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IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS AND BODIES

COURT OF JUSTICE

(2008/C 223/01)

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

OJ C 209, 15.8.2008

Past publications

OJ C 197, 2.8.2008

OJ C 183, 19.7.2008

OJ C 171, 5.7.2008

OJ C 158, 21.6.2008

OJ C 142, 7.6.2008

OJ C 128, 24.5.2008

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Fourth Chamber) of 17 July 2008 — Commission of the European Communities v Cantina sociale di Dolianova Soc. coop. arl, Cantina Trexenta Soc. coop. arl, Cantina sociale Marmilla — Unione viticoltori associati Soc. coop. arl, Cantina sociale S. Maria La Palma Soc. coop. arl, Cantina sociale del Vermentino Soc. coop. arl Monti-Sassari

(Case C-51/05 P) ([1])

(Appeals — Common organisation of the market in wine — Aid for distillation — Actions for damages — Non-contractual liability of the Community — Limitation period — Point from which time starts to run)

(2008/C 223/02)

Language of the case: Italian

Parties

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

Other parties to the proceedings: Cantina sociale di Dolianova Soc. coop. rl, Cantina Trexenta Soc. coop. rl, Cantina sociale Marmilla — Unione viticoltori associati Soc. coop. rl, Cantina sociale S. Maria La Palma Soc. coop. rl, Cantina sociale del Vermentino Soc. coop. rl Monti-Sassari (represented by: C. Dore and G. Dore, avvocati)

Re:

Appeal against the judgment of the Court of First Instance (Second Chamber) of 23 November 2004 in Case T-166/98 *Cantina sociale di Dolianova Soc. Coop. and Others* v *Commission* ordering the Commission to compensate the applicants for damage incurred as a result of Decision No VI B-I-3 M 4/97PVP of 31 July 1998 rejecting the applicants' requests for the payment of distillation aid for 1982/1983

Operative part of the judgment

The Court:

1. *Annuls the judgment of the Court of First Instance of the European Communities of 23 November 2004 in Case T 166/98 Cantina sociale di Dolianova and Others v Commission to the extent to which it declared admissible the action to establish non-contractual liability brought by Cantina sociale di Dolianova Soc. coop. arl, Cantina Trexenta Soc. coop. arl, Cantina sociale Marmilla — Unione viticoltori associati Soc. coop. arl, Cantina sociale S. Maria La Palma Soc. coop. arl and Cantina sociale del Vermentino Soc. coop. arl Monti-Sassari and ordered the Commission of the European Communities to make good the damage suffered by them as a result of the insolvency of Distilleria Agricola Industriale di Terralba by reason of the absence of a procedure capable of guaranteeing, under the system introduced by Article 9 of Commission Regulation (EEC) No 2499/82 of 15 September 1982 laying down provisions concerning preventive distillation for the 1982/1983 wine year, payment to the producers concerned of the Community aid provided for by that regulation.*

2. *Dismisses the action in Case T-166/98.*

3. *Orders Cantina sociale di Dolianova Soc. coop. arl, Cantina Trexenta Soc. coop. arl, Cantina sociale Marmilla — Unione viticoltori associati Soc. coop. arl, Cantina sociale S. Maria La Palma Soc. coop. arl and Cantina sociale del Vermentino Soc. coop. arl Monti-Sassari to pay the costs of the present proceedings and of those brought before the Court of First Instance of the European Communities.*

([1]) OJ C 82, 2.4.2005.

Judgment of the Court (Second Chamber) of 17 July 2008 — Commission of the European Communities v Italian Republic

(Case C-371/05) ([1])

(Failure of a Member State to fulfil obligations — Directive 92/50/EEC — Articles 11 and 15(2) — Public service contracts — Award of IT services of the municipality of Mantova (Italy) — Direct award without prior publication of a notice to tender)

(2008/C 223/03)

Language of the case: Italian

Parties

Applicant: Commission of the European Communities (represented by: X. Lewis, C. Zadra, L. Visaggio and C. Cattabriga, acting as Agents)

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

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 11 and Article 15(2) of Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts (OJ L 209, 24.7.1992, p. 1) — Award of IT services for the Commune di Mantova — Direct award without prior publication of a contract notice

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

([1]) OJ C 10, 14.1.2006.

Judgment of the Court (Fourth Chamber) of 17 July 2008 — Commission of the European Communities v French Republic

(Case C-389/05) ([1])

(Failure of a Member State to fulfil obligations — Articles 43 and 49 EC — Freedom of establishment and freedom to provide services — Animal health — Artificial insemination centre for bovine animals — National rules conferring on authorised centres the exclusive right to provide the service of artificially inseminating bovine animals in a defined geographical area and making the issue of an inseminator's licence subject to the conclusion of an agreement with one of those centres)

(2008/C 223/04)

Language of the case: French

Parties

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

Defendant: French Republic (represented by: G. de Bergues, A. Colomb and G. Le Bras, Agents)

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 43 and 49 EC — Only 'insemination centres' authorised in France allowed to carry out activities relating to the artificial insemination of bovine animals.

Operative part of the judgment

The Court:

1. *Declares that, by allowing only authorised artificial insemination centres, with exclusive rights over determined geographical areas, and persons holding an inseminator's licence, the issue of which is subject to the conclusion of an agreement with one of those centres, to provide the service of artificial insemination of bovine animals, the French Republic has failed to fulfil its obligations under Articles 43 EC and 49 EC;*

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

([1]) OJ C 10, 14.1.2006.

Judgment of the Court (Grand Chamber) of 17 July 2008 — Commission of the European Communities v Italian Rebublic

(Case C-132/06) ([1])

(Failure of a Member State to fulfil obligations — Article 10 EC — Sixth VAT Directive — Obligations under domestic rules — Control of taxable transactions — Amnesty)

(2008/C 223/05)

Language of the case: Italian

Parties

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

Defendant: Italian Rebublic (represented by: I. Braguglia, Agent and G. De Bellis, avvocato dello Stato)

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 2 and 22 of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) — Obligations under the internal system — National law waiving the verification of taxable transactions effected in the course of a series of tax years

Operative part of the judgment

The Court:

1. *Declares that, by providing in Articles 8 and 9 of Law No 289 of 27 December 2002 relating to the provisions for drawing up the annual and pluriannual budget of the State (Finance Law for 2003) (legge n. 289, disposizioni per la formazione del bilancio annuale e pluriennale dello Stato (legge finanziaria 2003)) for a general and indiscriminate waiver of verification of taxable transactions effected in a series of tax years, the Italian Republic has failed to fulfil its obligations under Articles 2 and 22 of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, and Article 10 EC.*

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

([1]) OJ C 108, 6.5.2006.

Judgment of the Court (Third Chamber) of 17 July 2008 (reference for a preliminary ruling from the Rechtbank Groningen — Netherlands) — Essent Netwerk Noord BV, Nederlands Elektriciteit Administratiekantoor BV, Aluminium Delfzijl BV v Aluminium Delfzijl BV, Staat der Nederlanden, Nederlands Elektriciteit Administratiekantoor BV, Saranne BV

(Case C-206/06) ([1])

(Internal market in electricity — National legislation permitting the levy of a surcharge on the price for electricity transmission in favour of a statutorily-designated company which is required to pay stranded costs — Charges having equivalent effect to customs duties — Discriminatory internal taxation — Aid granted by the Member States)

(2008/C 223/06)

Language of the case: Dutch

Referring court

Rechtbank Groningen

Parties to the main proceedings

Applicants: Essent Netwerk Noord BV, Nederlands Elektriciteit Administratiekantoor BV, Aluminium Delfzijl BV

Defendants: Aluminium Delfzijl BV, Staat der Nederlanden, Nederlands Elektriciteit Administratiekantoor BV, Saranne BV

Re:

Preliminary ruling — Rechtbank Groningen — Interpretation of Articles 25 EC, 87(1) EC and 90 EC — National legislation establishing a surcharge on the price of electricity and payable, during a transitional period, to the net operator by consumers established in the Netherlands — Obligation on the net operator

to pay that surcharge to a statutorily designated undertaking of the national electricity generators for the purpose of defraying a sum representing the amount of obligations incurred and investments made by that undertaking prior to liberalisation of the market — Payment by that undertaking of any surplus to the competent ministry

Operative part of the judgment

1. *Article 25 EC is to be construed as precluding a statutory rule under which domestic purchasers of electricity are required to pay to their net operator a price surcharge on the amounts of domestic and imported electricity which are transmitted to them, where that surcharge is to be paid by that net operator to a company designated by the legislature, with that company being the joint subsidiary of the four domestic generating undertakings and having previously managed the costs of all the electricity generated and imported, and where that surcharge is to be used in its entirety to pay non-market-compatible costs for which that company is personally responsible, with the result that the sums received by that company wholly offset the burden borne by the domestic electricity transmitted.*

   The same applies where the national electricity generating undertakings are required to bear those costs and where, by reason of existing agreements, by the payment of a purchase price for electricity produced in the Member State, by the payment of dividends to the various domestic electricity generating undertakings of which the designated company is the subsidiary or by any other means, the advantage which that price surcharge constitutes could be passed on in its entirety by the designated company to the domestic electricity generating undertakings.

   Article 90 EC is to be construed as meaning that it precludes such a statutory rule where the revenue from the charge levied on the electricity transmitted is used only in part to pay non-market-compatible costs, that is to say where the amount levied by the designated company only partly offsets the burden borne by the national electricity transmitted.

2. *Article 87 EC must be construed as meaning that the amounts paid to the designated company under Article 9 of the Transitional Law on the electricity generating sector (Overgangswet Elektriciteitsproductiesector) of 21 December 2000 constitute 'State aid' for the purposes of that provision of the EC Treaty in so far as they represent an economic advantage and not compensation for the services provided by the designated company in order to discharge public service obligations.*

([1]) OJ C 178, 29.7.2006.

Judgment of the Court (Third Chamber) of 17 July 2008 (reference for a preliminary ruling from the Unabhängiger Finanzsenat Salzburg Aigen, Austria) — Schwaninger Martin Viehhandel — Viehexport v Zollamt Salzburg, Erstattungen

(Case C-207/06) ([1])

(Regulation (EC) No 615/98 — Export refunds — Welfare of live bovine animals during transport — Directive 91/628/EEC — Applicability of the rules relating to the protection of animals during transport — Rules relating to journey times and rest periods and to the transportation of bovine animals by sea to a destination outside of the Community — Feeding and watering of the animals during the journey)

(2008/C 223/07)

Language of the case: German

Referring court

Unabhängiger Finanzsenat Salzburg Aigen

Parties to the main proceedings

Applicant: Schwaninger Martin Viehhandel — Viehexport

Defendant: Zollamt Salzburg, Erstattungen

Re:

Reference for a preliminary ruling — Unabhängiger Finanzsenat (Austria) — Interpretation 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 (OJ 1998 L 82, p. 19) and Chapter VII 48 point 7(a) and (b) of the annex to 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) and the second indent of Article 5A point 2(d)(ii) of that directive — Applicability of animal welfare legislation in relation to journey times and rest periods when transporting

bovine animals by sea to a destination outside of the Community in a vehicle loaded on to a ferry without unloading the animals — Failure to state in the route plan the times at which the animals transported were fed and watered during the journey

Operative part of the judgment

1. *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 cannot be interpreted as meaning that point 48(7)(b) of the annex to 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, as amended by Council Directive 95/29/EC of 29 June 1995, must be applied to the case of transport by sea on a link between a geographical point of the European Community and a geographical point in a third country by means of vehicles loaded onto vessels without unloading of the animals.*

2. *Point 48(7)(a) of the annex to Directive 91/628, as amended by Directive 95/29, must be interpreted as meaning that, in the case of transport by sea between a geographical point of the European Community and a geographical point situated in a third country by means of vehicles loaded onto vessels without unloading the animals, the duration of the transport does not have to be taken into account if the animals are transported in accordance with the conditions laid down in point 48(3) and (4) of the annex to Directive 91/628, apart from journey times and rest periods. If that is the case, a further period of transport by road may begin immediately after unloading the lorry at the port of destination in the third country, in accordance with point 48(4)(d).*

3. *A route plan containing a pre-typed statement indicating that during the ferry journey animals are fed and watered 'in the evenings and mornings, at midday, and in the evenings and mornings' may satisfy the requirements of Directive 91/628, as amended by Directive 95/29, provided that it is established that the animals were in fact fed and watered as stated. If the competent authority considers, in the light of all the documents submitted by the exporter, that the requirements of that directive have not been complied with, it is for that authority to assess whether that non compliance had an effect on the welfare of the animals, whether such non compliance may, where appropriate, be remedied and whether it must result in the export refund being forfeited, reduced or retained.*

(1) OJ C 190, 12.8.2006.

Judgment of the Court (Grand Chamber) of 17 July 2008 (reference for a preliminary ruling from the Employment Tribunal (United Kingdom)) — S. Coleman v Attridge Law, Steve Law

(Case C-303/06) (1)

(Social policy — Directive 2000/78/EC — Equal treatment in employment and occupation — Articles 1, 2(1), (2)(a) and (3) and 3(1)(c) — Direct discrimination on grounds of disability — Harassment related to disability — Dismissal of an employee who is not himself disabled but whose child is disabled — Included — Burden of proof)

(2008/C 223/08)

Language of the case: English

Referring court

Employment Tribunal

Parties to the main proceedings

Applicant: S. Coleman

Defendants: Attridge Law, Steve Law

Re:

Reference for a preliminary ruling — Employment Tribunal — Interpretation of Articles 1, 2(2)(a) and 2(3) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment (OJ 2000 L 303, p. 16) — Scope of the term 'disability' — Possibility of extending it to a person who is closely associated with a disabled person and has been discriminated against by reason of that association — Employee bringing up a disabled child on her own

Operative part of the judgment

1. *Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, and, in particular, Articles 1 and 2(1) and (2)(a) thereof, must be interpreted as meaning that the prohibition of direct discrimination laid down by those provisions is not limited only to people who are themselves disabled. Where an employer treats an employee who is not himself disabled less favourably than another employee is, has been or would be treated in a comparable situation, and it is established that the less favourable treatment of that employee is based on the disability of his child, whose care is provided primarily by that employee, such treatment is contrary to the prohibition of direct discrimination laid down by Article 2(2)(a).*

2. *Directive 2000/78, and, in particular, Articles 1 and 2(1) and (3) thereof, must be interpreted as meaning that the prohibition of harassment laid down by those provisions is not limited only to people who are themselves disabled. Where it is established that the unwanted conduct amounting to harassment which is suffered by an employee who is not himself disabled is related to the disability of his child, whose care is provided primarily by that employee, such conduct is contrary to the prohibition of harassment laid down by Article 2(3).*

([1]) OJ C 237, 30.9.2006.

Judgment of the Court (Second Chamber) of 17 July 2008 (reference for a preliminary ruling from the Tribunale amministrativo regionale per la Lombardia (Italy)) — ASM Brescia SpA v Comune di Rodengo Saiano

(Case C-347/06) ([1])

(Articles 43 EC, 49 EC and 86 EC — Concession for a public gas-distribution service — Directive 2003/55 — Early cessation at the end of a transitional period — Principles of the protection of legitimate expectations and legal certainty)

(2008/C 223/09)

Language of the case: Italian

Referring court

Tribunale amministrativo regionale per la Lombardia

Parties to the main proceedings

Applicant: ASM Brescia SpA

Defendant: Comune di Rodengo Saiano

Intervener: Anigas — Associazione Nazionale Industriali del Gas

Re:

Reference for a preliminary ruling — Tribunale amministrativo regionale per la Lombardia — Interpretation of Articles 43, 49 and 86(1) EC and of Article 23(1) of Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC (OJ 2003 L 176, p. 57) — Automatic extension of concessions for the operation of the public gas-distribution service

Operative part of the judgment

1. *Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC does not preclude legislation of a Member State, such as that at issue in the main proceedings, from providing for the extension, on conditions which it lays down, of the length of the transitional period at the end of which the early cessation of a concession for the distribution of natural gas such as that in question in those proceedings must occur. In those circumstances, it must also be held that neither Article 10 EC nor the principle of proportionality precludes such legislation.*

2. *Articles 43 EC, 49 EC and 86(1) EC do not preclude legislation of a Member State, such as that at issue in the main proceedings, from providing for the extension, on conditions which it lays down, of the length of the transitional period at the end of which the early cessation of a concession for the distribution of natural gas such as that in question in those proceedings must occur, provided that such an extension can be regarded as being necessary to enable the contracting parties to untie their contractual relations on acceptable terms both from the point of view of the requirements of the public service and from the economic point of view.*

([1]) OJ C 281, 18.11.2006.

Judgment of the Court (Grand Chamber) of 10 July 2008 — Bertelsmann AG, Sony Corporation of America v Commission of the European Communities Independent Music Publishers and Labels Association (Impala, an international association), Sony BMG Music Entertainment BV

(Case C-413/06 P) ([1])

(Appeals — Competition — Control of concentrations between undertakings — Sony BMG joint venture — Appeal against the annulment of a Commission decision declaring a concentration compatible with the common market — Judicial review — Scope — Standard of proof — Role of the statement of objections — Strengthening or creation of a collective dominant position — Statement of reasons for a decision approving a concentration — Use of confidential information)

(2008/C 223/10)

Language of the case: English

Parties

Appellants: Bertelsmann AG (represented by: P. Chappatte and J. Boyce, Solicitors), Sony Corporation of America (represented by: N. Levy, Barrister, R. Snelders, avocat, and T. Graf, Rechtsanwalt)

Other parties to the proceedings: Independent Music Publishers and Labels Association (Impala) (represented by: S. Crosby and J. Golding, Solicitors, and by I. Wekstein, Advocate), Commission of the European Communities (represented by: A. Whelan, Agent and K. Mojzesowicz, Agent), Sony BMG Music Entertainment BV, (represented by: N. Levy, Barrister, R. Snelders, avocat, and T. Graf, Rechtsanwalt)

Re:

Appeal against the judgment of the Court of First Instance (Third Chamber) of 13 July 2006 in Case T-464/04 *Impala* v *Commission* by which that Court annulled the Commission's Decision of 19 July 2004 declaring a concentration that creates a joint venture combining the activities of Sony and Bertelsmann in the recorded music sector to be compatible with the common market and the EEA Agreement (Case COMP/M.3333 — Sony/BMG)

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the Court of First Instance of 13 July 2006 in Case T-464/04 Impala v Commission;*

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

3. *Reserves the costs.*

([1]) OJ C 326, 30.12.2006.

Judgment of the Court (First Chamber) of 17 July 2008 (reference for a preliminary ruling from the Verwaltungsgericht Köln (Germany)) — cp-Pharma Handels GmbH v Bundesrepublik Deutschland

(Case C-448/06) ([1])

(Reference for a preliminary ruling — Validity of Regulation (EC) No 1873/2003 — Veterinary medicinal product — Regulation (EEC) No 2377/90 — Maximum residue limits of veterinary medicinal products in foodstuffs of animal origin — Progesterone — Restrictions on use — Directive 96/22/EC)

(2008/C 223/11)

Language of the case: German

Referring court

Verwaltungsgericht Köln

Parties to the main proceedings

Applicant: cp-Pharma Handels GmbH

Defendant: Bundesrepublik Deutschland

Re:

Reference for a preliminary ruling — Verwaltungsgericht Köln — Validity of Commission Regulation (EC) No 1873/2003 of 24 October 2003 amending Annex II to Council Regulation (EEC) No 2377/90 laying down a Community procedure for the establishment of maximum residue limits of veterinary medicinal products in foodstuffs of animal origin (OJ 2003 L 275, p. 9) in so far as, by limiting the conditions of use of progesterone, as an active substance of veterinary medicinal products, to application via the intravaginal route alone, it excludes the possibility of administering that substance in the form of an intramuscular injection — Whether or not the Commission has power to make that limitation in the light of Articles 1(a) and 3 of Council Regulation (EEC) No 2377/90 of 26 June 1990 laying down a Community procedure for the establishment of maximum residue limits of veterinary medicinal products in foodstuffs of animal origin (OJ 1990 L 224, p. 1) in conjunction with Article 4(1) of Council Directive 96/22/EC of 29 April 1996 concerning the prohibition on the use in stockfarming of certain substances having a hormonal or thyrostatic action and of ß-agonists, and repealing Directives 81/602/EEC, 88/146/EEC and 88/299/EEC (OJ 1996 L 125, p. 3)

Operative part of the judgment

Examination of the question referred has disclosed no factor of such a kind as to affect the validity of Commission Regulation (EC) No 1873/2003 of 24 October 2003 amending Annex II to Council Regulation (EEC) No 2377/90 laying down a Community procedure for the establishment of maximum residue limits of veterinary medicinal products in foodstuffs of animal origin.

([1]) OJ C 326, 30.12.2006.

