer)

Defendant: European Parliament

Parties

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

Defendant: Commission of the European Communities

Form of order sought

- Annul the decision of the appointing authority to dismiss the applicant to the extent that it has not been annulled by the decision to reject the complaint, or annul the decision to reject the complaint to the extent that it has not annulled the dismissal decision;
- Order the defendant to pay to the applicant the sum of EUR 125 000 as compensation for the non-material and material damage suffered by the applicant;
- Order the defendant to pay the costs.

Form of order sought

- set aside memorandum RELEX.K.4 D(2006) 522434 of 30 November 2006;
- set aside memorandum D(2007) 502458 of 15 February 2007;
- set aside the decision closing the investigation into the incident of 6 September 2001 when the applicant sought the assistance of the security service of the European Commission delegation in Angola for the purpose of replacing a tyre on his car;
- set aside the defendant's decision, howsoever drawn up, to reject the request of 1 September 2006 which the applicant had forwarded to the appointing authority;
- set aside, to the extent necessary, memorandum ADMIN.B.2/MB/nb D(07) 16072 of 16 July 2007;
- set aside, to the extent necessary, the decision, howsoever drawn up, to reject the complaint of 26 March 2007 which the applicant had forwarded to the appointing authority;

Pleas in law and main arguments

The applicant seeks annulment of the decision by which the appointing authority decided to dismiss him and compensation for the damage he suffered. In support of his action, he contends that there has been abuse of office by the appointing

- order the defendant to conduct an investigation for the purpose of establishing the events of 5 May 2003 when the head *ad interim* of administration of the EC delegation in Angola drove the applicant's car from the parking lot outside his accommodation to a location approximately four kilometres away, the events of 6 September 2001, and whether there is any link between those events, and to notify the applicant without delay of the results of the investigation, to display in a number of suitable and visible locations notices containing in extract form the findings of the investigation and to ensure access to those findings; in the alternative, order the defendant to pay to the applicant, by way of compensation for the now irreversible harm resulting from the decision rejecting the request of 1 September 2006, the sum of EUR 100 000, or such other greater or lesser sum as the Tribunal may deem to be fair and equitable, and, with regard to the harm which will occur after the date on which this present application is made, the sum of EUR 20, or such other greater or lesser sum as the Tribunal may deem to be fair and equitable, for each day from the date following that on which this present application is made to the date on which, on conclusion of the investigation, the applicant will be notified and the findings given adequate publicity;
- order the defendant to pay to the applicant, by way of compensation for the now irreversible harm resulting from the refusal to send him an Italian translation of the memorandum of 30 November 2006, the sum of EUR 20 000, or such other greater or lesser sum as the Tribunal may deem to be fair and equitable, and, with regard to the harm which will occur after the date on which this present application is made, the sum of EUR 2, or such other greater or lesser sum as the Tribunal may deem to be fair and equitable, for each day from the date following that on which this present application is made to the date on which all measures are adopted to give effect to the annulment of the refusal;
- order the defendant to pay to the applicant, by way of compensation for the harm — both that which has already occurred and that which is liable to occur in the future — resulting from the decision to close the investigation, so far as concerns the harm which has now occurred irreversibly, the sum of EUR 20 000, or such other greater or lesser sum as the Tribunal may deem to be fair and equitable, to be paid immediately after judgment has been delivered in this case, and, with regard to the harm which will occur after the date on which this present application is made, the sum of EUR 25, or such other greater or lesser sum as the Tribunal may deem to be fair and equitable, for each day from the date following that on which this present application is made to the date on which the defendant will have adopted all measures to give effect to the requisite annulment of the decision to close the investigation;
- confirm the illegality of the fact that, at least up to the date on which he received the memorandum of 30 November 2006, the applicant was not provided with any notification of the decision to close the investigation;
- declare unlawful the failure to notify the applicant that the investigation had been closed;

- order the defendant to pay to the applicant, by way of compensation for the harm resulting from the failure to notify the latter that the investigation had been closed, the sum of EUR 50 000, or such other greater or lesser sum as the Tribunal may deem to be fair and equitable;
- order the defendant to pay the costs.

Pleas in law and main arguments

In support of the form of order sought, the applicant invokes the following three pleas: (1) absolute lack of reasons, by virtue of, *inter alia*, want of logic, inconsistency, unreasonableness, confusion, lack of good faith and absence or inadequacy of the investigation; (2) serious, patent and manifest breach of law; (3) breach of the duty of care and of the duty to ensure sound administration.