Judgment of the Court (Fourth Chamber) of 10 July 2008 (reference for a preliminary ruling from the Hoge Raad der Nederlanden — Netherlands) — Fiscale eenheid Koninklijke Ahold NV v Staatssecretaris van Financiën

(Case C-484/06) ([1])

(Reference for a preliminary ruling — First and Sixth VAT directives — Principles of fiscal neutrality and proportionality — Rules concerning rounding of amounts of VAT — Rounding down per item)

(2008/C 223/12)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: Fiscale eenheid Koninklijke Ahold NV

Defendant: Staatssecretaris van Financiën

Re:

Reference for a preliminary ruling — Hoge Raad der Nederlanden — Interpretation of Article 11A(1)(a), Article 22(3)(b), first sentence, and Article 22(5) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) and Article 2, first and second paragraphs, of First Council Directive 67/227/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes (OJ, English Special Edition 1967, p. 14) — Rules on the rounding off of amounts of value added tax

Operative part of the judgment

1. *In the absence of specific Community legislation, it is for Member States to decide on the rules and methods of rounding amounts of the tax on added value, but those States must, when making that decision, observe the principles underpinning the common system of that tax, in particular the principles of fiscal neutrality and proportionality;*

2. *Community law, as it now stands, entails no specific obligation for Member States to permit taxable persons to round down per item the amount of the tax on added value.*

([1]) OJ C 20, 27.1.2007.

Judgment of the Court (Second Chamber) of 17 July 2008 — L & D SA v Office for Harmonisation in the Internal Market (Trade Marks and Designs), Julius Sämann Ltd

(Case C-488/06 P) ([1])

(Appeal — Community trade mark — Regulation (EC) No 40/94 — Articles 8(1)(b) and 73 — Figurative mark 'Aire Limpio' — Community, national and international figurative marks representing a fir tree with various names — Opposition by the proprietor — Partial refusal to register — Inference of the particularly distinctive character of the earlier mark from evidence relating to another mark)

(2008/C 223/13)

Language of the case: Spanish

Parties

Appellant: L & D SA (represented by: S. Miralles Miravet, abogado)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: J. García Murillo, Agent), Julius Sämann Ltd (represented by: E. Armijo Chávarri, abogado)

Re:

Appeal against the judgment of the Court of First Instance (Fourth Chamber) of 7 September 2006 in Case T-168/04 *L & D SA* v *Office for Harmonisation in the Internal Market (Trade Marks and Designs) and Julius Sämann Ltd*, by which the Court dismissed an application for partial annulment of the decision of the Second Board of Appeal of OHIM of 15 March 2004 (Case R 326/2003-2) in respect of opposition proceedings between Julius Sämann Ltd and L&D SA

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders L & D SA to pay the costs.*

(1) OJ C 20, 27.1.2007.

Judgment of the Court (Second Chamber) of 17 July 2008 (reference for a preliminary ruling from the Giudice di Pace di Genova — Italy) — Corporación Dermoestética SA v To Me Group Advertising Media

(Case C-500/06) (1)

(Articles 3(1)(g) EC, 4 EC, 10 EC, 43 EC, 49 EC, 81 EC, 86 EC and 98 EC — National legislation prohibiting advertisements for medical or surgical treatments of a cosmetic nature)

(2008/C 223/14)

Language of the case: Italian

Referring court

Giudice di Pace di Genova

Parties to the main proceedings

Applicant: Corporación Dermoestética SA

Defendant: To Me Group Advertising Media

Intervener: Cliniche Futura Srl

Re:

Reference for a preliminary ruling — Giudice di Pace di Genova — Interpretation of Articles 43 EC, 49 EC, 81 EC, 86 EC and 98 EC — Compatibility of a national provision prohibiting the broadcasting of advertisements on national television networks for medical and surgical treatments carried out in private health care establishments and limiting expenditure on advertising to 5 % of income for the previous year

Operative part of the judgment

Articles 43 EC and 49 EC, read in conjunction with Articles 48 EC and 55 EC, must be interpreted as precluding legislation, such as that at issue in the main proceedings, in so far as it prohibits the broadcasting of advertisements for medical and surgical treatments provided by private health care establishments on national television networks while at the same time permitting such advertisements, subject to certain conditions, on local television networks.

(1) OJ C 42, 24.2.2007.

Judgment of the Court (Fourth Chamber) of 17 July 2008 — Athinaïki Techniki AE v Commission of the European Communities, Athens Resort Casino AE Symmetochon

(Case C-521/06 P) (1)

(Appeal — State aid — Aid granted by the Hellenic Republic to the Hyatt Regency consortium — Complaint — Decision to take no further action on the complaint — Regulation (EC) No 659/1999 — Articles 4, 13 and 20 — Concept of 'act open to challenge' for the purposes of Article 230 EC)

(2008/C 223/15)

Language of the case: French

Parties

Appellant: Athinaïki Techniki AE (represented by: S. A. Pappas, dikigoros)

Other parties to the proceedings: Commission of the European Communities (represented by: D. Triantafyllou, Agent), Athens Resort Casino AE Symmetochon (represented by: F. Carlin, Barrister, and N. Korogiannakis, dikigoros)

Re:

Appeal brought against the order of the Court of First Instance (Second Chamber) of 26 September 2006 in Case T-94/05 *Athinaïki Techniki AE v Commission*, by which the Court of First Instance dismissed as inadmissible the action seeking annulment of the Commission's letter of 2 December 2004 informing the then applicant that no further action would be taken in regard to its complaint alleging that State aid had been granted by the Hellenic Republic in the context of a public contract tendering procedure — Concept of an act open to challenge for the purposes of Article 230 EC

Operative part of the judgment

The Court:

1. *Sets aside the order of the Court of First Instance of the European Communities of 26 September 2006 in Case T-94/05 Athinaïki Techniki v Commission.*

2. *Rejects the preliminary plea of inadmissibility raised by the Commission of the European Communities before the Court of First Instance of the European Communities.*

3. *Refers the case back to the Court of First Instance of the European Communities for it to rule on the pleas in law of Athinaïki Techniki AE, seeking annulment of the decision of the Commission of the European Communities of 2 June 2004 to take no further action concerning State aid allegedly granted by the Hellenic Republic to the Hyatt Regency consortium in the disposal of 49 % of the capital of the Casino Mont Parnès.*

4. *Orders that the costs be reserved.*

([1]) OJ C 42, 24.2.2007.

Judgment of the Court (First Chamber) of 10 July 2008 (reference for a preliminary ruling from the Tribunal Dâmbovița — Romania) — Ministerul Administrației și Internelor — Direcția Generală de Pașapoarte București v Gheorghe Jipa

(Case C-33/07) ([1])

(Citizenship of the Union — Article 18 EC — Directive 2004/38/EC — Right of citizens of the Union and their family members to move and reside freely within the territory of the Member States)

(2008/C 223/16)

Language of the case: Romanian

Referring court

Tribunal Dâmbovița

Parties to the main proceedings

Applicant: Ministerul Administrației și Internelor — Direcția Generală de Pașapoarte București

Defendant: Gheorghe Jipa

Re:

Reference for a preliminary ruling — Tribunal Dâmbovița — Interpretation of Article 18 EC and Article 27 of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77)

Operative part of the judgment

Article 18 EC and Article 27 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 do not preclude national legislation that allows the right of a national of a Member State to travel to another Member State to be restricted, in particular on the ground that he has previously been repatriated from the latter Member State on account of his 'illegal residence' there, provided that the personal conduct of that national constitutes a genuine, present and sufficiently serious threat to one of the fundamental interests of society and that the restrictive measure envisaged is appropriate to ensure the achievement of the objective it pursues and does not go beyond what is necessary to attain it. It is for the national court to establish whether that is so in the case before it.

([1]) OJ C 140, 23.6.2006.

Judgment of the Court (Second Chamber) of 10 July 2008 (reference for a preliminary ruling from the Arbeidshof te Brussel (Belgium)) — Centrum voor gelijkheid van kansen en voor racismebestrijding v Firma Feryn NV

(Case C-54/07) ([1])

(Directive 2000/43/EC — Discriminatory criteria for selecting staff — Burden of proof — Penalties)

(2008/C 223/17)

Language of the case: Dutch

Referring court

Arbeidshof te Brussel

Parties to the main proceedings

Applicant: Centrum voor gelijkheid van kansen en voor racismebestrijding

Defendant: Firma Feryn NV

Re:

Preliminary ruling — Arbeidshof te Brussel — Interpretation of Articles 2(2)(a), 8(1) and 15 of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ 2000 L 180, p. 22) — Staff selection criteria that discriminate directly on grounds of racial or ethnic origin — Burden of proof — Appraisal and establishment by a national court — Whether the national court is, or is not, under an obligation to order that an end be put to the discrimination

Operative part of the judgment

1. *The fact that an employer states publicly that it will not recruit employees of a certain ethnic or racial origin constitutes direct discrimination in respect of recruitment within the meaning of Article 2(2)(a) of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, such statements being likely strongly to dissuade certain candidates from submitting their candidature and, accordingly, to hinder their access to the labour market.*

2. *Public statements by which an employer lets it be known that under its recruitment policy it will not recruit any employees of a certain ethnic or racial origin are sufficient for a presumption of the existence of a recruitment policy which is directly discriminatory within the meaning of Article 8(1) of Directive 2000/43. It is then for that employer to prove that there was no breach of the principle of equal treatment. It can do so by showing that the undertaking's actual recruitment practice does not correspond to those statements. It is for the national court to verify that the facts alleged are established and to assess the sufficiency of the evidence submitted in support of the employer's contentions that it has not breached the principle of equal treatment.*

3. *Article 15 of Directive 2000/43 requires that rules on sanctions applicable to breaches of national provisions adopted in order to transpose that directive must be effective, proportionate and dissuasive, even where there is no identifiable victim.*

([1]) OJ C 82, 14.4.2007.

Judgment of the Court (Second Chamber) of 17 July 2008 — Franco Campoli v Commission of the European Communities, Council of the European Union

(Case C-71/07 P) ([1])

(Appeal — Officials — Remuneration — Pension — Application of the correction coefficient calculated on the basis of the average cost of living in the country of residence — Transitional arrangements established by the Regulation amending the Staff Regulations — Objection of illegality)

(2008/C 223/18)

Language of the case: French

Parties

Appellant: Franco Campoli (represented by: G. Vandersanden, L. Levi and S. Rodrigues, avocats)

Other parties to the proceedings: Commission of the European Communities (represented by: V. Joris and D. Martin, acting as Agents), Council of the European Union (represented by: M. Arpio Santacruz and I. Šulce, acting as Agents)

Re:

Appeal brought against the judgment of the Court of First Instance (Second Chamber, Extended Composition) of 29 November 2006 in Case T-135/05 *Campoli* v *Commission*, by which the Court dismissed as partially inadmissible and partially unfounded the action for annulment of the appellant's pension payslips from May to July 2004, in as much as they applied for the first time a weighting calculated in an allegedly unlawful manner on the basis of the average cost of living in the appellant's country of residence, rather than, as previously, in relation to the cost of living in the capital of that country — Effect of the entry into force of the new Staff Regulations of Officials on the system of weighting — Transitional system for officials who retired before 1 April 2004 — Method of calculating weighting and respect for the principle of the equality of treatment — Obligation to state reasons

Operative part of the judgment

The Court:

1. *Dismisses the principal appeal and the cross-appeal.*

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

([1]) OJ C 117, 26.5.2007.

Judgment of the Court (Fifth Chamber) of 17 July 2008 (reference for a preliminary ruling from the Arbeitsgericht Bonn — Germany) — Andrea Raccanelli v Max-Planck-Gesellschaft zur Förderung der Wissenschaften eV

(Case C-94/07) ([1])

(Article 39 EC — Concept of 'worker' — Non-governmental organisation operating in the public interest — Doctoral grant — Employment contract — Conditions)

(2008/C 223/19)

Language of the case: German

Referring court

Arbeitsgericht Bonn

Parties to the main proceedings

Applicant: Andrea Raccanelli

Defendant: Max-Planck-Gesellschaft zur Förderung der Wissenschaften eV

Re:

Preliminary ruling — Arbeitsgericht Bonn — Interpretation of Article 7 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ English Special Edition 1968(II), p. 475) — Capacity as a worker of a doctoral student engaged as a grant recipient by a non-profit-making association established under private law in another Member State which offers most national doctoral students the possibility of concluding a contract of employment — Need to make it possible for doctoral students who are nationals of the other Member States to choose between a grant and a contract of employment — Concept of 'worker'

Operative part of the judgment

1. *A researcher in a similar situation to that of the applicant in the main proceedings, that is, a researcher preparing a doctoral thesis on the basis of a grant contract concluded with the Max-Planck-Gesellschaft zur Förderung der Wissenschaften eV, must be regarded as a worker within the meaning of Article 39 EC only if his activities are performed for a certain period of time under the direction of an institute forming part of that association and if, in return for those activities, he receives remuneration. It is for the referring court to undertake the necessary verification of the facts in order to establish whether such is the case in the dispute before it.*

2. *A private-law association, such as the Max-Planck-Gesellschaft zur Förderung der Wissenschaften eV, must observe the principle of non-discrimination in relation to workers within the meaning of Article 39 EC. It is for the referring court to establish whether, in circumstances such as those of the case in the main proceedings, there has been inequality in the treatment of domestic and foreign doctoral students.*

3. *In the event that the applicant in the main proceedings is justified in relying on damage caused by the discrimination to which he has been subject, it is for the referring court to assess, in the light of the national legislation applicable in relation to non-contractual liability, the nature of the compensation which he would be entitled to claim.*

(1) OJ C 117, 26.5.2007.

Judgment of the Court (Grand Chamber) of 17 July 2008 (references for a preliminary ruling from the Bundesverwaltungsgericht — Germany) — Arcor AG & Co. KG (C-152/07), Communication Services TELE2 GmbH (C-153/07), Firma 01051 Telekom GmbH (C-154/07) v Bundesrepublik Deutschland

(Joined Cases C-152/07 to C-154/07) (1)

(Telecommunications — Networks and services — Tariff rebalancing — Article 4c of Directive 90/388/EEC — Article 7(2) of Directive 97/33/EC — Article 12(7) of Directive 98/61/EC — Regulatory authority — Direct effect of directives — Triangular situation)

(2008/C 223/20)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Applicants: Arcor AG & Co. KG (C-152/07), Communication Services TELE2 GmbH (C-153/07), Firma 01051 Telekom GmbH (C-154/07)

Defendant: Bundesrepublik Deutschland

Intervening Party: Deutsche Telekom AG

Re:

Reference for a preliminary ruling — Bundesverwaltungsgericht — Interpretation of Commission Directive 90/388/EEC of 28 June 1990 on competition in the markets for telecommunications services (OJ 1990 L 192, p. 10) and Directive 97/33/EC of the European Parliament and of the Council of 30 June 1997 on interconnection in telecommunications with regard to ensuring universal service and interoperability through application of the principles of Open Network Provision (ONP) (OJ 1997 L 199, p. 32) — National legislation prescribing, in addition to interconnection charges calculated on the basis of the cost of the service, a financial contribution from other operators to cover the 'connection cost deficit' incurred by the incumbent operator as a result of providing the local loop — Obligation of the Member States to remove obstacles to the rebalancing of tariffs by former telecommunications organisations following the interconnection of networks — Ability of an individual to rely on the direct effect of a directive before the courts of a Member State in order to secure the annulment of an administrative decision laying down a financial obligation in favour of another individual

Operative part of the judgment

1. *Article 12(7) of Directive 97/33/EC of the European Parliament and of the Council of 30 June 1997 on interconnection in telecommunications with regard to ensuring universal service and interoperability through application of the principles of open network provision (ONP), as amended by Directive 98/61/EC of the European Parliament and of the Council of 24 September 1998, and Article 4c of Commission Directive 90/388/EEC of 28 June 1990 on competition in the markets for telecommunications services, as amended by Commission Directive 96/19/EC of 13 March 1996, the latter article read in conjunction with recitals 5 and 20 in the preamble to Directive 96/19, must be interpreted as precluding a national regulatory authority from requiring an operator of a network interconnected with a public network to pay to the market-dominant subscriber network operator a connection charge which is additional to an interconnection charge and is intended to compensate the latter operator for the deficit incurred as a result of providing the local loop for the year 2003.*

2. *Article 4c of Directive 90/388, as amended by Directive 96/19, and Article 12(7) of Directive 97/33, as amended by Directive 98/61, produce direct effect and can be relied on directly before a national court by individuals to challenge a decision of the national regulatory authority.*

([1]) OJ C 140, 23.6.2008.

Judgment of the Court (Fourth Chamber) of 10 July 2008 (reference for a preliminary ruling from the Oberlandesgericht Frankfurt am Main — Germany) — Emirates Airlines Direktion für Deutschland v Diether Schenkel

(Case C-173/07) ([1])

(Carriage by air — Regulation (EC) No 261/2004 — Compensation for passengers in the event of cancellation of a flight — Scope — Article 3(1)(a) — Concept of 'flight')

(2008/C 223/21)

Language of the case: German

Referring court

Oberlandesgericht Frankfurt am Main

Parties to the main proceedings

Applicant: Emirates Airlines Direktion für Deutschland

Defendant: Diether Schenkel

Re:

Reference for a preliminary ruling — Oberlandesgericht Frankfurt am Main –Interpretation of Article 3(1)(a) 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 (OJ 2004 L 46, p. 1) — Concept of 'departure' — Outward and return ticket from a Member State to a non-member country — Cancellation of the return flight

Operative part of the judgment

Article 3(1)(a) 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, must be interpreted as not applying to the case of an outward and return journey in which passengers who have originally departed from an airport located in the territory of a Member State to which the EC Treaty applies travel back to that airport on a flight from an airport located in a non-member country. The fact that the outward and return flights are the subject of a single booking has no effect on the interpretation of that provision.

([1]) OJ C 155, 7.7.2007.

Judgment of the Court (Third Chamber) of 17 July 2008 — Commission of the European Communities v Kingdom of Spain

(Case C-207/07) ([1])

(Failure of a Member State to fulfil obligations — Articles 43 EC and 56 EC — National law making the acquisition of shareholdings in undertakings which carry on regulated activities in the energy sector and of the assets necessary to carry on those activities subject to prior approval)

(2008/C 223/22)

Language of the case: Spanish

Parties

Applicant: Commission of the European Communities (represented by: H. Støvlbæk and R. Vidal Puig, acting as Agents)

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

Re:

Failure of a Member State to fulfil obligations — Breach of Articles 43 EC and 56 EC — National law making the acquisition of certain shareholdings in undertakings which carry on regulated activities in the energy sector subject to prior approval of a special commission

Operative part of the judgment

The Court:

1. *Declares that, by adopting the first indent of the second paragraph of the single article of the fourteenth function of the National Energy Commission provided for in Supplementary Provision No 11, part 3, point 1 of Law 34/1998 of 7 October 1998 on the hydrocarbon sector (Ley 3471998, del sector de hidrocarburos), as amended by Royal Decree-Law 4/2006 of 24 February 2006 (Real Decreto-Ley 4/2006), in order to make the acquisition of certain shareholdings in undertakings which carry on certain regulated activities in the energy sector and the acquisition of the assets necessary to carry on such activities subject to the prior approval of the National Energy Commission, the Kingdom of Spain has failed to fulfil its obligations under Articles 43 EC and 56 EC;*

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

([1]) OJ C 140, 23.6.2007.

Judgment of the Court (Third Chamber) of 17 July 2008 (reference for a preliminary ruling from the Finanzgericht Düsseldorf — Germany) — Flughafen Köln/Bonn GmbH v Hauptzollamt Köln

(Case C-226/07) ([1])

(Directive 2003/96/EC — Community framework for the taxation of energy products and electricity — Article 14(1)(a) — Exemption for energy products used to produce electricity — Option to impose taxation for reasons of environmental policy — Direct effect of the exemption)

(2008/C 223/23)

Language of the case: German

Referring court

Finanzgericht Düsseldorf

Parties to the main proceedings

Applicant: Flughafen Köln/Bonn GmbH

Defendant: Hauptzollamt Köln

Re:

Reference for a preliminary ruling — Finanzgericht Düsseldorf — Interpretation of Article 14(1)(a) of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity (OJ 2003 L 283, p. 51) — Direct effect — National legislation not exempting gas oil used to produce electricity from mineral oil tax

Operative part of the judgment

Article 14(1)(a) of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity, in so far as it provides for the exemption from taxation under that directive of energy products used to produce electricity, has direct effect in the sense that it may be relied upon by an individual before national courts — in relation to a period of time during which the Member State concerned was in default of its obligation to transpose that directive into its national law within the prescribed period — in a dispute, such as that in the main proceedings, between that individual and the customs authorities of that State, for the purpose of having national legislation which is incompatible with that provision disapplied and, consequently, obtaining a refund of tax which infringed that provision.

([1]) OJ C 155, 7.7.2007.

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

(Case C-307/07) ([1])

(Failure of a Member State to fulfil its obligations — Directive 89/48/EEC — Recognition of diplomas awarded on completion of professional education and training of at least three years' duration — Failure to recognise diplomas which give access to the profession of pharmacist specialising in medical biology — Failure to transpose)

(2008/C 223/24)

Language of the case: Portuguese

Parties

Applicant: Commission of the European Communities (represented by: H. Støvlbæk and P. Andrade, acting as Agents)

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

Re:

Failure of a Member State to fulfil its obligations — Failure to transpose Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration (OJ 1989 L 19, p. 16) in relation to the profession of pharmacist specialising in medical biology

Operative part of the judgment

The Court:

1. *declares that, by failing to adopt the measures necessary to transpose Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration, as amended by Directive 2002/19/EC of the European Parliament and the Council of 14 May 2001, in relation to the profession of pharmacist specialising in medical biology, the Portuguese Republic has failed to fulfil its obligations under that directive;*

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

([1]) OJ C 199, of 25.8.2007.