Action brought on 3 December 2007 — Adjemian and Others v Commission

(Case F-134/07)

(2008/C 64/109)

Language of the case: French

Parties

Applicants: Vahan Adjemian (Angera, Italy) and Others (represented by: S. Orlandi, A. Coolen, J.-N. Louis and E. Marchal, lawyers)

Defendant: Commission of the European Communities

The subject-matter and description of the proceedings

Annulment of the decisions of the Commission, first, refusing to renew the engagement of the applicants as contract staff for a fixed or indefinite period and, second, laying down conditions of employment. In support of their action, the applicants rely on infringement of the principle of stability of employment relations and in particular the unlawfulness of Article 88 of the Conditions of Employment of other servants of the European Communities ('Conditions of Employment') in so far as it limits the duration of the contracts of contract staff.

Form of order sought

- Annul the successive decisions of the Commission and in particular that of 28 April 2004 concerning the maximum duration of the recourse to non-permanent staff in its services;
- Declare Article 88 of the Conditions of Employment unlawful in so far as it limits the duration of the contracts for contract staff;

- Annul the decisions of the Commission of 23 August and 31 October 2007 rejecting complaints R/263/07, R/492/07 and R/390/07 brought against the decisions of the Commission to conclude contracts with or to renew the engagement of the applicants as contract staff only for a fixed period;
- Annul the decision of the Commission of 5 September 2007 rejecting the applications of the applicants of 31 May and 20 July 2007 seeking the extension for an indefinite period of the applicants' contracts as members of the contract staff;
- Annul the decisions of the Commission which lay down the respective conditions of the employment of the applicants in so far as their engagement or the extension thereof is limited to a fixed period;
- Order the defendant to pay the costs.

**Action brought on 29 December 2007 — Luigi Marcuccio
v Commission of the European Communities**

(Case F-146/07)

(2008/C 64/110)

Language of the case: Italian

Parties

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

Defendant: Commission of the European Communities

Subject-matter and description of the dispute

Action brought against the rejection by the defendant of the applicant's request that it should carry out or conclude an investigation relating to the fact that on 29 October 2001, in the premises of the European Commission's delegation in Angola where he was employed as an official of the defendant, and during working hours, the applicant came accidentally into contact with a whitish powder of unknown nature and that it should provide him with any information as to what befell the sample of that powder and concerning the procedures for keeping the sample and for gaining access to it.

The applicant puts forward, in support of his arguments concerning the rejection by the defendant, the three following pleas in law: (1) absolute lack of any statement of reasons, also that the decision was illogical, inconsistent, unreasonable, confused, a mere pretext and relied on inadequate preparatory inquiries; (2) serious, obvious and manifest infringement of law; (3) breach of the duty to have regard for the welfare of officials and of the principle of sound administration.

Form of order sought by the applicant

- annul, in so far as necessary, the note dated 23 February 2007, prot. ADMINB.2/MB/nb D(07)4623;
- annul the decision, however framed, which constituted rejection by the defendant of the request of 10 October 2006 submitted by the applicant to the appointing authority;
- annul, in so far as necessary, the decision, however framed, rejecting the complaint dated 27 April 2007 submitted by the applicant to the appointing authority;
- annul, in so far as necessary, the note dated 4 September 2007 prot. ADMINB.2/MB/lb D(07) 19393;
- establish the fact that the defendant did not carry out, or did not conclude, any suitable investigation, including therein any measures preparatory or consequential to such investigation, for the purpose of ascertaining any circumstance, whether occurring earlier or later, in any way whatsoever connected with the fact that on 29 October 2001, in the premises of the European Commission's delegation in Angola where he was at that time employed as an official of the defendant, and during working hours, the applicant came accidentally into contact with a whitish powder of unknown nature;
- establish and declare that the failure to conduct any investigation was unlawful;
- order the defendant to carry out or conclude the investigation, to perform a series of relevant acts consequential upon the latter, to supply the applicant with pieces of information concerning the event of 29 October 2001 and to guarantee the applicant access to the sample of dust;
- order the defendant to pay to the applicant, as indemnification for that part of the damage already irreversibly caused to date as a result of the failure to carry out the investigation, the sum of EUR 3 000 000, or such greater or lesser sum as the Court of First Instance may consider just and fair;