Judgment of the Court (Eighth Chamber) of 17 July 2008 — Commission of the European Communities v Republic of Austria

(Case C-311/07) ([1])

(Failure of a Member State to fulfil obligations — Directive 89/105/EEC — Inclusion of medicinal products for human use in the national health insurance system — Article 6(1) — List of medicinal products covered by the national health insurance system establishing three different categories of reimbursement subject to conditions — Time-limit for adopting a decision on an application for inclusion of a medicinal product in the categories of that list offering the most favourable reimbursement conditions)

(2008/C 223/25)

Language of the case: German

Parties

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

Defendant: Republic of Austria (represented by: C. Pesendorfer, Agent)

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 6(1) of Council Directive 89/105/EEC of 21 December 1988 relating to the transparency of measures regulating the pricing of medicinal products for human use and their inclusion in the scope of national health insurance systems (OJ 1989 L 40, p. 8) — National legislation on social security establishing a list of medicinal products covered by the health insurance system comprising three categories of medicinal products differing according to their conditions of reimbursement — Failure to have set a time-limit as required by Article 6(1) of Directive 89/105/EEC for decisions relating to the inclusion of medicinal products in the most favourable categories

Operative part of the judgment

The Court:

1. *Declares that, by failing to lay down a time-limit, in accordance with Article 6(1) of Council Directive 89/105/EEC of 21 December 1988 relating to the transparency of measures regulating the pricing of medicinal products for human use and their inclusion in the scope of national health insurance systems, for the adoption of decisions relating to applications for inclusion of medicinal products in the yellow or green categories of the medicinal products reimbursement code provided for by the general Law on social insurance (Allgemeines Sozialversicherungsgesetz), as amended by the Law of 2003 amending social insurance (Sozialversicherungs-Änderungsgesetz 2003), the Republic of Austria has failed to fulfil its obligations under that provision.*

2. *Order the Republic of Austria to pay the costs.*

([1]) OJ C 211, 8.9.2007.

Judgment of the Court (First Chamber) of 17 July 2008 (reference for a preliminary ruling from the Wojewódzki Sąd Administracyjny w Białymstoku — Republic of Poland) — Dariusz Krawczyński v Dyrektor Izby Celnej w Białymstoku

(Case C-426/07) ([1])

(Internal taxation — Taxes on motor vehicles — Excise duty — Second-hand vehicles — Importation)

(2008/C 223/26)

Language of the case: Polish

Referring court

Wojewódzki Sąd Administracyjny w Białymstoku

Parties to the main proceedings

Applicant: Dariusz Krawczyński

Defendant: Dyrektor Izby Celnej w Białymstoku

Re:

Reference for a preliminary ruling — Wojewódzki Sąd Administracyjny w Białymstoku — Interpretation of Article 90 EC and Article 33(1) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) — National legislation establishing excise duty charged on any sale of a passenger car before its initial registration on national territory

Operative part of the judgment

1. *Article 33(1) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, as amended by Council Directive 91/680/EEC of 16 December 1991, is to be interpreted as not precluding an excise duty such as that provided for in Poland by the Law on Excise Duty (ustawa o podatku akcyzowym) of 23 January 2004, which is charged on all sales of motor vehicles before their first registration on national territory.*

2. *The first paragraph of Article 90 EC is to be interpreted as precluding an excise duty, such as that at issue in the main proceedings, in so far as the amount of the duty imposed on the sale, before their first registration, of second-hand vehicles imported from another Member State exceeds the residual amount of the same duty incorporated into the market value of similar vehicles previously registered in the Member State which introduced that duty. It is for the national court to examine whether the legislation at issue in the main proceedings, and in particular the application of Article 7 of the Order of the Minister for Finance on the lowering of the rates of excise duty (rozporządzenie Ministra Finansów w sprawie obniżenia stawek podatku akcyzowego) of 22 April 2004, has such an effect.*

([1]) OJ C 283, 24.11.2007.

Judgment of the Court (Fifth Chamber) of 17 July 2008 — Commission of the European Communities v Kingdom of Belgium

(Case C-510/07) ([1])

(Failure of a Member State to fulfil its obligations — Directive 68/414/EEC — Article 1(1) — Obligation to maintain minimum stocks of petroleum products — Breach)

(2008/C 223/27)

Language of the case: French

Parties

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

Defendant: Kingdom of Belgium (represented by: C. Pochet, Agent)

Re:

Failure of a Member State to fulfil its obligations — Non-compliance with the obligation to stock petroleum products under Article 1(1) of Council Directive 68/414/EEC of 20 December 1968 imposing an obligation on Member States of the EEC to maintain minimum stocks of crude oil and/or petroleum products (OJ English Special Edition, Series I, Chapter 1968 II, p. 586), as amended and then codified by Council Directive 2006/67/EC of 24 July 2006 (OJ 2006 L 217, p. 8) — Nature and extent of the obligation to stock — Discrepancy between the figures transmitted by the Member State concerned and the data provided by Eurostat — Method of calculating stocks of petroleum products and the level of internal consumption of those products.

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt all such laws, regulations or administrative provisions as may be appropriate to maintain within the Community at all times the level of stocks of petroleum products in the second category of petroleum products listed in Article 2 of Council Directive 68/414/EEC of 20 December 1968 imposing an obligation on Member States of the EEC to maintain minimum stocks of crude oil and/or petroleum products, as amended by Council Directive 98/93/EC of 14 December 1998, the Kingdom of Belgium has failed to fulfil its obligations under Article 1(1) of that directive;*

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

([1]) OJ C 22, 26.1.2008.

Judgment of the Court (Eighth Chamber) of 17 July 2008 — Commission of the European Communities v Kingdom of Belgium

(Case C-543/07) [1]

(Failure of a Member State to fulfil its obligations — Directive 2002/73/EC — Equal treatment for men and women — Access to employment — Vocational training and promotion — Working conditions — Failure to transpose within the period prescribed)

(2008/C 223/28)

Language of the case: Dutch

Parties

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

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

Re:

Failure of a Member State to fulfil its obligations — Failure to adopt, within the period prescribed, the provisions necessary to comply with Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (OJ 2002 L 296, p. 15).

Operative part of the judgment

The Court:

1. *Declares that, by failing, within the period prescribed, to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, the Kingdom of Belgium failed to fulfil its obligations under that directive;*

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

[1] OJ C 37, 9.2.2008.

Judgment of the Court (Grand Chamber) of 17 July 2008 (reference for a preliminary ruling from the Oberlandesgericht Stuttgart — Germany) — Proceedings concerning the execution of a European arrest warrant issued against Szymon Kozłowski

(Case C-66/08) [1]

(Police and judicial cooperation in criminal matters — Framework Decision 2002/584/JHA — European arrest warrant and surrender procedures between Member States — Article 4(6) — Ground for optional non-execution of a European arrest warrant — Interpretation of the terms 'resident' and 'staying' in the executing Member State)

(2008/C 223/29)

Language of the case: German

Referring court

Oberlandesgericht Stuttgart

Parties to the main proceedings

Szymon Kozłowski

Re:

Reference for a preliminary ruling — Oberlandesgericht Stuttgart — Interpretation of Article 4(6) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1) — Possibility for the executing judicial authority to refuse to execute a European arrest warrant issued for the purpose of execution of a sentence of imprisonment in relation to a person staying or residing in the Member State of execution — Concepts of 'residence' and 'staying' — Interpretation of Article 6(1) EU in conjunction with Articles 12 EC and 17 EC — National legislation which allows requested persons to be treated differently by the executing judicial authority, where they do not consent to their surrender, depending whether they are a national of the Member State of execution or of another Member State

Operative part of the judgment

Article 4(6) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, is to be interpreted to the effect that:

— *a requested person is 'resident' in the executing Member State when he has established his actual place of residence there and he is 'staying' there when, following a stable period of presence in that State, he has acquired connections with that State which are of a similar degree to those resulting from residence;*

— *in order to ascertain whether there are connections between the requested person and the executing Member State which lead to the conclusion that that person is covered by the term 'staying' within the meaning of Article 4(6), it is for the executing judicial authority to make an overall assessment of various objective factors characterising the situation of that person, including, in particular, the length, nature and conditions of his presence and the family and economic connections which that person has with the executing Member State.*

([1]) OJ C 107, 26.4.2008.

Judgment of the Court (Third Chamber) of 11 July 2008 (reference for a preliminary ruling from the Lietuvos Aukščiausiasis Teismas, Republic of Lithuania) — Proceedings brought by Inga Rinau

(Case C-195/08 PPU) ([1])

(Judicial cooperation in civil matters — Jurisdiction and enforcement of judgments — Enforcement in matrimonial matters and matters of parental responsibility — Regulation (EC) No 2201/2003 — Application for non-recognition of a decision requiring the return of a child wrongfully retained in another Member State — Urgent preliminary ruling procedure)

(2008/C 223/30)

Language of the case: Lithuanian

Referring court

Lietuvos Aukščiausiasis Teismas, Lithuania

Party to the main proceedings

Inga Rinau

Re:

Reference for a preliminary ruling — Lietuvos Aukščiausiasis Teismas — Interpretation of Articles 21, 23, 24, 31(1), 40(2) and 42 of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (OJ 2003 L 338, p. 1) — Application for non-recognition in Member State A of a decision delivered by a court in Member State B ordering the return of a child, who is regarded as being unlawfully held by her mother in Member State A, to her father, who is resident in Member State B and has been awarded custody of the child

Operative part of the judgment

1. *Once a non-return decision has been taken and brought to the attention of the court of origin, it is irrelevant, for the purposes of issuing the certificate provided for in Article 42 of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, that that decision has been suspended, overturned, set aside or, in any event, has not become res judicata or has been replaced by a decision ordering return, in so far as the return of the child has not actually taken place. Since no doubt has been expressed as regards the authenticity of that certificate and since it was drawn up in accordance with the standard form set out in Annex IV to the Regulation, opposition to the recognition of the decision ordering return is not permitted and it is for the requested court only to declare the enforceability of the certified decision and to allow the immediate return of the child.*

2. *Except where the procedure concerns a decision certified pursuant to Articles 11(8) and 40 to 42 of Regulation No 2201/2003, any interested party can apply for non-recognition of a judicial decision, even if no application for recognition of the decision has been submitted beforehand.*

3. *Article 31(1) of Regulation No 2201/2003, in so far as it provides that neither the person against whom enforcement is sought, nor the child is, at this stage of the proceedings, entitled to make any submissions on the application, is not applicable to proceedings initiated for non-recognition of a judicial decision if no application for recognition has been lodged beforehand in respect of that decision. In such a situation, the defendant, who is seeking recognition, is entitled to make such submissions.*

([1]) OJ C 171, 5.7.2008.

Appeal brought on 22 May 2008 by Philippe Guigard against the judgment of the Court of First Instance (Third Chamber) delivered on 11 March 2008 in Case T-301/05 Guigard v Commission

(Case C-214/08 P)

(2008/C 223/31)

Language of the case: French

Parties

Appellant: Philippe Guigard (represented by: S. Rodrigues and C. Bernard-Glanz)

Other party to the proceedings: Commission of the European Communities

Form of order sought

— declare the appeal admissible;

— set aside the judgment of the Court of First Instance of the European Communities of 11 March 2008 in Case T-301/05;

— grant the application for annulment and damages made by the applicant at first instance;

— order the defendant at first instance to pay all the costs of the proceedings at first instance and on appeal.

Pleas in law and main arguments

The appellant puts forward essentially three pleas in support of its appeal.

By its first plea, which consists of two parts, the appellant claims, first of all, that the Court of First Instance incorrectly interpreted the Fourth Lomé Convention ([1]).

The error consists, first, of the fact that the Court held that under Article 313(2)(k) of the Lomé Convention it is for the national authorising officer to decide on the hiring of consultants and other technical assistance experts, without taking account of the power of budgetary control and administration of funds afforded to the Commission by that convention and the obligation on the latter institution to offer the national authorising officer technical assistance in the negotiation of contracts.

The error committed by the Court consists, second, of the fact that it held that the request from the national authorising officer to the Commission for approval of the decision to renew the appellant's contract of employment must contain an explicit reference to Article 314 of the Lomé Convention in order to make the 30-day time-limit referred to therein start to run, even though no such a requirement arises from that article. According to the appellant, if the Court had correctly interpreted that article it should have held that the Commission did not comply with that time-limit.

By its second plea, the appellant submits that the judgment under appeal is vitiated by a clear contradiction in its reasoning as the Court held that, as regards the plea alleging infringement of Article 317(a) of the Lomé Convention, on one hand, that plea was out of time and, on the other, that it was subsumed within the plea alleging infringement of Article 313(2)(k) of the convention. According to the appellant, the same plea cannot be rejected as being both inadmissible and unfounded.

By its third plea, the appellant claims, lastly, that the Court infringed his rights of defence in that, first, it failed to take account of all the arguments that he put forward at the hearing and, second, it misinterpreted the scope of his plea alleging infringement of the principles of care and sound administration and the principle of protection of legitimate expectations.

([1]) Fourth convention concluded between the African, Caribbean and Pacific States (ACP) and the European Economic Community, signed at Lomé on 15 December 1989 (approved by Decision of the Council and the Commission of 25 February 1991 on the conclusion of the fourth ACP-EEC Convention (OJ 1991 L 229, p. 1), as amended by the agreement signed in Mauritius on 4 November 1995 (OJ 1998 L 156, p. 3).

Reference for a preliminary ruling from the Audiencia Provincial, Salamanca (Spain) lodged on 26 May 2008 — Eva Martín Martín v EDP Editores, S.L and Juan Caballo Bueno

(Case C-227/08)

(2008/C 223/32)

Language of the case: Spanish

Referring court

Audiencia Provincial, Salamanca

Parties to the main proceedings

Applicant: Eva Martín Martín

Defendant: EDP Editores, S.L and Juan Caballo Bueno

Question referred

Must Article 153 EC, in conjunction with Articles 3 EC and 95 EC, Article 38 of the Charter of Fundamental Rights of the European Union, and Council Directive 85/577/EEC ([1]) of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises, specifically Article 4 thereof, be interpreted as meaning that a court seised of an appeal against a judgment given at first instance may, of its own motion, declare a contract which falls within the scope of that directive void, where no plea of nullity was raised at any point by the defendant consumer when submitting a defence to the order for payment procedure, at the hearing, or during the appeal?

([1]) OJ L 372, p. 31 — EE 15/06, p. 131.

Reference for a preliminary ruling from the Verwaltungsgericht Frankfurt am Main (Germany) lodged on 28 May 2008 — Colin Wolf v Stadt Frankfurt am Main

(Case C-229/08)

(2008/C 223/33)

Language of the case: German

Referring court

Verwaltungsgericht Frankfurt am Main

Parties to the main proceedings

Applicant: Colin Wolf

Defendant: Stadt Frankfurt am Main

Questions referred

1. Does the national legislature enjoy a wide general margin of discretion to exploit the room for manoeuvre in Article 6(1) of Directive 2000/78/EC, ([1]) or is the discretion limited to what is needed, at any rate when it comes to setting an upper age limit for recruitment with a view to a minimum period of service before retirement in accordance with point (c) of the second subparagraph of Article 6(1) of Directive 2000/78/EC?

2. Does the criterion of need in point (c) of the second subparagraph of Article 6(1) of Directive 2000/78/EC express the appropriateness of the means mentioned in the first subparagraph of Article 6(1) of Directive 2000/78/EC in more concrete terms, thereby restricting the scope of that general provision?

3. (a) Does pursuing the interest in recruiting officials who will remain in active service for as long as possible by having a maximum recruitment age constitute a legitimate aim for a public employer to pursue in the context of the first subparagraph of Article 6(1) of Directive 2000/78/EC?

   (b) Is the implementation of such an aim inappropriate as soon as it results in officials serving for longer than the 5 years necessary to obtain the minimum pension guaranteed by law in the case of early retirement?

   (c) Is the implementation of such an aim inappropriate only once it results in officials serving for longer than the time necessary — at present 19.51 years — to earn in full the minimum pension guaranteed by law in the case of early retirement?

4. (a) Is it a legitimate aim within the meaning of the first subparagraph of Article 6(1) of Directive 2000/78/EC to keep the total number of officials to be recruited to a minimum by means of a maximum recruitment age which is as low as possible, in order to keep to a minimum the amount of individual benefits such as provision for accidents or sickness (assistance which also covers family members)?

   (b) In that respect, what significance can be accorded to the fact that, as officials grow older, provisions for accidents or sickness benefits (including for family members) are higher than for younger officials, so that the recruitment of older officials could increase the overall cost of such provision?

   (c) In that respect, must firm forecasts or statistics be available, or are general assumptions based on probability sufficient?

5. (a) If a public employer wants to apply a particular maximum recruitment age in order to ensure a 'balanced age structure in the particular career', is that aim legitimate within the meaning of the first subparagraph of Article 6(1) of Directive 2000/78/EC?

   (b) If so, what requirements must the criteria for creating such an age structure satisfy in order to meet the conditions for a ground of justification (appropriateness and necessity, need)?

6. If in respect of a maximum recruitment age a public employer refers to the fact that, until that age is reached, there are regular opportunities to acquire the relevant qualifications for recruitment on a training programme for middle-ranking officers in the fire service, in the form of appropriate school education and technical training, does that constitute a legitimate consideration within the meaning of the first subparagraph of Article 6(1) of Directive 2000/78/EC?

7. What criteria should be used to assess whether a minimum period of service before retirement is appropriate or necessary?

   (a) Is the need for a minimum period of service justified solely as a form of compensation for having acquired, exclusively at the employer's expense, a qualification with the employer (professional qualification for a middle-ranking post in the fire service), in the interests of ensuring, with regard to such a qualification, an adequate subsequent period of service with that employer, so that the costs of training the officer are thus gradually worked off?

   (b) What is the maximum permissible length of the service period phase that follows the period of training? Can it exceed five years? If so, under what conditions?

   (c) Irrespective of question 7(a), can the appropriateness or necessity of a minimum period of service be justified by the consideration that, in the case of officials whose pensions are financed solely by the employer, the estimated period of active service from recruitment to likely retirement date must suffice to earn in full the minimum pension guaranteed by law by serving for a period which is at present 19.51 years?

(d) Conversely, is a refusal to recruit someone justified under Article 6(1) of Directive 2000/78/EC only if the person would be recruited at an age which, given his likely retirement date, would result in the minimum pension being payable although it had not yet been fully earned?

8. (a) Should the date of retirement for the purposes of point (c) of the second subparagraph of Article 6(1) of Directive 2000/78/EC be determined on the basis of the age limit fixed by law for retirement and subsequent receipt of a pension, or must it be based on statistical calculations of the average retirement age of a particular group of officials or employees?

(b) Where applicable, to what extent should it be taken into consideration that in individual cases the normal date of an official's retirement can be postponed by up to two years? Does that circumstance lead to a corresponding increase in the maximum recruitment age?

9. Can the initial in-service training to be completed be included in the calculation of the minimum period of service under Article 6(1) of Directive 2000/78/EC? In that respect, is it relevant whether the training period has to be fully accounted for as pensionable service for the purpose of obtaining the pension, or should the period of training be excluded from the time period for which an employer may require a minimum length of service under point (c) of the second subparagraph of Article 6(1) of Directive 2000/78/EC?

10. Are the provisions in the second sentence of Paragraph 15(1) and in Paragraph 15(3) of the General Law on Equal Treatment compatible with Article 17 of Directive 2000/78/EC?

([1]) OJ 2000 L 303, p. 16.

Appeal brought on 29 May 2008 by Massimo Giannini against the judgment delivered on 12 March 2008 in Case T-100/04 Massimo Giannini v Commission

(Case C-231/08 P)

(2008/C 223/34)

Language of the case: French

Parties

Appellant: Massimo Giannini (represented by: L. Levi and C. Ronzi, lawyers)

Other party to the proceedings: Commission of the European Communities

Form of order sought

— Annulment of the judgment of the Court of First Instance of the European Communities of 12 March 2008 in Case T-100/04;

— Grant of the appellant's claims in the forms of order sought at first instance and consequently,

— annulment of the decision of the selection board in competition COM/A/9/01 not to include the appellant's name on the competition reserve list, a decision notified to the appellant by letter of 11 June 2003, and so far as necessary, annulment of the decision refusing the appellant's application for review, a decision notified to the appellant by letter of 8 July 2003, and annulment of the decision rejecting the appellant's complaint, a decision notified to the appellant by letter of 2 December 2003;

— award of damages in respect of material damage assessed (i) on the difference between the unemployment benefit received on conclusion of a temporary staff contract and the salary of an official graded A7 step 4 and (ii) after the period of unemployment, on the amount of salary paid to an official graded A7 step 5, and in respect of non-material damage, assessed at EUR 1;

— order that the Commission pay all of the costs at first instance and on appeal.

Pleas in law and main arguments

The appellant relies in essence on three principal grounds in support of his appeal.

In his first ground of appeal, the appellant complains that the Court of First Instance infringed his right to a fair trial and, more particularly, the right to have his case determined within a reasonable time. Four years elapsed between the date of the case being brought before the Court of First Instance and the date of delivery of the contested judgment. According to the appellant, there was no exceptional circumstance which in this case justified such a length of time. The documents before the Court were neither particularly voluminous nor legally complex and the proceedings had real importance for the appellant.