- order the defendant to pay to the applicant, as indemnification for that part of the damage arising hereafter from the failure to carry out the investigation, the sum of EUR 300, or such greater or lesser sum as the Court may consider just and fair, for every day passing between tomorrow and the day on which, when the investigation has been carried out and all measures taken preparatory or consequential thereto, communication is made to the applicant, together with suitable publicity, in the premises of the delegation and also in the Development and External Relations Directorates-General, of the conclusions of the investigation;
- assess the defendant's conduct before, during and after the event of 29 October 2001 in any way connected to that event, save only the failure to carry out an investigation;
- establish and declare that the conduct in question was unlawful;
- order the defendant to pay to the applicant, by way of indemnification of the damage caused by the conduct in question, the sum of EUR 5 000 000 or such greater or lesser sum as the Court may consider just and fair;
- order the EC to make reimbursement to the applicant of all the costs, disbursements and fees involved in the proceedings, including those relating to the preparation of the party's expert's report which may be drawn up in order to ascertain whether the conditions are met for the defendant to be ordered to pay the applicant each of the abovementioned sums and, more generally, to ascertain any fact whatsoever of relevance for the purpose of the judgment to be given in this case.

Action brought on 2 January 2008 — Nijs v Court of Auditors

(Case F-1/08)

(2008/C 64/111)

Language of the case: French

Parties

Applicant: Bart Nijs (Bérelange, Grand Duchy of Luxembourg) (represented by: F. Rollinger, lawyer)

Defendant: European Court of Auditors

The subject-matter and description of the proceedings

Firstly, annulment of the decision of the Appeals Committee not to promote the applicant to Grade A*11 in the 2005 promotion year and, secondly, a claim for damages.

Form of order sought

- annul the applicant's 2005/06 evaluation report, including Decision No 1/2007 of the Appeals Committee to confirm that report, received by the applicant on 2 March 2007;
- annul the connected and subsequent decisions, in particular the decision not to promote the applicant to Grade AD 11 in 2007;
- annul the decision of the restrictive meeting of the Court of Auditors of 8 March 2007 to renew the term of office of Mr Michel Hervé from 1 July 2007 for a period of six years;
- order the Court of Auditors to make good the non-material damage suffered of EUR 10 000 and to make good the material damage, consisting of the difference between the salary received by the applicant since the effective date of the last promotion decisions, announced on 3 April 2007, and that to which he would have been entitled had he been promoted on the effective date of those decisions;
- order the European Court of Auditors to pay the costs.

Action brought on 3 January 2008 — Marcuccio v Commission

(Case F-3/08)

(2008/C 64/112)

Language of the case: Italian

Parties

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

Defendant: Commission of the European Communities

The subject-matter and description of the proceedings

Action brought against the defendant's decision refusing the applicant's request to receive an Italian translation of a note addressed to him and drafted in English.

Form of order sought

- Annulment of the note dated 15 February 2007, prot. RELEX.K7/PL/dgD(2007)502497;
- annulment of the defendant's decision, however formulated, rejecting the request of 27 January 2007 submitted by the applicant to the appointing authority;
- annulment, so far as may be necessary, of the decision, however formulated, rejecting the complaint of 26 May 2007 submitted by the applicant to the appointing authority;
- an order that the defendant should indemnify the applicant for the damage caused by the measures whose annulment is sought in the sum of EUR 1 000 or such greater or lesser sum as the Court of First Instance may think fit;
- an order that the defendant should pay the costs.

which it declared the reserve list for EPSO Competition AD/26/05 void;

- In the alternative, annul the defendant's decision of 10 May 2007, and its decision of 2 October 2007 rejecting the complaint and order the defendant to place the applicant on EPSO reserve list AD/26/05;
- In the further alternative, annul the defendant's decision of 10 May 2007, and its decision of 2 October 2007 rejecting the complaint and order the defendant to fix a new date, with adequate preparation time, for the applicant to take the oral test and to assess the possibility of his being placed on the reserve list on the basis of appropriate criteria;
- Order the defendant to state the grounds for its decision of 10 May 2007 and to permit the minutes of the oral test held on 6 March 2007 to be examined;
- Order the defendant to pay the costs;
- As a precautionary measure, deliver judgment in default.

Action brought on 10 January 2008 — Brune v Commission

(Case F-5/08)

(2008/C 64/113)

Language of the case: German

Parties

Applicant: Markus Brune (Brussels, Belgium) (represented by: H. Mannes, lawyer)

Defendant: Commission of the European Communities

The subject-matter and description of the proceedings

Annulment of the defendant's decision not to place the applicant on the reserve list for EPSO Competition AD/26/05 by reason of his obtaining an inadequate number of points.

Form of order sought

- Annul the defendant's decision of 10 May 2007, and its decision of 2 October 2007 rejecting the complaint, in

Action brought on 14 January 2008 — Schönberger v Parliament

(Case F-7/08)

(2008/C 64/114)

Language of the case: German

Parties

Applicant: Peter Schönberger (Luxembourg, Luxembourg) (represented by: O. Mader, lawyer)

Defendant: European Parliament

The subject-matter and description of the proceedings

Annulment of the Parliament's decision not to award the applicant a third service point in the context of his periodical report for 2003.

Form of order sought

- Annul the defendant's decision of 15 January 2007 not to award the applicant a third service point in the context of his periodical report for 2003 and its decision of 16 October 2007 rejecting the applicant's complaint against the decision of 15 January 2007;
- Order the defendant to pay the costs.

- Order the defendant to place the applicant in financial position in which he would have been if he had been correctly classified;
- Order the defendant to pay the costs.

Action brought on 18 January 2008 — Rosenbaum v Commission**(Case F-9/08)**

(2008/C 64/115)

*Language of the case: German***Parties**

Applicant: Eckehard Rosenbaum (Bonn, Germany) (represented by: H.-J. Rüber, lawyer)

Defendant: Commission of the European Communities

The subject-matter and description of the proceedings

Annulment of the defendant's decision to classify the applicant in Grade AD 6/2 at the time of recruitment.

Form of order sought

- Annul the decision of the Appointing Authority of the European Commission of 13 February 2007 concerning the applicant's classification in Grade AD 6/2;
- Declare that the recruitment must be made in Grade AD 9;
- In the alternative, declare that the recruitment must be made in Grade AD 8;
- In the further alternative, declare that the recruitment must be made in Grade AD 8;

Action brought on 21 January 2008 — Aayhan and Others v European Parliament**(Case F-10/08)**

(2008/C 64/116)

*Language of the case: French***Parties**

Applicants: Laleh Aayhan (Strasbourg, France) and Others (represented by: R. Blindauer, lawyer)

Defendant: European Parliament

The subject-matter and description of the proceedings

Annulment of the European Parliament's decision of 25 October 2007 rejecting the complaint brought by the applicants on 21 June 2007 for the purpose of having all the fixed-term contracts between them and the Parliament converted into a single contract for an indefinite period.

Form of order sought

- Annul the decision of the Secretary General of the European Parliament, the Appointing Authority, of 25 October 2007 expressly rejecting the complaint lodged with the Parliament on 27 June 2007;
- Consider all the fixed-term contracts between the applicants and the European Parliament as a single contract for an indefinite period, continuing in effect beyond 1 January 2007;
- Re-employ all the applicant members of staff on the basis of contracts for an indefinite period with the European Parliament;
- Grant each applicant member of staff an indemnity in respect of all the periods worked since the beginning of their employment equivalent to the right to paid leave which they have acquired through their work;

— Take note of the fact that the applicants regard the decision of 20 April 2007 as the rejection of a complaint and have already brought an action before the Civil Service Tribunal.

**Order of the Civil Service Tribunal (First Chamber) of
22 January 2008 — Erbežnik v Parliament**

(Case F-106/06) ⁽¹⁾

(2008/C 64/117)

Language of the case: Slovenian

The President of the First Chamber has ordered that the case be removed from the register, following amicable settlement.

⁽¹⁾ OJ 2006 C 281, 46.

**Order of the Civil Service Tribunal (First Chamber) of
23 January 2008 — De Fays v Commission**

(Case F-62/07) ⁽¹⁾

(2008/C 64/118)

Language of the case: French

The President of the First Chamber has ordered that the case be removed from the register, following amicable settlement.

⁽¹⁾ OJ C 199, 25.8.2007, p. 53.

**Order of the Civil Service Tribunal (First Chamber) of
23 January 2008 — De Fays v Commission**

(Case F-123/07)

(2008/C 64/119)

Language of the case: French

The President of the First Chamber has ordered that the case be removed from the register, following amicable settlement.