In his second ground of appeal, the appellant claims that the Court of First Instance infringed Articles 4, 27 and 29 of the Staff Regulations and misinterpreted both the concept of the interests of the service and the duty of the Community institutions to have regard for the welfare of their servants and officials. According to the appellant, the Court of First Instance confused in that regard entry into the Community civil service, by means of an open competition intended to establish a recruitment reserve, and the career development of persons already employed by means of the mechanisms, provided for by the Staff Regulations, of transfers and promotions.

In his third ground of appeal, the appellant claims that the Court of First Instance disregarded the obligation to state reasons in judgments and the principles of non-discrimination and respect for the rights of the defence, and that the Court distorted the clear sense of the evidence presented for its assessment. This ground of appeal can be broken down into three parts.

In the first part of the third ground of appeal, the appellant submits that the Court of First Instance disregarded both the principle of non-discrimination and its obligation to state reasons and the rules on the adducing of evidence by concluding that the fact that some candidates in the competition had knowledge of the document on which the written test was based did not imply an infringement of the principle of non-discrimination and by not requiring that the Commission provide concrete evidence of the absence of discrimination linked to that fact.

In the second part of this third ground of appeal, the appellant claims that there was an infringement of the principle of non-discrimination and a distortion of the clear sense of the evidence presented for assessment by the Court of First Instance since the Court considered that the selection board was sufficiently constant in composition to ensure the objective comparison and marking of candidates, when the evidence in the documents before the Court demonstrated on the contrary that the composition of that selection board was not sufficiently constant and when several essential pieces of factual information were not made known to the Court of First Instance by the Commission.

Lastly, in the third part of this ground of appeal, the appellant relies on a further infringement of the principle of non-discrimination and the rules on the adducing of evidence, and a violation of the rights of the defence, in relation to the conclusions drawn by the Court of First Instance as regards the impartiality of the members of the selection board.

Reference for a preliminary ruling from the Landesgericht Ried im Innkreis (Austria) lodged on 2 June 2008 — Criminal proceedings against Roland Langer

(Case C-235/08)

(2008/C 223/35)

Language of the case: German

Referring court

Landesgericht Ried im Innkreis

Party to the main proceedings

Roland Langer

Questions referred

1. Is Article 43 EC (Treaty establishing the European Community, in the version of 2 October 1997, most recently amended by the Treaty of 25 April 2005 concerning the accession of the Republic of Bulgaria and Romania to the European Union (OJ 2005 L 157, p. 11)) to be interpreted as precluding a provision which provides that only public limited companies established in the territory of a particular Member State may there operate games of chance in casinos, thereby necessitating the establishment or acquisition of a company limited by shares in that Member State?

2. Are Articles 43 EC and 49 EC to be interpreted as precluding a national monopoly on certain types of gaming, such as games of chance in casinos, if there is no consistent and systematic policy whatsoever in the Member State concerned to limit gaming, inasmuch as national licensed organisers encourage participation in gaming — such as public sports betting and lotteries — and advertise such gaming (on television and in newspapers and magazines) in a manner which goes as far as offering a cash payment for a lottery ticket shortly before the lottery draw is made ('TOI TOI TOI — Believe in luck!')?

3. Are Articles 43 EC and 49 EC to be interpreted as precluding a provision under which all licences granting the right to operate games of chance and casinos are issued for a period of 15 years on the basis of a scheme under which Community competitors (not belonging to that Member State) are excluded from the tendering procedure?

Reference for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 4 June 2008 — Swiss Re Germany Holding GmbH v Finanzamt München für Körperschaften

(Case C-242/08)

(2008/C 223/36)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Swiss Re Germany Holding GmbH

Defendant: Finanzamt München für Körperschaften

Questions referred

1. Must the fifth indent of Article 9(2)(e) and Article 13B(a) and the second and third subparagraphs of Article 13B(d) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes be interpreted as meaning where in consideration for payment of the sales price by the purchaser a transfer ([1]) of a life reinsurance contract is effected, on the basis of which, with the consent of the policyholder, the contract's purchaser takes over the exempted reinsurance activities of the previous insurer and in place of the previous insurer supplies to the policyholder tax-exempt reinsurance services, that such transfer must be regarded

   (a) as an insurance or banking transaction within the meaning of the fifth indent of Article 9(2)(e) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes, or

   (b) as a reinsurance transaction in accordance with Article 13B(a) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes, or

   (c) as a transaction which in substance consists of the tax-exempt assumption of an obligation and an exempt transaction concerning debts in accordance with Article 13B(d)(2) and (3) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes?

2. Is the answer to Question 1 any different where payment in respect of the transfer is made not by the purchaser but the previous insurer?

3. If alternatives (a), (b) and (c) of Question 1 are all answered in the negative, must Article 13B(c) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes be interpreted as meaning that

   — the transfer of life reinsurance contracts in return for consideration constitutes a supply of goods and

   — that in the application of Article 13B(c) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes no distinction is to be drawn whether the place in which the exempted activities are effected lies in the Member State in which the goods are supplied or in a different Member State?

([1]) OJ 1977 L 145, p. 1.

Reference for a preliminary ruling from the Finanzgericht Köln (Germany) lodged on 9 June 2008 — Gaz de France — Berliner Investissement SA v Bundeszentralamt für Steuern

(Case C-247/08)

(2008/C 223/37)

Language of the case: German

Referring court

Finanzgericht Köln

Parties to the main proceedings

Applicant: Gaz de France — Berliner Investissement SA

Defendant: Bundeszentralamt für Steuern

Questions referred

1. Must Article 2(a) in conjunction with paragraph (f) of the Annex to Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States ([1]) be interpreted as meaning that for the purposes of the directive a French company taking the legal form of a 'société par actions simplifiée' may be regarded even for the years prior to 2005 as 'company of a Member State' with the result that in respect of a profit distribution effected by its Germany subsidiary in 1999 the former company is entitled to an exemption from withholding tax in accordance with Article 5(1) of Directive 90/435/EEC?

2. In the event that Question 1 is answered in the negative:

   Inasmuch as Article 2(a) in conjunction with paragraph (f) of the Annex to Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States together with Article 5(1) of the same directive in the event of a profit distribution by a German subsidiary establishes an exemption from withholding tax in favour of French parent companies taking the legal form of a 'société anonyme', 'société en commandite par actions' or 'société à responsabilite limitee' not, however, French parent companies taking the legal form of a 'société par actions simplifiée' do such provisions infringe Articles 43 EC and 48 EC or Article 56(1) EC and Article 58(1)(a) and (3) EC?

([1]) OJ 1990 L 225, p. 6.

Action brought on 10 June 2008 — Commission of the European Communities v Kingdom of Belgium

(Case C-250/08)

(2008/C 223/38)

Language of the case: Dutch

Parties

Applicant: Commission of the European Communities (represented by: R. Lyal and P. van Nuffel, acting as Agents)

Defendant: Kingdom of Belgium

Form of order sought

— Declare that, by taking into account, in the Flemish Region, for the assessment of a tax advantage upon the purchase of immovable property intended as a new principal place of residence, the amount of registration fees paid upon the purchase of a previous principal place of residence only where the latter was situated in the Flemish Region but not where it was in a Member State other than Belgium or in an EEA State, the Kingdom of Belgium has failed to fulfil its obligations under Articles 18, 43 and 56 of the EC Treaty and Articles 31 and 40 of the EEA Agreement;

— order Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

Upon the purchase of a principal place of residence in the Flemish region, the Belgian legislation on registration fees, as in force in the Flemish Region, provides for a reduction of registration fees in an amount corresponding to the registration fees paid upon the purchase of a previous principal place of residence in the Flemish Region, provided that the previous principal place of residence is sold in the same period. The Commission considers that this legislation discriminates against Union citizens who exercise the right of free movement, that it discriminates against Union citizens who exercise the right of establishment, and that it restricts investment in immovable property in the Flemish Region with capital from Member States other than Belgium and therefore that this legislation in principle conflicts with Articles 18, and 43 of the EC Treaty and Article 31 of the EEA Agreement, and Article 56 of the EC Treaty and Article 40 of the EEA Agreement, respectively. The Commission submits that there are no overriding reasons of public interest that could justify these breaches. Nor can the defendant rely on the need to ensure the cohesion of the tax system, because this case concerns two separate fiscal situations, each of which is governed by its own rules applicable to the situation in question.

Action brought on 13 June 2008 — Commission of the European Communities v Portuguese Republic

(Case C-253/08)

(2008/C 223/39)

Language of the case: Portuguese

Parties

Applicant: Commission of the European Communities (represented by N. Yerrell and M Telles Romão, acting as Agents)

Defendant: Portuguese Republic

Form of order sought

— a declaration that, by failing to bring into force the laws, regulations and administrative provisions necessary to comply with Directive 2006/22/EC [1] of the European Parliament and of the Council of 15 March 2006 on minimum conditions for the implementation of Council Regulations (EEC) No 3820/85 and (EEC) No 3821/85 concerning social legislation relating to road transport activities and repealing Council Directive 88/599/EEC or, in any case, by failing to communicate them to the Commission, the Portuguese Republic has failed to fulfil its obligations under that directive;

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

Pleas in law and main arguments

The period prescribed for the implementing of the directive expired on 1 April 2007.

[1] OJ 2006 L 102, p. 35.

Action brought on 13 June 2008 — Commission of the European Communities v Kingdom of the Netherlands

(Case C-255/08)

(2008/C 223/40)

Language of the case: Dutch

Parties

Applicant: Commission of the European Communities (represented by: M. van Beek and J.-B. Laignelot, Agents)

Defendant: Kingdom of the Netherlands

Form of order sought

— Declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Article 4(2) and (3) in conjunction with Annexes II and III of Council Directive 85/337/EEC ([1]) of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Directives 97/11/EC ([2]) and 2003/35/EC ([3]),

— order the Kingdom of the Netherlands to pay the costs.

Pleas in law and main arguments

1. According to Article 249, third paragraph, EC a directive is binding, as to the result to be achieved, upon each Member State to which it is addressed, but leaves to the national authorities the choice of form and methods.

2. The Member States must also adopt the necessary measures in order to implement directives in national law within the prescribed period and to inform the Commission of those measures.

3. In the present case, Article 3(1) of Directive 97/11/EC provides that the Member States are to bring into force the necessary provisions to comply with the directive by 14 March 1999 at the latest and to notify the Commission forthwith thereof. However, the Netherlands has failed to do so.

4. On the basis of the above the Commission must conclude that the Netherlands has failed to adopt the necessary measures to correctly implement Article 4(2) and (3) in conjunction with Annexes II and III of Directive 85/337/EEC, as amended by Directives 97/11 and 2003/35/EC, in that it has failed to apply all the criteria in Annex III to all projects in Annex II.

([1]) OJ 1985 L 175, p. 40.
([2]) OJ 1997 L 73, p. 5.
([3]) OJ 2003 L 156, p. 17.

Reference for a preliminary ruling from the Hoge Raad der Nederlanden, lodged on 18 June 2008 — Ladbrokes Betting & Gaming Ltd and Ladbrokes International Ltd v Stichting de Nationale Sporttotalisator

(Case C-258/08)

(2008/C 223/41)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Appellants: Ladbrokes Betting & Gaming Ltd and Ladbrokes International Ltd

Respondent: Stichting de Nationale Sporttotalisator

Questions referred

1. Does a restrictive national gaming policy which is aimed at channelling the propensity to gamble and which in fact contributes to the achievement of the objectives pursued by the national legislation in question, namely, the curbing of gambling addiction and the prevention of fraud, inasmuch as, by reason of the regulated offer of games of chance, participation in gambling activities occurs on a (much) more limited scale than would be the case if there were no national regulatory system, satisfy the condition set out in the case-law of the Court of Justice of the European Communities, particularly in the judgment in Case C-243/01 *Gambelli and Others* [2003] ECR I-13031, that such restrictions must limit betting activities in a consistent and systematic manner, even where the licence holder/s is/are permitted to make the games of chance which it/they offer/s attractive by introducing new games, to bring the games which it/they offer/s to the notice of a wide public by means of advertising and thereby to keep (potential) gamblers away from the unlawful offer of games of chance (see Joined Cases C-338/04, C-359/04 and C-360/04 *Placanica and Others* [2007] ECR I-1891, paragraph 55, *in fine*)?

2a. Assuming that national legislation governing gaming policy is compatible with Article 49 EC, is it for the national courts to determine, on every occasion on which they apply that legislation in practice in an actual case, whether the measure to be imposed, such as an order that a particular website be made inaccessible to residents of the Member State concerned by means of software designed for that purpose, in order to prevent them from participating in the games of chance offered thereon, in itself and as such satisfies the condition, in the specific circumstances of the case, that it should actually serve the objectives which might justify the national legislation in question, and whether the restriction resulting from that legislation and its application on the freedom to provide services is not disproportionate in the light of those objectives?

2b. In answering Question 2a, does it make any difference if the measure to be implemented is not ordered and imposed in the context of the application of the national legislation by the authorities, but in the context of a civil action in which an organiser of games of chance operating with the required licence requests imposition of the measure on the ground that an unlawful act has been committed in its regard under civil law, inasmuch as the opposing party contravened the national legislation in question, thereby gaining an unfair advantage over the party operating with the required licence?

3. Should Article 49 EC be interpreted in such a way that the application of that article results in the competent authority of a Member State being unable, on the basis of the closed licensing system that exists in that State for the provision of gaming services, to prohibit a service provider which has already been granted a licence in another Member State for the online provision of such services from also offering those services online in the first Member State?

Appeal brought on 24 June 2008 by Christos Michail against the judgment of the Court of First Instance (First Chamber) delivered on 16 April 2008 in Case T-486/04 Michail v Commission

(Case C-268/08 P)

(2008/C 223/42)

Language of the case: French

Parties

Appellant: Christos Michail (represented by: C Meidanis. lawyer)

Other party to the proceedings: Commission of the European Communities

Form of order sought

— Declaration that the appeal is admissible and well-founded;

— Annulment, as necessary, of the judgment of the Court of First Instance of 16 April 2008 in Case T-486/04;

— Order as appropriate that costs be paid.

Pleas in law and main arguments

The appellant relies on three grounds in support of his appeal.

In his first ground of appeal, Mr Michail claims that the Court of First Instance erred in the interpretation and application of Community law and failed to comply with its duty to state reasons in judgments, in that the Court acknowledged, in the contested judgment, that the Commission was partly responsible for the appellant feeling that he was subject to psychological harassment, within the meaning of Article 12a of the Staff Regulations, but nonetheless rejected his action as unfounded.

In his second ground of appeal, the appellant complains that the Court of First Instance distorted the sense of the facts presented for its assessment, in particular by examining the facts individually and not in their overall context, and that the Court made several errors in the legal classification of those facts.

In his third ground of appeal, the appellant lastly criticises the decision of the Court of First Instance to reject as inadmissible, for lack of precision, the numerous pleas in law on which he relied in support of his action, alleging, inter alia, infringement of Articles 21a, 22a and 22c of the Staff Regulations and of the principles of equal treatment and proportionality. By breaking down his action into several parts, the Court of First Instance altered the essential nature of the action in its objectives and structure.

Action brought on 24 June 2008 — Commission v Germany

(Case C-271/08)

(2008/C 223/43)

Language of the case: German

Parties

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

Defendant: Federal Republic of Germany

Form of order sought

— Declare that the Federal Republic of Germany has until, 31 January 2006, infringed Article 8 in conjunction with Titles III to VI of Directive 92/50/EEC ([1]) and, since 1 February 2006, infringed Article 20 in conjunction with Articles 23 to 55 of Directive 2004/18/EEC ([2]), because local authorities and local authority undertakings with more than 1 218 employees awarded public service contracts concerning occupational pension schemes without a European call for tenders directly to the organisations and undertakings mentioned in Paragraph 6 of the Tarifvertrag zur Entgeltumwandlung für Arbeitnehmer/-innen im kommunalen öffentlichen Dienst (TV-EUmw/VKA) (Collective agreement on the conversion of earnings into pension contributions for local authority employees);

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

Pleas in law and main arguments

In Germany, employees have the right to demand that part of their future earnings — up to 4 % of the relevant contribution assessment ceiling for the statutory pension fund — are paid into their occupational pension schemes through the conversion of earnings into pension contributions (Entgeltumwandlung). According to the Tarifvertrag zur Entgeltumwandlung für Arbeitnehmer/-innen im kommunalen öffentlichen Dienst (Collective agreement on the conversion of earnings into pension contributions for local authority employees — 'the collective agreement') the conversion of earnings into pension contributions is the responsibility of local authorities or, as the case may be, local authority undertakings. The conversion of earnings into pension contributions has to implemented through public bodies offering supplementary private pensions or, as the case may be, undertakings that are part of the Sparkassen finance group or local authority insurance companies (Kommunalversicherer). As a general rule, local authorities or, as the case may be, local authority undertakings enter into group insurance contracts for all their employees, under which the conversion of earnings into pension contributions is agreed with one of the organisations mentioned above.

According to information available to the Commission, local authorities or, as the case may be, local authority undertakings awarded those public service contracts relating to occupational pension schemes directly to the organisations and undertakings mentioned in the collective agreement, without first issuing a European call for tenders.

Public services relating to occupational pension schemes fell within the scope of Annex I A, category 6 of Directive 92/50/EC and, since 1 February 2006, have come under Annex II Part A of Directive 2004/18/EC. They constitute insurance and pension fund services that do not fall within the scope of the statutory social security system. Therefore, the service contracts at issue, which were awarded by local authorities — in other words, contracting authorities — constitute public contracts for pecuniary interest concluded in writing within the meaning of the abovementioned directives. In addition, according to the case-law, Article 1(a) of Directive 92/50/EC does not make a distinction between contracts that a contracting authority awards in the context of carrying out its general interest functions and contracts that are not connected to those functions. Therefore, the Court of Justice rejected the idea that the nature of a contracting body can be determined by its function. The objection raised by Germany that, as regards occupational pension schemes, public authorities or, as the case may be, local authority undertakings do not — for the purposes of procurement law — carry out the functions of contracting authorities, could not be upheld.

Further, the Commission takes the view that the contracts at issue exceeded the relevant thresholds by a significant amount. Contrary to the view taken by the defendant, that calculation does not have to be done for every single contract. What matters is the duration of the framework agreement since, for the purposes of Community law on public procurement, the public contract does not concern individual agreements between the employee and the employer. Accordingly, the value of a framework agreement to be taken into account is equivalent to the estimated total value — net of value added tax — of all contracts whose implementation is envisaged throughout the entire duration of the framework agreement. According to calculations undertaken by the Commission, at least 110 cities in the Federal Republic of Germany exceeded the threshold.

Local authorities and local authority undertakings should not have awarded public service contracts relating to occupational pensions schemes to organisations and undertakings mentioned in the collective agreement, but rather after issuing a European call for tenders. This finding is not affected by the fact that continued payment of remuneration has been agreed under a collective wage agreement. First, the case-law of the Court of Justice clearly shows that Community law does not make general provisions for collective bargaining autonomy and, second, the Commission cannot see how, if contracting authorities were to fulfil their obligation to put contracts out to public tender, this would limit the application of the principle of collective bargaining autonomy enshrined in the German Basic Constitutional Law.

([1]) OJ 1992 L 209, p. 1.
([2]) OJ 2004 L 134, p. 114.

Action brought on 24 June 2008 — Commission of the European Communities v Federal Republic of Germany

(Case C-275/08)

(2008/C 223/44)

Language of the case: German

Parties

Applicant: Commission of the European Communities (represented by: G. Wilms and D. Kukovec, acting as Agents)

Defendant: Federal Republic of Germany

Form of order sought

— declare that the Federal Republic of Germany has failed to fulfil its obligations under Article 6, in conjunction with Article 9, of Council Directive 93/36/EEC of 14 June 1993 ([1]), by reason of the fact that the Datenzentrale Baden-Württemberg (Central Data Office of Baden-Württemberg) awarded a public contract for the transfer and maintenance of a software application without implementing the award procedures including Europe-wide tendering;

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

Pleas in law and main arguments

The object of the present action is the conclusion of a contract for a software application designed for motor vehicle registration between the Datenzentrale Baden-Württemberg (Central Data Office of Baden-Württemberg) and the Anstalt für Kommunale Datenverarbeitung in Bayern (Institute for local-authority data-processing in Bavaria) (AKDB). The contested award decision was made by way of a negotiated procedure without a contract notice, in which negotiations took place exclusively with the AKDB.

In the opinion of the Commission, the fact that the contract in Germany had already been the object of a review procedure within the meaning of Directive 89/665/EEC is not relevant for the declaration of a failure to fulfil an obligation under the Treaty. This is due to the fact that there are fundamental differences in nature between a review procedure before the national courts and Treaty-infringement proceedings under Article 226 EC, both with regard to the objective and to the parties and the course of the proceedings.

The contested contract in the present case consists of a public supply contract within the meaning of Article 1(a) of Directive 93/36/EEC. According to the Commission's findings, the value of the contract amounts to approximately EUR 1 million, and thus considerably exceeds the threshold in the directive. The Central Data Office has legal personality under public law, and was established with the particular purpose to coordinate and promote electronic data-processing in public administration in the interests of the general public. It is, moreover, under the predominant control of the State of Baden-Württemberg, which appoints more than half the members of the administrative council. It is, therefore, a contracting authority within the meaning of Article 1(b) of Directive 93/36/EEC, which is obliged to comply with the procedures laid down therein when awarding public contracts within the scope of that directive. The fact that both the Central Data Office and the AKDB have legal personality under public law is not relevant for the purposes of the application of Directive 93/36/EEC.

According to the Commission's findings, there are no apparent facts that could justify an open market award of the contract, such as in the form of a negotiated procedure without a prior contract notice. According to the case-law of the Court of Justice, the negotiated procedure is exceptional in nature, and may be applied only in '*cases which are set out in an exhaustive list*'. The burden of proof with respect to the exceptional circumstances lies with the Member State wishing to rely on them. As, however, the defendant in the present case has not satisfied this burden of proof, the Commission was forced to conclude that, by concluding the contested contract without implementing the award procedures including Europe-wide tendering, the Federal Republic of Germany had breached Article 6, in conjunction with Article 9, of Directive 93/36/EEC coordinating procedures for the award of public supply contracts.

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

Reference for a preliminary ruling from the Juzgado de lo Social No 23 de Madrid (Spain) lodged on 26 June 2008 — Francisco Vicente Pereda v Madrid Movilidad S.A.

(Case C-277/08)

(2008/C 223/45)

Language of the case: Spanish

Referring court

Juzgado de lo Social No 23 de Madrid

Parties to the main proceedings

Applicant: Francisco Vicente Pereda

Defendant: Madrid Movilidad S.A.

Question referred

Must Article 7(1) of Directive 2003/88/EC ([1]) be interpreted as meaning that when the period of leave allocated in the undertaking's annual planning of leave coincides in time with a temporary disability following an accident at work which happened before that period of leave began, the employee affected, once he returns to work, has the right to use his leave on dates different from those originally allocated, irrespective of whether the calendar year to which they relate has ended?

([1]) Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (OJ 2003 L 299, p. 9).

Reference for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 26 June 2008 — Die BergSpechte Outdoor Reisen und Alpinschule Edi Koblmüller GmbH v Günter Guni and trekking.at Reisen GmbH

(Case C-278/08)

(2008/C 223/46)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: Die BergSpechte Outdoor Reisen und Alpinschule Edi Koblmüller GmbH

Defendants: Günter Guni and trekking.at Reisen GmbH

Questions referred

1. Must Article 5(1) of the First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks ('Directive 89/104') ([1]) be interpreted as meaning that a trade mark is used in a manner reserved for the proprietor of the trade mark if the trade mark or a sign similar to it (such as the word component of a word and figurative trade mark) is reserved as a keyword with a search engine operator and advertising for identical or similar goods or services therefore appears on the screen when the trade mark or the sign similar to it is entered as a search term?

2. If the answer to Question 1 is yes:

   (A) Is the trade mark proprietor's exclusive right infringed by the utilisation of a search term identical with the trade mark for an advertisement for identical goods or services, regardless of whether the accessed advertisement appears in the list of hits or in a separate advertising block and whether it is marked as a 'sponsored link'?

   (B) In respect of the utilisation of a sign identical with the trade mark for similar goods or services, or the utilisation of a sign similar to the trade mark for identical or similar goods or services, is the fact that the advertisement is marked as a 'sponsored link' and/or appears not in the list of hits but in a separate advertising block sufficient to exclude any likelihood of confusion?

([1]) OJ 1989 L 40, p. 1.

Appeal brought on 25 June 2008 by the Commission of the European Communities against the judgment delivered by the Court of First Instance (Fifth Chamber, Extended Composition) on 10 April 2008 in Case T-233/04 *Kingdom of the Netherlands*, supported by Federal Republic of Germany v *Commission of the European Communities*

(Case C-279/08 P)

(2008/C 223/47)

Language of the case: Dutch

Parties

Appellant: Commission of the European Communities (represented by: H. van Vliet, K. Gross and C. Urraca Gaviedes, Agents)

Other parties to the proceedings: Kingdom of the Netherlands, Federal Republic of Germany

Form of order sought

— Primarily:

   (a) set aside the judgment under appeal;

   (b) **declare inadmissible** the action seeking annulment of the Decision;

   (c) order the Kingdom of the Netherlands to pay the costs of the proceedings before the Court of First Instance and those of the present appeal;

— In the alternative:

   (a) set aside the judgment under appeal;

   (b) **dismiss** the action seeking annulment of the Decision;

   (c) order the Kingdom of the Netherlands to pay the costs of the proceedings before the Court of First Instance and those of the present appeal.

Pleas in law and main arguments

— In its first plea, the Commission submits that the Court of First Instance erred in declaring the action brought by the Kingdom of the Netherlands to be admissible.

   In the view of the Commission, it is clear from the Court's case-law, and in particular from its order in Case C-164/02, that a Member State cannot seek the annulment of a Commission decision by which the Commission declares an aid measure notified by that Member State to be compatible with the common market.

— By its second (alternative) plea in law, the Commission submits that the Court of First Instance was wrong to conclude that the disputed measure is not selective, that is to say, that it does not favour certain undertakings within the meaning of Article 87(1) EC. The Commission goes on to submit that the Court of First Instance erred in concluding that, even if the measure were selective, it would still not constitute State aid in view of its purpose and on the ground that that measure would be justified by the nature and general scheme of the system.

Appeal brought on 26 June 2008 by Deutsche Telekom AG against the judgment delivered by the Court of First Instance on 10 April 2008 in Case T-271/03 *Deutsche Telekom* v *Commission*

(Case C-280/08 P)

(2008/C 223/48)

Language of the case: German

Parties

Appellant: Deutsche Telekom AG (represented by: U. Quack, Rechtsanwalt, S. Ohlhoff, Rechtsanwalt, M. Hutschneider, Rechtsanwalt)

Other parties to the proceedings: Commission of the European Communities, Arcor AG & Co. KG, Versatel NRW GmbH, formerly Tropolys NRW GmbH, formerly CityKom Münster GmbH Telekommunikationsservice, EWE TEL GmbH, HanseNet Telekommunikation GmbH, Versatel Nord-Deutschland GmbH, formerly KomTel Gesellschaft für Kommunikations- und Informationsdienste mbH, NetCologne Gesellschaft für Telekommunikation mbH, Versatel Süd-Deutschland GmbH, formerly tesion Telekommunikation GmbH, Versatel West-Deutschland GmbH & Co. KG, formerly VersaTel Deutschland GmbH & Co. KG

Form of order sought

— Set aside the judgment of the Court of First Instance of 10 April 2008 in Case T-271/03;

— annul Commission Decision 2003/707/EC ([1]) of 21 May 2003, notified under document number C(2003)1536;

— in the alternative, reduce, at the Court's discretion, the fine imposed on Deutsche Telekom AG in Article 3 of the contested Commission decision;

— order the Commission to pay the costs.

Pleas in law and main arguments

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

The judgment infringes Article 82 EC and the principle of the protection of legitimate expectations because in the present case, there has been no objective infringement of Article 82 EC attributable to the appellant and the appellant has also not been at fault. The judgment fails to take into account, in the manner required by law, repeated examinations of the purported margin squeeze by the German regulatory authority for telecommunications and post ('RegTP'), which was responsible at that time for regulating the appellant. RegTP repeatedly examined whether there was an anti-competitive margin squeeze in respect of local loops and found that there was none. In a situation like that, the responsibility of the relevant regulatory authority overrides and restricts the regulated undertaking's special responsibility for maintaining the structure of the market. In the light of the regulatory decisions, the appellant had a right to assume that its conduct was not anti-competitive. The assumption that the appellant could have reduced the purported margin squeeze by increasing its ADSL charges is contrary to the Court's own position that, in the context of examining a margin squeeze, 'cross-subsidisation' between different markets is not to be taken into account. In addition, the Court of First Instance was wrong not to object to the fact that the Commission failed to examine whether an increase in ADSL charges would have actually reduced the purported margin squeeze.

The judgment also infringes Article 82 EC because the Court of First Instance erred in examining whether the conditions for the application of Article 82 EC were met. In the present case, a margin squeeze test is inherently unsuitable to establish abuse. In a situation where charges for wholesale access were imposed by the relevant regulatory authority — as is the case here — the test in itself could produce anti-competitive results.

In this context, the Court of First Instance also infringed *its obligation to state the reasons for its judgment*.

In the context of examining the methodology used by the Commission to establish that there had been a margin squeeze, the contested judgment also contains errors of law on essential points. First of all, the so-called 'as-efficient-competitor-test', which the Court of First Instance used as a generally applicable standard of comparison, can in any event not be used in a situation in which the dominant undertaking and its competitors operate under different regulatory and actual competitive conditions — as is the case here. Second, the margin squeeze test only takes into account charges for access, while charges for additional telecommunication services (especially telephone calls) that require the same wholesale service, were not considered. The judgment's findings on the effects of the purported margin squeeze suffered from several errors in law and the judgment failed to examine whether the purported margin squeeze supported the Court of First Instance's findings on the structure of the market.

Further, the judgment fails to observe the requirements of Article 253 EC as regards the Commission's obligation to state the reasons on which its decisions are based.

Finally, the Court of First Instance also wrongly applied Article 15(2) of Regulation 17 when it failed to object to the Commission's calculation of the fine, even though the Commission wrongly assumed that there had been a serious infringement, failed to take proper account of the sector specific regulation of the appellant's charges and should not have imposed more than a symbolic fine. In doing so, the Court of First Instance failed to take into account, in a legally correct manner, all relevant factors and to deal to the requisite legal standard with the appellant's arguments concerning cancellation or reduction of the fine.

([1]) OJ 2003 L 263, p. 9.

Action brought on 27 June 2008 — Commission of the European Communities v Kingdom of the Netherlands

(Case C-283/08)

(2008/C 223/49)

Language of the case: Dutch

Parties

Applicant: Commission of the European Communities (represented by: W. Roels and W. Wils, Agents)

Defendant: Kingdom of the Netherlands

Form of order sought

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2005/29/EC ([1]) of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive'), or in any event by failing to notify the Commission thereof, the Kingdom of the Netherlands has failed to fulfil its obligations under that directive;

— order the Kingdom of the Netherlands to pay the costs.

Pleas in law and main arguments

The period within which the directive had to be transposed into national law expired on 12 June 2007.

([1]) OJ 2005 L 149, p. 22.

Action brought on 27 June 2008 — Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland

(Case C-284/08)

(2008/C 223/50)

Language of the case: English

Parties

Applicant: Commission of the European Communities (represented by Messrs W. Roels and W. Wils, Agents)

Defendant: United Kingdom of Great Britain and Northern Ireland

The applicant claims that the Court should:

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 on unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') ([1]), or in any event by failing to communicate them to the Commission, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under the Directive in its territory of Gibraltar;

— order United Kingdom of Great Britain and Northern Ireland to pay the costs.

Pleas in law and main arguments

The period within which the directive had to be transposed expired on 12 June 2007.

([1]) OJ L 149, p. 22.

Action brought on 30 June 2008 — Commission of the European Communities v Hellenic Republic

(Case C-286/08)

(2008/C 223/51)

Language of the case: Greek

Parties

Applicant: Commission of the European Communities (represented by: M. Patakia and J.-B. Laignelot)

Defendant: Hellenic Republic

Form of order sought

— declare that, by failing to draw up and adopt within a reasonable period a hazardous-waste management plan that accords with the requirements of the relevant Community legislation, and by failing to establish an integrated and adequate network of disposal installations for hazardous waste that enables such waste to be disposed of by means of the most appropriate methods in order to ensure a high level of protection for the environment and public health, the Hellenic Republic has failed to fulfil its obligations under Articles 1(2) and 6 of Directive 91/689/EEC ([1]) on hazardous waste, in conjunction with Articles 5(1) and (2) and 7(1) of Directive 2006/12/EC ([2]) (formerly Directive 75/442/EEC on waste, as amended by Directive 91/156/EEC);

— declare that, by failing to take all the necessary measures to ensure, as regards the management of hazardous waste, compliance with Articles 4 and 8 of Directive 2006/12/EC (formerly Directive 75/442/EEC, as amended by Directive 91/156/EEC) and Articles 3(1), 6, 7, 8, 9, 13 and 14 of Directive 1999/31/EC ([3]) on the landfill of waste, the Hellenic Republic has failed to fulfil its obligations under Article 1(2) of Directive 91/689/EEC on hazardous waste, in conjunction with Articles 4 and 8 of Directive 2006/12/EC (formerly Directive 75/442/EEC on waste, as amended by Directive 91/156/EEC), and its obligations under Articles 3(1), 6, 7, 8, 9, 13 and 14 of Directive 1999/31/EC on the landfill of waste;

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

After examining the legislative measures notified by the Hellenic Republic relating to the management of hazardous waste, and in particular the National Management Plan, the Commission found that they did not meet the requirements of the Community provisions relating to the management of hazardous waste.

More specifically, the National Management Plan is deficient since it merely contains guidelines which require further elaboration and do not meet the requirement of 'sufficient precision', in breach of Articles 1(2) and 6(1) of Directive 91/689/EEC, in conjunction with Article 7(1) of Directive 2006/12/EC (formerly Directive 75/442/EEC).

Also, the National Management Plan does not provide for an integrated and adequate network of disposal installations, because adequate infrastructure is lacking, there are no assessments relating to the required level of operational capacity and there are deficiencies relating to the establishment and geographical location of appropriate sites, in breach of Article 1(2) of Directive 91/689/EEC, in conjunction with Article 5 of Directive 2006/12/EC (formerly Directive 75/442/EEC).

Furthermore, it has been established that the disposal of hazardous waste in Greece is in practice usually in the form of 'temporary storage', which however, because the relevant permits are renewed in the absence of appropriate landfill sites, has become permanent. It follows that appropriate measures have not been taken for the safe final disposal of hazardous waste without endangering human health and without harming the environment, in breach of Article 1(2) of Directive 91/689/EEC, in conjunction with Articles 4 and 8 of Directive 2006/12/EC (formerly Directive 75/442/EEC), and of Articles 3(1), 6, 7, 8, 9, 13 and 14 of Directive 1999/31/EC on the landfill of waste.

([1]) OJ L 377, 31.12.1991, p. 20.

([2]) OJ L 114, 27.4.2006, p. 9.

([3]) OJ L 182, 16.7.1999, p. 1.

Action brought on 1 July 2008 — Commission of the European Communities v Grand Duchy of Luxembourg

(Case C-289/08)

(2008/C 223/52)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: G. Rozet and A. Sipos)

Defendant: Grand Duchy of Luxembourg

Form of order sought

— Declare that, by not drawing up an external emergency plan for the measures to be taken outside establishments subject to Article 9 of Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances ([1]), the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 11(1)(c) of that directive;

— order Grand Duchy of Luxembourg to pay the costs.

Pleas in law and main arguments

The applicant claims that drawing up an emergency plan for the measures to be taken outside establishments subject to Article 9 of Council Directive 96/82/EC is a fundamental requirement of that directive. The Grand Duchy of Luxembourg has failed to fulfil its obligations under the directive since it has not drawn up such plans for eight operational establishments situated on its territory.

([1]) OJ 1997, L 10, p. 13.

Action brought on 2 July 2008 — Commission of the European Communities v Republic of Finland

(Case C-293/08)

(2008/C 223/53)

Language of the case: Finnish

Parties

Applicant: Commission of the European Communities (represented by: M. Condou-Durande and I. Koskinen, acting as Agents)

Defendant: Republic of Finland

Form of order sought

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted and ([1]), in any event, by failing to inform the Commission thereof, the Republic of Finland has failed to fulfil its obligations under that directive.

— order Republic of Finland to pay the costs.

Pleas in law and main arguments

The time-limit for transposition of the directive expired on 10 October 2006.

([1]) OJ L 304, p. 12.

Reference for a preliminary ruling from the Cour d'appel de Montpellier (France) lodged on 3 July 2008 — Ministère public v Ignacio Pédro Santesteban Goicoechea

(Case C-296/08)

(2008/C 223/54)

Language of the case: French

Referring court

Cour d'appel de Montpellier

Parties to the main proceedings

Applicant: Ministère public

Defendant: Ignacio Pédro Santesteban Goicoechea

Questions referred

1. Does the failure of a Member State (in this case Spain) to give notification under Article 31(2) of the Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States ([1]) of its intention to continue to apply bilateral or multilateral agreements preclude, by reason of the word 'replace' in Article 31 of that Framework Decision, that Member State from using with another Member State (in this case France), which has made a statement under Article 32 of the Framework Decision, procedures other than that of the European arrest warrant?

2. If the answer to the above question is in the negative, do the provisos made by the executing Member State permit that State to apply a Convention of 27 September 1996, thus prior to 1 January 2004, but which entered into force in that executing State after that date of 1 January 2004 referred to in Article 32 of the Framework Decision?

(1) Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1).

Action brought on 3 July 2008 — Commission of the European Communities v Italian Republic

(Case C-297/08)

(2008/C 223/55)

Language of the case: Italian

Parties

Applicant: Commission of the European Communities (represented by: C. Zadra, D. Recchia and J.-B. Laignelot, acting as Agents)

Defendant: Italian Republic

Form of order sought

— declare that, by failing to adopt, in respect of the Region of Campania, all the necessary measures to ensure that waste is recovered or disposed of without endangering human health and without harming the environment and, in particular, by failing to establish an integrated and adequate network of disposal installations, the Italian Republic has failed to fulfil its obligations under Articles 4 and 5 of Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste (1);

— order the Italian Republic to pay the costs.

Pleas in law and main arguments

By the present action, the Commission seeks to obtain a declaration that the Italian Republic has failed to create, in the Region of Campania, an integrated and adequate network of disposal installations suitable to enable self-sufficiency in waste disposal characterised by the criterion of proximity. As recognised by the Italian authorities themselves in official communications, the failure to fulfil obligations complained of is a source of danger to human health and the environment and therefore constitutes infringement of Articles 4 and 5 of Directive 2006/12/EC.

(1) OJ L 114 of 27.4.2006, p. 9.

Action brought on 3 July 2008 — Commission of the European Communities v Hellenic Republic

(Case C-298/08)

(2008/C 223/56)

Language of the case: Greek

Parties

Applicant: Commission of the European Communities (represented by: N. Yerrell and I. Khatzigiannis)

Defendant: Hellenic Republic

Form of order sought

— declare that, by not adopting the laws, regulations and administrative provisions necessary to comply with Directive 2006/22/EC (1) of the European Parliament and of the Council of 15 March 2006 on minimum conditions for the implementation of Council Regulations (EEC) No 3820/85 and (EEC) No 3821/85 concerning social legislation relating to road transport activities and repealing Council Directive 88/599/EEC, or in any event by not notifying those provisions to the Commission, the Hellenic Republic has failed to fulfil its obligations under that directive;

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

The time-limit for transposition of the directive into domestic law expired on 1 April 2007.

(1) OJ L 102, 11.4.2006, p. 35.

Appeal brought on 7 July 2008 by Leche Celta SL against the judgment delivered on 23 April 2008 in Case T-35/07 Leche Celta SL v OHMI

(Case C-300/08 P)

(2008/C 223/57)

Language of the case: French

Parties

Appellant: Leche Celta SL (represented by: J Calderón Chavero and T. Villate Consonni, lawyers)

Other party/parties to the proceedings: Office for Harmonisation in the Internal Market (Trade marks and Designs), Celia SA

Form of order sought

— Annul the judgment of the Third Chamber of the Court of First Instance of 23 April 2008 in Case T-35/07 on the grounds that the marks CELIA/CELTA are clearly incompatible;

— Order payment of costs.

Pleas in law and main arguments

By its appeal the appellant challenges in essence the assessment made by the Court of First Instance on the similarity of the marks at issue. According to the appellant, the similarity of the two marks is such that the relevant public will not be able to detect any difference between them, the more so when the goods covered by them are identical. The Court therefore committed several errors of assessment by judging the degree of verbal and conceptual similarity between the marks at issue to be low.

Action brought on 9 July 2008 — Commission of the European Communities v Kingdom of Spain

(Case C-306/08)

(2008/C 223/58)

Language of the case: Spanish

Parties

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

Defendant: Kingdom of Spain

Form of order sought

— Declare that, in awarding the Integrated Action Programmes in accordance with Law 6/1994 of 15 November, regulating development activities in the Valencian Community, the Kingdom of Spain has failed to fulfil its obligations under Council Directive 93/37/EEC [1] of 14 June 1993 concerning the coordination of procedures for the award of public works contracts, and particularly Articles 1, 6(6), 11, 12 and Title II of Capital IV thereof (Articles 24 to 29),

and that, in awarding the Integrated Action Programmes in accordance with Law 16/2005, Valencian development law, implemented by Decree 67/2006 of the Region of Valencia of 12 May, establishing the Regulation of Town Planning and Management, the Kingdom of Spain has failed to fulfil its obligations under Articles 2, 6, 24, 30, 31(4)(a), 48(2) and 53 of Directive 2004/18/EC [2] of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts;

— order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

The Commission states that the awarding of the Integrated Action Programmes (IAP), an urban development measure established by Law 6/1994 of 15 November, Valencian Law on development activities ('LRAU') and its successor, Law 16/205, Valencian development law ('LUV') relates to public works contracts which should be awarded in accordance with Directive 93/37/EC and Directive 2004/18/EC. In other words, the Commission affirms that the IAP are public works contracts awarded by local bodies which include the carrying out of public infrastructure works by urban developers chosen by the local authorities.

The Commission considers that the LUV infringes the Community public procurement directives in various aspects, in relation, inter alia, to the privileged position of the first bidder, the experience of bidders in similar contracts, the provision of alternatives to the proposal of the first bidder 'in open envelope', the regulation of variants, the criteria for awarding IAP contracts, the possibility of amending the contract after it has been awarded (for example, the possibility of increasing development fees) and the regulation of cases of incomplete execution of the contract by the bidder to which the contract has been awarded. Some of those infringements concern both the LRAU and the LUV, and others just the LUV.

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[1] OJ 1993 L 199, p. 54.
[2] OJ 2004 L 134, p. 114.

Action brought on 10 July 2008 — Commission of the European Communities v Kingdom of Spain

(Case C-308/08)

(2008/C 223/59)

Language of the case: Spanish

Parties

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

Defendant: Kingdom of Spain

Form of order sought

— Declare that the Kingdom of Spain has failed to fulfil its obligations under Council Directive 92/43/EEC ([1]) of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, interpreted by the judgments of the Court of Justice on 13 January 2005 in Case C-117/03 and on 14 September 2006 in Case C-244/05, and its obligations stemming from Article 12(4) of that directive in relation to the project for improvement of the rural path from Villamanrique de la Condesa (Seville) to El Rocio (Huelva).

— order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

The Commission considers that in carrying out the project for improvement of the rural path from Villamanrique de la Condesa (Seville) to El Rocio (Huelva) without at the same time taking adequate protective measures, the Kingdom of Spain has failed to fulfil its obligations under Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, interpreted by the judgments of the Court of Justice on 13 January 2005 in Case C-117/03 and on 14 September 2006 in Case C-244/05, and its obligations under Article 12(4) of that directive.

([1]) OJ L 206, p. 7.

Action brought on 14 July 2008 — Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland

(Case C-312/08)

(2008/C 223/60)

Language of the case: English

Parties

Applicant: Commission of the European Communities (represented by: H. Støvlbæk, Agent)

Defendant: United Kingdom of Great Britain and Northern Ireland

The applicant claims that the Court should:

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 2006/100/EC, of 20 November 2006 adapting certain Directives in the field of freedom of movement of persons, by reason of the accession of Bulgaria and Romania ([1]), or in any event by failing to communicate them to the Commission, the United Kingdom has failed to fulfil its obligations under the Directive;

— order the United Kingdom of Great Britain and Northern Ireland to pay the costs.

Pleas in law and main arguments

The period within which the directive had to be transposed expired on 1 January 2007.

([1]) OJ L 363, p. 141.

Action brought on 14 July 2008 — Commission of the European Communities v Italian Republic

(Case C-313/08)

(2008/C 223/61)

Language of the case: Italian

Parties

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

Defendant: Italian Republic

Form of order sought

— Declare that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Article 1(4), (5) and (6) of Directive 2003/58/EC ([1]) of the European Parliament and of the Council of 15 July 2003 amending Council Directive 68/151/EEC, as regards disclosure requirements in respect of certain types of companies or, in any event, by failing to communicate such provision to the Commission, the Italian Republic has failed to fulfil its obligations under that directive;

— order the Italian Republic to pay the costs.

Pleas in law and main arguments

The prescribed period for transposing the directive into national law expired on 30 December 2006.

(1) OJ 2006 L 221, p. 13.

Action brought on 15 July 2008 — Commission of the European Communities v Kingdom of Spain

(Case C-321/08)

(2008/C 223/62)

Language of the case: Spanish

Parties

Applicant: Commission of the European Communities (represented by: W. Wils and E. Adsera Ribera, acting as Agents)

Defendant: Kingdom of Spain

Form of order sought

— Declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2005/29/EC (1) of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive'), or in any event, by failing to inform the Commission thereof, the Kingdom of Spain has failed to fulfil its obligations under that directive.

— order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

The period prescribed for bringing national law into conformity with Directive 2005/29 expired on 12 June 2007.

(1) OJ 2005 L 149, p. 22.

Action brought on 15 July 2008 — Commission of the European Communities v Kingdom of Sweden

(Case C-322/08)

(2008/C 223/63)

Language of the case: Swedish

Parties

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

Defendant: Kingdom of Sweden

Form of order sought

— Declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 2004/83/EC of 29 April 2004 (1) or in any event by failing to notify the Commission thereof, the Kingdom of Sweden has failed to fulfil its obligations under that directive;

— order the Kingdom of Sweden to pay the costs.

Pleas in law and main arguments

The period prescribed for the implementation of the Directive expired on 10 October 2006.

(1) on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (OJ 2004 L 304, p. 12).

Action brought on 16 July 2008 — Commission of the European Communities v Federal Republic of Germany

(Case C-326/08)

(2008/C 223/64)

Language of the case: German

Parties

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

Defendant: Federal Republic of Germany

Form of order sought

— declare that, by not adopting all the laws, regulations and administrative provisions necessary to comply with Directive 2005/29/EC [1], or, in any event, by not communicating those provisions to the Commission, the Federal Republic of Germany has failed to fulfil its obligations under Community law, in particular under Article 19 of that directive;

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

Pleas in law and main arguments

The period for implementing the Directive expired on 12 June 2007.

[1] Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive'); OJ 2005 L 149, p. 22.

Action brought on 18 July 2008 — Commission of the European Communities v Italian Republic

(Case C-334/08)

(2008/C 223/65)

Language of the case: Italian

Parties

Applicant: Commission of the European Communities (represented by: A. Aresu and A. Caeiros, acting as Agents)

Defendant: Italian Republic

Form of order sought

— declare that the Italian Republic has failed to fulfil its obligations under Article 10 EC, Article 8 of Council Decision 2000/597/EC, Euratom of 29 September 2000 on the system of the European Communities' own resources [1], and Articles 2, 6, 10, 11 and 17 of Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources [2] by refusing to make available to the Commission the own resources corresponding to the customs obligation deriving from the issue, from 27 February 1997, by the departmental head office of customs of the Regions of Apulia and Basilicata, located in Bari, of irregular authorisations to create and operate Type C customs bonded warehouses in Taranto, followed by consecutive authorisations for processing under customs control and to use the inward processing procedure, until their revocation on 4 December 2002;

— order the Italian Republic to pay the costs.

Pleas in law and main arguments

By the present action the Commission of the European Communities complains that the Italian Government has refused to make available to the European Communities the own resources — quantified at approximately EUR 23 million — corresponding to certain irregular customs authorisations issued in Taranto in the period from February 1997 to December 2002 inclusive.

The contested subject-matter concerns, essentially, liability for the amounts relating to the resources not collected owing to the irregular transactions in question. The Italian Government submits that it is not liable for the missing revenue caused by those irregularities, since the latter were solely attributable to the officials who caused the loss, whereas the Commission takes the view that the Community legislation in force requires the Italian State to make itself responsible for all the financial consequences deriving from the action — including irregular action — of officials who act in its name and on its behalf.

[1] OJ L 253 of 7.10.2000, p. 42.
[2] OJ L 130 of 31.5.2000, p. 1.

Order of the President of the Court of 30 April 2008 (reference for a preliminary ruling from the Verwaltungsgerichtshof — Austria) — Josef Holzinger v Bundesministerium für Bildung, Wissenschaft und Kultur

(Case C-332/07) [1]

(2008/C 223/66)

Language of the case: German

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

[1] OJ C 269, 10.11.2007.

COURT OF FIRST INSTANCE

Order of the Court of First Instance of 26 June 2008 — Gibtelecom v Commission

(Joined Cases T-433/03, T-434/03, T-367/04 and T-244/05) [1]

(Competition — Telecommunications — Decisions not to take any further action on complaints based on Article 86 EC — Failure of the Commission to define a position on complaints based on Article 86 EC — Actions for annulment — Actions for failure to act — Action which becomes devoid of purpose in the course of proceedings — No need to adjudicate)

(2008/C 223/67)

Language of the case: English

Parties

Applicant: Gibtelecom Ltd (Gibraltar) (represented by: M. Llamas, barrister, and B. O'Connor, solicitor)

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

Re:

Actions for (i) annulment of the alleged decisions of the Commission of 17 October 2003, 5 July 2004 and 26 April 2005 not to take any further action in respect of two complaints calling on the Commission to act, on the basis of Article 86(3) EC, to put an end to infringements of Community law allegedly committed by the Kingdom of Spain, and (ii) a declaration under Article 232 EC that, by failing to define a position on the further action which it proposed to take with respect to certain aspects of one of those complaints, the Commission failed to fulfil its obligations under Community law.

Operative part of the order

1. *There is no need to adjudicate on the actions;*

2. *There is no need to adjudicate on the Kingdom of Spain's application to intervene in Case T-367/04;*

3. *Gibtelecom Ltd and the Commission shall each bear their own costs.*

[1] OJ C 59, 6.3.2004.

Order of the Court of First Instance of 14 July 2008 — Espinosa Labella and Others v Commission

(Case T-322/06) [1]

(Action for annulment — Directive 92/43/EEC — Conservation of natural habitats and of wild fauna and flora — Decision 2006/613/EC — List of sites of Community importance for the Mediterranean biogeographical region — Challengeable act — Lack of direct effect — Inadmissible)

(2008/C 223/68)

Language of the case: Spanish

Parties

Applicants: Manuel José Espinosa Labella (Almería, Spain); Josefa Labella Dávalos (Almería); María Pilar Espinosa Labella (Almería); María José Espinosa Labella (Almería); Tomasa Peñuela Ortiz (Almería); Tomás Espinosa Peñuela (Almería); Francisco José Espinosa Peñuela (Mairena del Aljarafe, Spain); Juan Manuel Espinosa Peñuela (Madrid, Espagne); María Lourdes Espinosa Peñuela (Almería); Adela Espinosa Peñuela (Almería); Jorge Jesús Espinosa Peñuela (Almería) and the heirs of de Rafael Espinosa Peñuela (Almería) (represented by: M.J. Rovira Daudí, lawyer)

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

Intervener in support of the defendant: Kingdom of Spain (represented by: F. Díez Moreno, abogado del Estado)

Re:

Partial annulment of Commission Decision 2006/613/EC of 19 July 2006 adopting, pursuant to Council Directive 92/43/EEC, the list of sites of Community importance for the Mediterranean biogeographical region (OJ 2006 L 259, p. 1), in so far as it declares the site designated as 'Artos de El Ejido', which includes lands belonging to the applicants, to be a site of Community importance for the Mediterranean biogeographical region.

Operative part of the order

1. *The action is dismissed as inadmissible;*

2. *Manuel José Espinosa Labella, Josefa Labella Dávalos, María Pilar Espinosa Labella, María José Espinosa Labella, Tomasa Peñuela Ortiz, Tomás Espinosa Peñuela, Francisco José Espinosa Peñuela, Juan Manuel Espinosa Peñuela, María Lourdes Espinosa Peñuela, Adela Espinosa Peñuela; Jorge Jesús Espinosa Peñuela and the heirs of Rafael Espinosa Peñuela are ordered to bear their own costs and to pay those of the Commission;*

3. *The Kingdom of Spain is ordered to bear its own costs.*

([1]) OJ C 326, 30.12.2006.

Order of the Court of First Instance of 14 July 2008 — Fresyga v Commission

(Case T-323/06) ([1])

(Action for annulment — Directive 92/43/EEC — Conservation of natural habitats and of wild fauna and flora — Decision 2006/613/EC — List of sites of Community importance for the Mediterranean biogeographical region — Challengeable act — Lack of direct effect — Inadmissible)

(2008/C 223/69)

Language of the case: Spanish

Parties

Applicant: Fresyga S.A. (Almería, Spain) (represented by: M.J. Rovira Daudí, lawyer)

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

Re:

Partial annulment of Commission Decision 2006/613/EC of 19 July 2006 adopting, pursuant to Council Directive 92/43/EEC, the list of sites of Community importance for the Mediterranean biogeographical region (OJ 2006 L 259, p. 1), in so far as it declares the site designated as 'Ramblas de Jergal, Tabernas y Sur de Sierra Alhamilla', which includes land belonging to the applicant, to be a site of Community importance for the Mediterranean biogeographical region.

Operative part of the order

1. *The action is dismissed as inadmissible;*

2. *Fresyga S.A. is ordered to bear its own costs and to pay those of the Commission.*

([1]) OJ C 326, 30.12 2006.

Order of the Court of First Instance of 14 July 2008 — Complejo Agrícola v Commission

(Case T-345/06) ([1])

(Action for annulment — Directive 92/43/EEC — Conservation of natural habitats and of wild fauna and flora — Decision 2006/613/EC — List of sites of Community importance for the Mediterranean biogeographical region — Challengeable act — Lack of direct effect — Inadmissible)

(2008/C 223/70)

Language of the case: Spanish

Parties

Applicant: Complejo Agrícola S.A. (Madrid, Spain) (represented by: A. Menéndez Menéndez and G. Yanguas Montero, lawyers)

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

Intervener in support of the defendant: Kingdom of Spain (represented by: F. Díez Moreno, abogado del Estado)

Re:

Partial annulment of Article 1 of, and Annex 1 to, Commission Decision 2006/613/EC of 19 July 2006 adopting, pursuant to Council Directive 92/43/EEC, the list of sites of Community importance for the Mediterranean biogeographical region (OJ 2006 L 259, p. 1), in so far as it declares the site designated as 'Acebuchales de la Campiña sur de Cádiz', which includes a farm belonging to the applicant, to be a site of Community importance for the Mediterranean biogeographical region.

Operative part of the order

1. *The action is dismissed as inadmissible;*

2. *Complejo Agrícola S.A. is ordered to bear its own costs and to pay those of the Commission;*

3. *The Kingdom of Spain is ordered to bear its own costs.*

(1) OJ C 20, 27.1.2007.

Order of the Court of First Instance of 4 July 2008 — Wegenbouwmaatschappij J. Heijmans v Commission

(Case T-358/06) (1)

(Action for annulment — Decision finding an infringement of Article 81 EC — Action brought by an undertaking referred to in the reasons for a decision not addressed to it — Lack of interest in bringing proceedings — Inadmissible)

(2008/C 223/71)

Language of the case: Dutch

Parties

Applicant: Wegenbouwmaatschappij J. Heijmans (Rosmalen, Netherlands) (represented by: M. Smeets and A. Van den Oord, lawyers)

Defendant: Commission of the European Communities (represented by: A. Bouquet and A. Nijenhuis, Agents, assisted by F. Wijckmans, F. Tuyschaever and L. Gyselen, lawyers)

Re:

Action for annulment of Commission Decision 2007/523/EC decision of 13 September 2006 relating to a proceeding under Article 81 EC (Case COMP/38.456 — Bitumen — Netherlands) or, in the alternative, a reduction of the fine imposed on Heijmans NV and Hejmans Infrastructur BV.

Operative part of the order

The Court:

1. *Dismisses the action;*

2. *Orders Wegenbouwmaatschappij J. Heijmans BV to bear its own costs and to pay the costs incurred by the Commission.*

(1) OJ C 20, 27.1.2007.

Order of the Court of First Instance of 14 July 2008 — Calebus v Commission

(Case T-366/06) (1)

(Action for annulment — Directive 92/43/EEC — Conservation of natural habitats and of wild fauna and flora — Decision 2006/613/EC — List of sites of Community importance for the Mediterranean biogeographical region — Challengeable act — Lack of direct effect — Inadmissible)

(2008/C 223/72)

Language of the case: Spanish

Parties

Applicant: Calebus S.A. (Almería, Spain) (represented by: R. Bocanegra Sierra, lawyer)

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

Intervener in support of the defendant: Kingdom of Spain (represented by: F. Díez Moreno, abogado del Estado)

Re:

Partial annulment of Commission Decision 2006/613/EC of 19 July 2006 adopting, pursuant to Council Directive 92/43/EEC, the list of sites of Community importance for the Mediterranean biogeographical region (OJ 2006 L 259, p. 1), in so far as it declares the site designated as 'Ramblas de Jergal, Tabernas y Sur de Sierra Alhamilla', which includes land belonging to the applicant, to be a site of Community importance for the Mediterranean biogeographical region.

Operative part of the order

1. *The action is dismissed as inadmissible;*

2. *Calebus S.A. is ordered to bear its own costs and to pay those of the Commission;*

3. *The Kingdom of Spain is ordered to bear its own costs.*

(1) OJ C 20, 27.1.2007.

Order of the Court of First Instance of 2 July 2008 — Polimeri Europa v Commission

(Case T-12/07) ([1])

(No need to give a decision)

(2008/C 223/73)

Language of the case: Italian

Parties

Applicant: Polimeri Europa SpA (Brindisi, Italy) (represented by: M. Siragusa, F. Moretti and L. Nascimbene, lawyers)

Defendant: Commission of the European Communities (represented by: V. Di Bucci, F. amato and V Bottka, agents)

Intervener in support of the defendant: Manufacture Française des Pneumatiques Michelin (represented by: S. Kon and L. Farell, lawyers)

Re:

Annulment of the Commission's decision COMP/F/2/1095 of 6 November 2006, taken in the context of a proceeding pursuant to Article 81 EC (Case COMP/F//38.638 BR/ESBR) to forward to Manufacture Française des Pneumatiques Michelin, admitted to the administrative procedure as an interested third party, the non-confidential version of the statement of objections of 6 April 2006 addressed to the applicant.

Operative part of the order

1. *There is no need to give a decision in this action;*
2. *Polimeri Europa SpA is ordered to bear its own costs and to pay those incurred by the Commission and by Manufacture Française des Pneumatiques Michelin in these proceedings, and to pay those incurred by the Commission in the interlocutory proceedings.*

([1]) OJ C 56, of 10.3.2007.

Order of the Court of First Instance of 27 June 2008 — Denka International v Commission

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

(Action for annulment — Directive 2006/92/EC — Maximal levels for dichlorvos residues — Lack of individual concern — Inadmissible)

(2008/C 223/74)

Language of the case: English

Parties

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

Defendant: Commission (represented by: L. Parpala and B. Doherty, Agents)

Re:

Action for partial annulment of Commission Directive 2006/92/EC of 9 November 2006 amending annexes to Council Directives 76/895/EEC, 86/362/EEC and 90/642/EEC as regards maximum levels for captan, dichlorvos, ethion and folpet (OJ 2006 L 311, p. 31).

Operative part of the order

The Court:

1. *Dismisses the action as inadmissible.*
2. *Orders Denka International BV to bear its own costs and to pay those incurred by the Commission.*

([1]) OJ C 82, 14.4.2007.

Order of the Court of First Instance of 26 June 2008 — Pfizer v OHIM — Isdin (FOTOPROTECTOR ISDIN)

(Case T-354/07 to T-356/07) ([1])

(Community trade mark — Action for annulment — Invalidity — No need to adjudicate)

(2008/C 223/75)

Language of the case: Spanish

Parties

Applicant: Pfizer Ltd (Sandwich, Kent, United Kingdom) (represented by: V. von Bomhard, A. Renck, T. Dolde, lawyers, and M. Hawkins, Solicitor)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance: Isdin, SA (Barcelona, Spain) (represented by: M. Esteve Sanz, lawyer)

Re:

Three actions brought against the decisions of the First Board of Appeal of OHIM of 28 June 2007 (Cases R 567/2006-1, R 566/2006-1 and R 565/2006-1) concerning invalidity proceedings between Pfizer Ltd and Isdin, SA.

Operative part of the order

1. *There is no need to adjudicate on the action.*

2. *Isdin, SA is order to bear its own costs and to pay those incurred by the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM). Pfizer Ltd is ordered to bear its own costs.*

([1]) OJ C 269, 10.11.2007.

Order of the Court of First Instance of 11 July 2008 — WellBiz v OHIM — Wild (WELLBIZ)

(Case T-451/07) ([1])

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

(2008/C 223/76)

Language of the case: German

Parties

Applicant: WellBiz Verein (Eschen, Liechtenstein) (represented by: M. Schnetzer, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Rudolf Wild GmbH & Co. KG (Eppelheim, Germany)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 2 October 2007 (Case R 1575/2006-1) concerning opposition proceedings between WellBiz Verein and Rudolf Wild GmbH & Co. KG.

Operative part of the order

1. *There is no longer any need to adjudicate on the action;*

2. *The applicant and the defendant are ordered to bear their own costs.*

([1]) OJ C 37, 9.2 2008.

Order of the Court of First Instance of 25 June 2008 — Volkswagen v OHIM (Silhouette of a car with its headlights)

(Case T-9/08) ([1])

(Community trade mark — Waiver of registration of national mark — No need to adjudicate)

(2008/C 223/77)

Language of the case: German

Parties

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

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

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 6 November 2007 (Case R 1306/2007-4) concerning a national registration, pursuant to the Protocol relating to the Madrid Agreement concerning the international registration of marks, adopted at Madrid on 27 June 1989, of the figurative mark representing the silhouette of a car with its headlights.

Operative part of the judgment

The Court:

1. *There is no need to adjudicate on the action.*

2. *The applicant is ordered to pay the costs.*

([1]) OJ C 64, 8.3.2006.

Action brought on 4 June 2008 — Gosselin World Wide Moving v Commission

(Case T-208/08)

(2008/C 223/78)

Language of the case: Dutch

Parties

Applicant: Gosselin World Wide Moving (Deurne, Belgium) (represented by: F. Wijckmans, lawyer, and S. De Keer, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— Annul Commission Decision C(2008)926 final of 11 March 2008, notified to the applicant on 25 March 2008, relating to a proceeding under Article 81 EC (Case COMP/38.543 — International removal services), in so far as it concerns the applicant;

— In the alternative, annul Article 1 of the Decision, in so far as it concerns the applicant, inasmuch as it finds a continuous infringement by the applicant from 31 January 1992 until 18 September 2002, and reduce the fine imposed on it in Article 2, in a manner corresponding to that adjusted period of the infringement;

— In the alternative, annul Article 2(e) of the Decision, in so far as it concerns the applicant, on the grounds set out in the second and/or third pleas, and reduce correspondingly the fine imposed on it in Article 2;

— Order the Commission to pay the costs.

Pleas in law and main arguments

The applicant's first plea alleges that the Decision infringes Article 81 EC. The first part of the plea submits that the Commission has not proved that the acts alleged against the applicant are to be classified as an appreciable restriction of competition for the purposes of Article 81 EC. The second part submits that the Commission has not correctly proved that that the agreement in which the applicant participated could appreciably affect trade between Member States.

In the alternative, the second plea submits that the Decision infringed Article 23 of Regulation No 1/2003 ([1]), Regulation No 17/62 ([2]), and the Guidelines on the method of setting fines ([3]). Those provisions were infringed when the Commission determined the gravity of the infringement, its duration, the value of turnover with regard to setting the basic amount of the fine, and rejected the existence of any mitigating circumstances for the applicant for the purposes of the fine.

In the alternative, the third plea alleges breach of the principle of equal treatment, in particular when the Commission determined the gravity of the infringement and the value of relevant turnover for the purposes of the fine.

([1]) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (Text with EEA relevance) (OJ 2003 L 1, p. 1).
([2]) Council Regulation No 17 : First Regulation implementing Articles 85 and 86 of the Treaty (OJ, English Special Edition, 1962, p. 87).
([3]) Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 (Text with EEA relevance) (OJ 2006 C 210, p. 2).

Action brought on 6 June 2008 — Strack v Commission

(Case T-221/08)

(2008/C 223/79)

Language of the case: German

Parties

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

Defendant: Commission of the European Communities

Form of order sought

— annul the decisions, particularly the decision of 19 May 2008, adopted by the Commission — either actually or in the form of a deemed refusal under Article 8(3) of Regulation (EC) No 1049/2001 — in the context of the processing of the applicant's application for access to documents of 18 January 2008 and 19 January 2008 and his confirmatory application of 22 February 2008, 18 April 2008 and, in particular, 21 April 2008, in so far as they refuse those applications either in part or in full;

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

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

Pleas in law and main arguments

On 18 and 19 January 2008, the applicant applied to the Commission for access to numerous documents. The applicant brings the present application because he was not granted access to those documents, at least partly, within the period provided for.

In support of his application, the applicant submits, in particular, that the defendant infringed Article 255 EC as well as Regulation No 1049/2001 ([1]). In addition, the applicant claims that there has been an infringement of the principles of good administration, Articles 41 and 42 of the Charter of Fundamental Rights and the principles governing the obligation to state reasons for refusal decisions laid down in Article 253 EC.

([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)

Action brought on 9 June 2008 — Sanatur v OHIM — Sektkellerei Schloss Wachenheim (life light)

(Case T-222/08)

(2008/C 223/80)

Language in which the application was lodged: German

Parties

Applicant: Sanatur GmbH (Singen, Germany) (represented by: M. Wiume, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Sektkellerei Schloss Wachenheim AG (Trier, Germany)

Form of order sought

— Annul the decision of the First Board of Appeal of OHIM of 6 March 2008 in Case R 1257/2006-1;

— Alter that decision so that the appeal is dismissed;

— Order the intervener to pay the costs of the proceedings, including the costs of the appeal.

Pleas in law and main arguments

Applicant for a Community trade mark: Sanatur GmbH.

Community trade mark concerned: Word mark 'life light' for goods in Class 32 (Application No 3 192 481).

Proprietor of the mark or sign cited in the opposition proceedings: Sektkellerei Schloss Wachenheim AG.

Mark or sign cited in opposition: German figurative mark 'LIGHT live' for goods in Class 32 (Mark No 302 00 216).

Decision of the Opposition Division: Dismissal of the opposition.

Decision of the Board of Appeal: Annul the decision of the Opposition Division.

Pleas in law: Infringement of Article 8(1)(b) of Regulation (EC) No 40/94 ([1]) in that no likelihood of confusion exists between the conflicting marks.

([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 12 June 2008 — Iranian Tobacco v OHIM — AD Bulgartabac (Bahman)

(Case T-223/08)

(2008/C 223/81)

Language in which the application was lodged: German

Parties

Applicant: Iranian Tobacco Company (Teheran, Iran) (represented by: M. Beckensträter, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: AD Bulgartabac Holding (Sofia, Bulgaria)

Forms of order sought

— Annul the decision of the First Board of Appeal of 10 April 2008 — R 709/2007-1, notified on 15 April 2008;

— Order AD Bulgartabac Holding to pay the reimbursable costs, including those of the main proceedings and including those of the defendant;

— In the alternative, while annulling the decision of 10 April 2008 and that of 7 March 2007 — 1415C — declare that the application by AD Bulgartabac Holding of 8 November 2005 was inadmissible.

Pleas in law and main arguments

Registered Community trade mark in respect of which revocation was applied for: the figurative mark 'Bahman' for goods in Class 34 (Community trade mark No 427 336).

Proprietor of the Community trade mark: Iranian Tobacco Company.

Applicant in the revocation proceedings: AD Bulgartabac Holding.

Decision of the Cancellation Division: Decision declaring the Community trade mark concerned to be revoked.

Decision of the Board of Appeal: Dismissal of the applicant's appeal.

Pleas in law: The admissibility requirements concerning the application by AD Bulgartabac Holding which OHIM is obliged to consider of its own motion were not taken into account, contrary to Community law, Regulation (EC) No 40/94 [1] and other principles of procedure.

[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 13 June 2008 — Mineralbrunnen Rhön-Sprudel Egon Schindel v OHIM — Schwarzbräu (ALASKA)

(Case T-225/08)

(2008/C 223/82)

Language in which the application was lodged: German

Parties

Applicant: Mineralbrunnen Rhön-Sprudel Egon Schindel GmbH (Ebersburg, Germany) (represented by: P. Wadenbach, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Schwarzbräu GmbH (Zusmarshausen, Germany)

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 8 April 2008 (Case R 877/2004-4);

— Completely delete the Community trade mark No 505 552 'ALASKA' owing to the existence of absolute grounds for refusal;

— Order the defendant to bear the costs of the proceedings;

— In the alternative to the second application, declare Community trade mark No 505 552 'ALASKA' invalid at least in respect of the following goods: 'Mineral waters and carbonated waters and other non-alcoholic drinks in Class 32'.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: the figurative mark 'ALASKA' for goods in Class 32 (Community trade mark No 505 552)

Proprietor of the Community trade mark: Schwarzbräu GmbH

Applicant for the declaration of invalidity: Mineralbrunnen Rhön-Sprudel Egon Schindel GmbH

Decision of the Cancellation Division: Rejection of the application for the declaration of invalidity of the trade mark concerned.

Decision of the Board of Appeal: Dismissal of the applicant's appeal.

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

[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 13 June 2008 — Mineralbrunnen Rhön-Sprudel Egon Schindel v OHIM — Schwarzbräu (Alaska)

(Case T-226/08)

(2008/C 223/83)

Language in which the application was lodged: German

Parties

Applicant: Mineralbrunnen Rhön-Sprudel Egon Schindel GmbH (Ebersburg, Germany) (represented by: P. Wadenbach, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Schwarzbräu GmbH (Zusmarshausen, Germany)

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 8 April 2008 (Case R 1124/2004-4);

— cancel Community trade mark No 505 503 'Alaska' entirely, on account of the existence of absolute grounds for refusal;

— order the defendant to pay the costs;

— in the alternative to the second head of claim, declare Community trade mark No 505 503 'Alaska' invalid in respect, at least, of the following goods: 'Mineral and aerated waters and other non-alcoholic drinks in class 32'.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: Word mark 'Alaska' for goods in class 32 (Community trade mark No 505 503).

Proprietor of the Community trade mark: Schwarzbräu GmbH.

Applicant for the declaration of invalidity: The applicant.

Decision of the Cancellation Division: Application for a declaration of invalidity of the trade mark concerned granted in part.

Decision of the Board of Appeal: Annulment of the contested decision and dismissal of the application for a declaration of invalidity of the trade mark concerned.

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

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

Action brought on 17 June 2008 — Asenbaum Fine Arts v OHIM (WIENER WERKSTÄTTE)

(Case T-230/08)

(2008/C 223/84)

Language of the case: German

Parties

Applicant: Asenbaum Fine Arts Ltd (London, United Kingdom) (represented by: P. Vögel, lawyer)

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

Form of order sought

— Alter the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market of 10 April 2008 (R 1573/2006-4) so as to allow the applicant's appeal of 29 November 2006 in its entirety, or in the alternative, to allow the appeal for Classes 6, 11 (excluding lamps (electric), fitted lamps, ceiling lamps and floor lamps), 14 (excluding chocolates), 16, 20, 21 (excluding chocolates) and 34;

In the alternative annul the contested decision and refer the matter back to the Office for Harmonisation in the Internal Market to complete the proceedings;

— Order the Office for Harmonisation in the Internal Market to pay the costs of the proceedings, including the costs of the appeal proceedings.

Pleas in law and main arguments

Community trade mark concerned: Word mark 'WIENER WERKSTÄTTE' for goods in Classes 6, 11, 14, 16, 20, 21 and 34 (Application No 4 133 501).

Decision of the Examiner: Application rejected.

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 that the trade mark applied for is neither descriptive nor devoid of 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 17 June 2008 — Asenbaum Fine Arts v OHIM (WIENER WERKSTÄTTE)

(Case T-231/08)

(2008/C 223/85)

Language of the case: German

Parties

Applicant: Asenbaum Fine Arts Ltd (London, United Kingdom) (represented by: P. Vögel, lawyer)

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

Form of order sought

— Alter the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market of 10 April 2008 (R 1571/2006-4) so as to allow the applicant's appeal of 29 November 2006 in its entirety;

  In the alternative annul the contested decision and refer the matter back to the Office for Harmonisation in the Internal Market to complete the proceedings;

— Order the Office for Harmonisation in the Internal Market to pay the costs of the proceedings, including the costs of the appeal proceedings.

Pleas in law and main arguments

Community trade mark concerned: Word mark 'WIENER WERKSTÄTTE' for goods in Class 14 (Application No 4 207 783).

Decision of the Examiner: Application rejected.

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 that the trade mark applied for is neither descriptive nor devoid of 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 16 June 2008 — MPDV Mikrolab v OHIM (ROI ANALYZER)

(Case T-233/08)

(2008/C 223/86)

Language of the case: German

Parties

Applicant: MPDV Mikrolab GmbH, Mikroprozessordatenverarbeitung und Mikroprozessorlabor (Mosbach, Germany) (represented by: W. Göpfert, 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 OHIM of 15 April 2008 in Case R 1525/2006-4;

— Order the defendant to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: Word mark 'ROI ANALYZER' for goods and services in Classes 9, 35 and 42 (Application No 4 866 042).

Decision of the Examiner: Application rejected in part.

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 that the trade mark applied for does not lack distinctive character and no requirement of availability exists for it.

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

Action brought on 16 June 2008 — HPA v Commission

(Case T-236/08)

(2008/C 223/87)

Language of the case: Dutch

Parties

Applicant: Hoofdproductschap Akkerbouw (The Hague, Netherlands) (represented by: R.J.M. van den Tweel)

Defendant: Commission of the European Communities

Form of order sought

— declare non-existent, or at least annul, Commission Decision C(2006)7093/6 of 19 December 2006 concerning the recovery of Claim No 3240206544 payable jointly and severally by the members of the European Economic Interest Grouping (EEIG) Euroterroirs, within the framework of Project No 93.EU.06.002 concerning a study to compile an inventory on European heritage in respect of typical and regional agricultural and food products (certified local and regional products), at any rate in so far as the Hoofdproductschap Akkerbouw is thereby held to be jointly and severally liable for the full amount of the aforementioned claim;

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicant challenges the recovery of a claim from Euroterroirs established by Commission decision of 14 August 2000. According to the applicant, the contested decision must, at least to the extent to which the applicant is thereby declared to be jointly and severally liable for the full amount of the claim, be declared to be non-existent and void, in view of the fact that that decision is vitiated by particularly serious and manifest defects. The applicant further contends that a ruling can be given to the effect that the decision has given rise to no effects in law even after expiry of the period within which that decision ought to have been challenged.

By its first plea, the applicant submits that there has been a breach of Regulation No 2137/85 [1] inasmuch as the applicant has never been a member of the European Economic Interest Grouping (EEIG) Euroterroirs and for that reason cannot be liable.

Second, the applicant alleges infringement of the rights of the defence. The Commission, it submits, failed to provide the applicant with an opportunity to set out its views before the Commission adopted the contested decision, and notified the applicant of the claim established by decision of 14 August 2000 only when it sent the contested decision to the applicant.

Third, the applicant submits that the principle of proportionality has been infringed. The Commission, it claims, declared the applicant to be jointly and severally liable six years after the claim was established without first having itself taken appropriate measures against Euroterroirs, against the establishing member — and also the administrator — of Euroterroirs, namely the Conseil national des Arts Culinaires (CNAC) in France, or against the Member State France. In addition, the applicant submits, the Netherlands expert engaged for individual inventarising activities in 1994/1995 in the context of the Euroterroirs project received remuneration of merely EUR 13 055.

In conclusion, the applicant submits that the claim is time-barred in view of the fact that the Commission sent the disputed debit note to Euroterroirs on 28 September 2000 without subsequently informing the applicant in good time of activities which might have suspended the limitation period.

[1] Council Regulation (EEC) No 2137/85 of 25 July 1985 on the European Economic Interest Grouping (EEIG) (OJ 1985 L 199, p. 1).

Action brought on 19 June 2008 — Commission v Commune de Valbonne

(Case T-238/08)

(2008/C 223/88)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: L. Escobar Guerrero, acting as Agent, and E. Bouttier, lawyer)

Defendant: Commune de Valbonne

Form of order sought

— Order the Commune de Valbonne, represented by its current mayor, to pay the applicant the sum of EUR 18 619,38 corresponding to the principal sum of EUR 14 261,29 and late-payment interest thereon of EUR 4 358,09 due from 31 May 2008;

— Order the Commune de Valbonne to pay the sum of EUR 5 000 in order to cover the costs the applicant was obliged to incur to recover the debt;

— Order the Commune de Valbonne to pay the costs.

Pleas in law and main arguments

For 1998 and 1999, the Commission concluded, with the Commune de Valbonne (municipality of Valbonne) in France, the municipality of Fermo in Italy and the European Economic Interest Group ARCHI-MED, a research and training contract relating to a mutual education project between the city of Valbonne and the province of Di Ascoli Piceno, called 'VALASPI MM 1027'.

The municipalities and ARCHI-MED undertook, inter alia, to supply the Commission with a final report. Since they did not supply that report following a letter of formal notice from the Commission, the Commission took the view that the contracting parties had failed to fulfil their obligations under the contract and terminated it, requesting reimbursement of part of the advances paid by the Commission, together with interest.

Faced with ARCHI-MED's insolvency, the Commission seeks an order that the defendant pay the sums due, since the contracting parties were jointly and severally liable to perform the contract.

Action brought on 23 June 2008 — Konsum Nord v Commission

(Case T-244/08)

(2008/C 223/89)

Language of the case: Swedish

Parties

Applicant: Konsum Nord ekonomisk förening (Umeå, Sweden) (represented by: U. Öberg, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— Annul in its entirety Commission Decision C(2008) 311 final of 30 January 2008 on the State aid implemented by Sweden for Konsum Jämtland ekonomisk förening;

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

Pleas in law and main arguments

By decision of 30 January 2008 on State aid No C 35/2006 (ex NN 37/2006) implemented by Sweden for Konsum Jämtland, which merged with the applicant in 2006, the Commission found that the sale by the municipality of Åre of parts of an unbuilt plot of land for SEK 2 million instead of SEK 6,6 million, which was offered by Konsum Jämtland's competitor, Lidl, constituted State aid contrary to Article 87 EC.

The applicant submits in support of its action that the Commission has committed a series of incorrect assessments in its legal classification of the disputed sale as State aid since:

— the Commission incorrectly found that the sale was not at the market price and thus constituted an economic advantage for Konsum Jämtland;

— the Commission did not take into consideration the fact that the sale formed part of a series of land transactions undertaken between different parties, the purpose of which was the implementation of detailed plans for the village of Åre;

— the Commission incorrectly assumed that the offer made by the competitor, Lidl, was incompatible with a number of conditions and that it was binding and credible; and

— the Commission wrongly applied the principle of a private investor in a market economy.

Further, the applicant submits that the Commission disregarded its own guidelines in the Communication on State aid elements in sales of land and buildings by public authorities ([1]) and failed to fulfil its duty of inquiry since it failed to examine all the factual circumstances.

Finally, the applicant asserts that the alleged State aid neither distorts competition nor affects trade between the Member States.

([1]) OJ 1997 C 209, p. 3.

Action brought on 20 June 2008 — Iranian Tobacco v OHIM — AD Bulgartabac (TIR 20 FILTER CIGARETTES)

(Case T-245/08)

(2008/C 223/90)

Language in which the application was lodged: German

Parties

Applicant: Iranian Tobacco Company (Tehran, Iran) (represented by: M. Beckensträter, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: AD Bulgartabac Holding (Sofia, Bulgaria)

Form of order sought

— annul the decision of the First Board of Appeal of 11 April 2008 (Case R 708/2007-1), notified on 21 April 2008;

— order the third party to pay the refundable costs, including those of the main proceedings and of the defendant;

— in the alternative, annul the decision of 11 April 2008 and that of 7 March 2007 — 1414C — and hold the third party's application of 8 November 2005 to be inadmissible.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: the figurative mark 'TIR 20 FILTER CIGARETTES' for goods in Class 34 (Community trade mark No 400 804).

Proprietor of the Community trade mark: the applicant.

Applicant for the declaration of invalidity: AD Bulgartabac Holding.

Decision of the Cancellation Division: cancellation of the relevant Community trade mark.

Decision of the Board of Appeal: dismissal of the applicant's appeal.

Pleas in law: conditions of admissibility to be taken into consideration ex officio by OHIM concerning AD Bulgartabac Holding's application were not examined, contrary to Community law, to Regulation (EC) No 40/94 ([1]) and to other procedural principles.

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

Appeal brought on 23 June 2008 by Frantisek Doktor against the judgment of the Civil Service Tribunal delivered on 16 April 2008 in Case F-73/07, *Doktor* v *Council*

(Case T-248/08 P)

(2008/C 223/91)

Language of the case: French

Parties

Appellant: Frantisek Doktor (Bratislava, Slovakia) (represented by S. Rodrigues and C. Bernard-Glanz, lawyers)

Other party to the proceedings: Council of the European Union

Form of order sought by the appellant

— Annul the judgment delivered by the European Union Civil Service Tribunal on 16 April 2008 in Case F-73/07;

— Grant the pleas seeking annulment and compensation submitted by the applicant at first instance;

— Order the defendant at first instance to pay all the costs of the action for annulment and of the appeal.

Pleas in law and main arguments

By the present appeal, the appellant seeks annulment of the judgment of the Civil Service Tribunal (CST) of 16 April 2008, delivered in Case F-73/07 *Doktor* v *Council*, dismissing the action by which the applicant had sought, on the one hand, annulment of the decision of the Council to dismiss the applicant at the end of his probationary period and, on the other, damages in compensation for the professional, financial and non-pecuniary losses allegedly suffered.

In support of his appeal, the appellant submits that the CST i) distorted the clear sense of certain pieces of evidence, in particular by basing a number of its conclusions on an incorrect material assessment of the elements of the documents submitted to it; ii) infringed the applicant's rights of the defence by not taking into consideration or not answering a number of elements or arguments put before it; and iii) committed two errors in law with respect to its interpretation of Community law relating to the applicant's right to complete his probationary period under normal conditions and to the administration's ability to supplement the reasoning of a complaint during the written procedure before the Community Courts.

Action brought on 26 June 2008 — Vion v OHIM (PASSION FOR BETTER FOOD)

(Case T-251/08)

(2008/C 223/92)

Language in which the application was lodged: German

Parties

Applicant: Vion NV (Best, Netherlands) (represented by A. Klinger, lawyer)

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

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 25 April 2008 (Case R 562/2007-4);

— order the defendant to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: Word mark 'PASSION FOR BETTER FOOD' for goods in classes 5, 29 and 30 (Application for registration No 5 039 946).

Decision of the Examiner: Application dismissed.

Decision of the Board of Appeal: Appeal dismissed.

Pleas in law: Infringement of Article 7(1)(b) of Regulation (EC) No 40/94, ([1]) as the trade mark applied for is sufficiently distinctive.

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

Action brought on 26 June 2008 — Associazione Giullemanidallajuve v Commission

(Case T-254/08)

(2008/C 223/93)

Language of the case: French

Parties

Applicant: L'Associazione Giullemanidallajuve (Garibaldi, Italy) (represented by: L.Misson, G. Ernes and A. Kettels, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— declare that the Commission has failed to act;

— instruct the Commission to use its powers and to reply to the complaint lodged by the applicant in May 2007;

— obtain all the information necessary for that purpose.

Pleas in law and main arguments

The applicant claims that theCommission failed to fulfil its obligation to act in that after being invited to do so it did not express its opinion on the complaint lodged by the applicant with the Commission in May 2007 concerning alleged contraventions of Articles 81 and 82 EC committed by the Federazione Italiana Giuoco Calcio (FIGC), the Comitato Olimpico Nazionale Italiano (CONI), the Union of European Football Associations (UEFA) and the Fédération Internationale de Football Association (FIFA).

The applicant considers that the letter which was sent to it by the Commission in March 2008 further to the invitation to act and which informed it that the case was being dealt with, does not represent an expression of opinion, since the letter did not provide any replies on the substance of the requests made by the applicant.

The applicant also claims that, in the area of competition, a complainer is entitled to expect that its complaint will be examined thoroughly by the Commission, and that a reasoned opinion will be expressed.

Action brought on 30 June 2008 — Biotronik v OHIM (BioMonitor)

(Case T-257/08)

(2008/C 223/94)

Language of the case: German

Parties

Applicant: Biotronik Meβ- und Therapiegeräte GmbH (Berlin, Germany) (represented by: U. Sander and R. Böhm, 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 24 April 2008 in Case No R 466/2007-4;

— Order the defendant to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: Word mark 'BioMonitor' for goods and services in Classes 9, 10 and 38, in which the additional list of goods for Class 10 would be restricted (Application No 4 556 023).

Decision of the Examiner: Application rejected.

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 that the trade mark applied for does not lack distinctive character and it is not a descriptive term.

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

Action brought on 30 June 2008 — Rath v OHIM — Portela & Ca. (DIACOR)

(Case T-258/08)

(2008/C 223/95)

Language in which the application was lodged: English

Parties

Applicant: Matthias Rath (Cape Town, South Africa) (represented by: U. Vogt, C. Kleiner and S. Ziegler, lawyers)

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

Other party to the proceedings before the Board of Appeal: Portela & Ca., SA (Mamede do Coronado, Portugal)

Form of order sought

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 30 April 2008 in case R 1630/2006-2; and

— Order the defendant and, if the case may be, the other party to the proceedings before the Board of Appeal to pay the costs.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The word mark 'DIACOR' for goods and services in classes 5, 16 and 41

Proprietor of the mark or sign cited in the opposition proceedings: The other party to the proceedings before the Board of Appeal

Mark or sign cited: Portuguese trade mark registration No 137 311 of the mark 'DIACOL' for goods in class 79, in accordance with the national classification of goods in force at the time of registration

Decision of the Opposition Division: Upholding of the opposition for all the contested goods in class 5

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: (i) Infringement of Article 22(6) of Commission Regulation No 2868/95 ([1]) as several documents submitted by the other party to the proceedings before the Board of Appeal were not in English and no translation had been provided to the applicant in order to assess the content of the evidence of use; (ii) Infringement of Article 43(2) and (3) of Council Regulation No 40/94 as the Board of Appeal erred in its opinion that the other party to the proceedings before it had submitted sufficient evidence for the proof of use of the earlier mark in Portugal for all the goods for which it has been registered; and (iii) Infringement of Article 8(1) of Council Regulation No 40/94 as the conflicting trade marks show no visual, phonetic or conceptual similarities, such as to trigger a likelihood of confusion.

([1]) Regulation (EC) No 2868/1995 of the Commission of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark (OJ 1995 L 303, p. 1).

Action brought on 3 July 2008 — Indo Internacional v OHIM — Visual (VISUAL MAP)

(Case T-260/08)

(2008/C 223/96)

Language in which the application was lodged: English

Parties

Applicant: Indo Internacional, SA (Sant Cugat del Vallès, Spain) (represented by: X. Fàbrega Sabaté and M. Curell Aguilà, lawyers)

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

Other party to the proceedings before the Board of Appeal: Visual SA (Saint Apollinaire, France)

Form of order sought

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 15 April 2008 in case R 700/2007-1; and

— Order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The word mark 'VISUAL MAP' for services in class 44 — application No 393 2936

Proprietor of the mark or sign cited in the opposition proceedings: The other party to the proceedings before the Board of Appeal

Mark or sign cited: French trade mark registration No 043 303 854 of the word mark 'VISUAL' for services in class 44

Decision of the Opposition Division: Rejection of the Community trade mark application in its entirety

Decision of the Board of Appeal: Dismissal of the appeal

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

Action brought on 8 July 2008 — Canon Communications v OHIM — Messe Düsseldorf (MEDTEC)

(Case T-262/08)

(2008/C 223/97)

Language in which the application was lodged: English

Parties

Applicant: Canon Communications LLC (Los Angles, United States) (represented by: M. Mak, lawyer)

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

Other party to the proceedings before the Board of Appeal: Messe Düsseldorf GmbH (Düsseldorf, Germany)

Form of order sought

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 30 April 2008 in case R 817/2005-1; and

— Order the defendant/the other party to the proceedings before the Board of Appeal to pay the costs.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The word mark 'MEDTEC' for goods and services in classes 16, 35 and 41

Proprietor of the mark or sign cited in the opposition proceedings: The other party to the proceedings before the Board of Appeal

Mark or sign cited: German trade mark registration No 39 975 563 of the word mark 'Metec' for goods and services in classes 16, 35 and 41; international trade mark registration No 752 637 of the word mark 'Metec' for goods and services in classes 16, 35 and 41

Decision of the Opposition Division: Upheld the opposition with respect to all the contested goods and services

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: The decision of the Board of Appeal should be annulled on the ground that there is a considerable chance that the national trade marks cited in the opposition proceedings are void; alternatively, infringement of Article 8(1) of Council Regulation No 40/94 as there is no similarity between the services concerned and therefore no likelihood of confusion between the conflicting trade marks, or, in the alternative, that the services concerned are not sufficiently similar to conclude that there is a likelihood of confusion. In the alternative, it should be established that the Board of Appeal erred in not considering the fact that the public concerned is highly specialised and will therefore not confuse the conflicting trade marks. Finally, as an alternative plea in law, it should be established that the Board of Appeal erred in not taking into account the fact that the other party to the proceedings before the Board of Appeal tolerated the use of the Community trade mark concerned by the applicant for more than five years.

Action brought on 7 July 2008 — Becker Flugfunkwerk v OHIM — Harman Becker Automotive Systems (BECKER AVIONIC SYSTEMS)

(Case T-263/08)

(2008/C 223/98)

Language in which the application was lodged: English

Parties

Applicant: Becker Flugfunkwerk GmbH (Rheinmünster, Germany) (represented by: O. Griebenow, lawyer)

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

Other party to the proceedings before the Board of Appeal: Harman Becker Automotive Systems GmbH (Karlsbad, Germany)

Form of order sought

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 10 April 2008 in case R 398/2007-1; and

— Refuse opposition No B 484 503 relating to Community trade mark application No 1 829 563.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The figurative mark 'BECKER AVIONIC SYSTEMS' for goods in class 9, application No 1 829 563

Proprietor of the mark or sign cited in the opposition proceedings: The other party to the proceedings before the Board of Appeal

Mark or sign cited: United Kingdom trade mark registration No 1 258 929 of the word mark 'BECKER' for goods in class 9; German trade mark registration No 1 039 843 of the figurative mark 'BECKER' for goods in class 9; German trade mark registration No 1 016 927 of the figurative mark 'BECKER' for goods in class 37; Finnish trade mark registration No 116 880 of the word mark 'BECKER' for goods in class 9; Greek trade mark registration No 82339 of the word mark 'BECKER' for goods in class 9; International trade mark registration No 473 178 of the word mark 'BECKER' for goods in class 9

Decision of the Opposition Division: Uphold the opposition with respect to all the contested goods

Decision of the Board of Appeal: Dismissal of the appeal

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

Action brought on 4 July 2008 — Germany v Commission

(Case T-265/08)

(2008/C 223/99)

Language of the case: German

Parties

Applicant: Federal Republic of Germany (represented by: M. Lumma and U. Karpenstein, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— Annul Commission Decision C(2008) 1690 final of 30 April 2008 reducing the assistance from the European Regional Development Fund (ERDF) for an operational programme in the Objective 1 region Thuringia in the Federal Republic of Germany (1994-1999);

— Order the Commission to pay the costs.

Pleas in law and main arguments

In the contested decision, the Commission, reduced the financial assistance from the ERDF for the operational programme in the Objective 1 region Thuringia in the Federal Republic of Germany (1994-1999).

The applicant relies on four grounds in support of its action.

Firstly, it complains that the Commission did not correctly assess important elements of fact in connection with priority axis 2.1 of the operational programme at issue (support measures for small and medium-sized enterprises: support for productive investment).

Second, the applicant alleges an infringement of Article 24(2) of Regulation (EEC) No 4253/88 [1] since no irregularities within the meaning of that provision have occurred. In that connection, it argues, in particular, that that provision does not permit the Commission to make financial corrections for administrative errors or allegedly inadequate systems of administration or supervision.

In addition, the applicant, argues that the Commission is not permitted to carry out extrapolated financial corrections under Regulation No 4253/88, since Article 24 of that provision refers to concrete cases and assistance which may be expressed in figures and not to hypothetical conclusions of systematic misadministration drawn on the basis of an administrative error which has been discovered.

Finally, the applicant complains that there is an infringement of Articles 23 and 24 of Regulation No 4253/88 even if it is accepted that extrapolated financial corrections are permitted inasmuch as the extrapolations are erroneous. It argues in that connection that the Commission should not have emphasised extrapolations based on the analysis of weak points by the Court of Auditors of the European Communities, that the Commission is partly to blame for the matters of which it complains and that the extrapolations at issue infringe the principle of proportionality.

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

Action brought on 11 July 2008 — Italy v Commission

(Case T-274/08)

(2008/C 223/100)

Language of the case: Italian

Parties

Applicant: Italian Republic (represented by: S. Fiorentino, Avvocato dello Stato)

Defendant: Commission of the European Communities

Form of order sought

— Annul Commission Decision C (2008) 1711 of 30 April 2008 on the clearance of the accounts of the paying agencies of Member States concerning expenditure financed by the European Agricultural Guarantee Fund (EAGF) for the 2007 financial year.

Pleas in law and main arguments

The decision that is the subject of these proceedings is challenged in so far as it charges interest on sums to be borne by the Italian State budget pursuant to Article 32(5) of Regulation (EC) No 1290/05 and, in particular, in so far as it accounts for interest, with effect from the date of payment of sums that are not due, on sums which have not been recovered within eight years of the date of the primary administrative or judicial procedure and where judicial proceedings are pending before the national courts or tribunals, 50 % of which is to be borne by the Member State and 50 % by the Community budget.

In support of its action, the applicant Government claims infringement of Article 32(5) of Regulation (EC) No 1290/05. That measure cannot be interpreted as meaning that, where recovery is being disputed in legal proceedings, interest must be charged, both because the literal wording of paragraph 5 makes no such provision (unlike paragraph 1 of that provision) and because the date from which interest runs can be established only once a judicial finding has been made.

Action brought on 11 July 2008 — Italy v Commission

(Case T-275/08)

(2008/C 223/101)

Language of the case: Italian

Parties

Applicant: Italian Republic (represented by: S. Fiorentino, avvocato dello Stato)

Defendant: Commission of the European Communities

Form of order sought

— annul Commission Decision C (2008) 1709 final of 30 April 2008 on the clearance of the accounts of certain paying agencies of Germany, Italy and Slovakia concerning expenditure financed by the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) in respect of the 2006 financial year, in so far as it charges interest on sums to be borne by the Italian State pursuant to Article 32(5) of Regulation (EC) No 1290/05 and, in particular, in so far as it accounts for interest, with effect from the date of payment of sums that are not due, on sums which have not been recovered within eight years of the date of the primary administrative or judicial procedure and where judicial proceedings are pending before the national courts or tribunals, 50 % of which is to be borne by the Member State and 50 % by the Community budget.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those relied on in Case T-274/08 *Italian Republic* v *Commission*.

Order of the Court of First Instance of 10 July 2008 — Jungbunzlauer and Others v Commission

(Case T-492/04) ([1])

(2008/C 223/102)

Language of the case: German

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

([1]) OJ C 82, 2.4.2005.

Order of the Court of First Instance of 10 July 2008 — Elini v OHIM — Rolex (Elini)

(Case T-67/06) ([1])

(2008/C 223/103)

Language of the case: French

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

([1]) OJ C 96, 22.4.2006.

Order of the Court of First Instance of 9 July 2008 — CityLine Hungary v Commission

(Case T-237/07) ([1])

(2008/C 223/104)

Language of the case: Hungarian

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

([1]) OJ C 211, 8.9.2007.

Order of the Court of First Instance of 16 June 2008 — Cyprus v Commission

(Case T-87/08) ([1])

(2008/C 223/105)

Language of the case: Greek

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

([1]) OJ C 142, 7.6.2008.

Order of the Court of First Instance of 16 June 2008 — Cyprus v Commission

(Case T-88/08) ([1])

(2008/C 223/106)

Language of the case: Greek

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

([1]) OJ C 142, 7.6.2008.

Order of the Court of First Instance of 16 June 2008 — Cyprus v Commission

(Case T-91/08) ([1])

(2008/C 223/107)

Language of the case: Greek

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

([1]) OJ C 142, 7.6.2008.

Order of the Court of First Instance of 16 June 2008 — Cyprus v Commission

(Case T-92/08) ([1])

(2008/C 223/108)

Language of the case: Greek

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

([1]) OJ C 142, 7.6.2008.

Order of the Court of First Instance of 16 June 2008 — Cyprus v Commission

(Case T-93/08) ([1])

(2008/C 223/109)

Language of the case: Greek

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

([1]) OJ C 142, 7.6.2008.

Order of the Court of First Instance of 16 June 2008 — Cyprus v Commission

(Case T-119/08) ([1])

(2008/C 223/110)

Language of the case: Greek

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

([1]) OJ C 142, 7.6.2008.

Order of the Court of First Instance of 16 June 2008 — Cyprus v Commission

(Case T-122/08) ([1])

(2008/C 223/111)

Language of the case: Greek

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

([1]) OJ C 142, 7.6.2008.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Order of the Civil Service Tribunal (Second Chamber) of 21 February 2008 — Vande Velde v Commission

(Case F-60/05) [1]

(Staff — Contract staff member — Late claim — Action manifestly inadmissible)

(2008/C 223/112)

Language of the case: French

Parties

Applicant: Patricke Vande Velde (Linkebeek, Belgium) (represented by: L. Vogel, lawyer)

Defendant: Commission of the European Communities (represented by: J. Currall and G. Berscheid, acting as Agents)

Intervener in support of the form of order sought by the defendant: Council of the European Union (represented by: M. Arpio Santacruz and I. Sulce, acting as Agents)

Re:

Staff case — First, annulment of the Commission's decision rejecting the complaint submitted by the applicant, a former member of the auxiliary staff, against the decision fixing his grade and remuneration as a contract staff member and, secondly, an application for damages (formerly T-268/05)

Operative part of the order

1. *The action is dismissed as manifestly inadmissible.*

2. *Each party shall bear its own costs.*

[1] OJ C 229, 17.9.2005, p. 30 (case originally registered at the Court of First Instance of the European Communities as Case T 268/05 and transferred to the European Union Civil Service Tribunal by order of 15.12.2005).

Order of the Civil Service Tribunal of 21 February 2008 — Arana de la Cal v Commission

(Case F-63/05) [1]

(Staff — Contractual agent — Late claim — Action manifestly inadmissible)

(2008/C 223/113)

Language of the case: French

Parties

Applicant: Miriam Arana de la Cal (Brussels, Belgium) (represented by: L. Vogel, lawyer)

Defendant: Commission of the European Communities (represented by: J. Currall and G. Berscheid, acting as Agents)

Intervener in support of the form of order sought by the defendant: Council of the European Union (represented by: M. Arpio Santacruz and I. Sulce, acting as Agents)

Re:

First, annulment of the Commission's decision rejecting the complaint submitted by the applicant, a former member of the auxiliary staff, against the decision fixing her grade and remuneration as a contract staff member and, secondly, an application for damages (formerly T-271/05)

Operative part of the order

1. *The action is dismissed as manifestly inadmissible.*

2. *Each party shall bear its own costs.*

[1] OJ C 229, 17.9.2005, p. 31 (case originally registered at the Court of First Instance of the European Communities as Case T-271/05 and transferred to the European Union Civil Service Tribunal by order of 15.12.2005).

Order of the Civil Service Tribunal of 5 June 2008 — Timmer v Court of Auditors

(Case F-123/06) ([1])

(Staff — Officials — Assessment — Time-limit for lodging a complaint — New fact — Inadmissibility)

(2008/C 223/114)

Language of the case: French

Parties

Applicant: Marianne Timmer (Saint-Sauves-d'Auvergne, France) (represented by: F. Rollinger, lawyer)

Defendant: Court of Auditors of the European Communities (represented by: T. Kennedy, J.-M. Stenier and G. Corstens, acting as Agents)

Re:

Firstly, annulment of all the applicant's staff reports drawn up by M.L. and the connected and/or subsequent decisions, including that appointing M L. and, secondly, an application for damages.

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *Each party shall bear its own costs.*

([1]) OJ C 326, 30.12.2006, p. 84.

Order of the Civil Service Tribunal of 21 April 2008 — Boudova and Others v Commission

(Case F-78/07) ([1])

(Civil service — Officials — Appointment — Classification in grade — Competition published before the entry in force of the new Staff Regulations — Act adversely affecting a party — Admissibility of the action)

(2008/C 223/115)

Language of the case: French

Parties

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

Defendant: Commission of the European Communities (represented by: J. Currall and G. Berscheid, agents)

Re:

Annulment of the decision rejecting the requests for review of the classification in grade of the applicants, former auxiliary agents appointed officials after they passed open competitions for grades B5/B4 — Application for damages

Operative part of the order

1. *The action is dismissed as manifestly inadmissible.*

2. *Each party is to bear its own costs.*

([1]) OJ C 247, 20.10.2007, p. 42.

Order of the Civil Service Tribunal (Second Chamber) of 26 June 2008 — Nijs v Court of Auditors

(Case F-108/07) ([1])

(Civil service — Officials — Article 44(1)(c) of the Rules of Procedure of the Court of First Instance — Summary of the pleas in law in the application — No prior administrative complaint — Manifestly inadmissible)

(2008/C 223/116)

Language of the case: French

Parties

Applicant: Bart Nijs (Bereldange, Luxembourg) (represented by: F. Rollinger, lawyer)

Defendant: Court of Auditors (represented by: T. Kennedy, J.-M Stenier and G. Corstens, agents)

Re:

Annulment of the decision of the Court of Auditors to renew the mandate for its Secretary General for a period of six years starting on 1 July 2007 and, alternatively, of the decision of the Appointing Authority not to promote the applicant to the grade LA5 for the 2004 promotion exercise following the judgment of the Court of First Instance of 3 October 2006 in Case T-171/05 *Nijs* v *Court of Auditors*

Operative part of the order

1. *The action is dismissed as manifestly inadmissible.*

2. *Mr Nijs is ordered to pay all the costs.*

(1) OJ C 22 of 26.1.2008, p. 56.

Order of the Civil Service Tribunal of 26 June 2008 — Nijs v Court of Auditors

(Case F-136/07) (1)

(Staff — Officials — Previous complaint — Defect — Time-limit for instituting proceedings — Lateness — Manifest inadmissibility)

(2008/C 223/117)

Language of the case: French

Parties

Applicant: Bart Nijs (Béreldange, Luxembourg) (represented initially by: F. Rollinger; subsequently by: F. Rollinger and A. Hertzog, lawyers)

Defendant: Court of Auditors of the European Communities (represented by: T. Kennedy, J.-M. Stenier and G. Corstens, acting as Agents)

Re:

Annulment, on the one hand, of the decision of the Appointing Authority of 5 September 2007 to demote the applicant to Grade AD9, step 5, following a disciplinary procedure and, on the other, of the decisions to suspend him from his post, to open an administrative enquiry with regard to him and not to promote him to Grade AD 11 in 2007 — Claim for compensation for non-material and material harm

Operative part of the order

1. *The action is dismissed as manifestly inadmissible.*

2. *Mr Nijs is ordered to pay all the costs.*

(1) OJ C 79, 29.3.2008, p. 37.

Action brought on 29 May 2008 — Bernard v Europol

(Case F-54/08)

(2008/C 223/118)

Language of the case: Dutch

Parties

Applicant: Marjorie Bernard (The Hague, Netherlands) (represented by: P. de Casparis, lawyer)

Defendant: European Police Office (Europol)

Subject-matter and description of the proceedings

Annulment of the decision of Europol to extend the applicant's contract of employment for only the minimum period of 9 months.

Form of order sought

— annul the decision of 31 July 2007 to renew the applicant's contract of employment only until 1 June 2008 and the decision on the complaint of 29 February 2008;

— order Europol to pay the costs.

Action brought on 30 June 2008 — Klug v European Medicines Agency

(Case F-59/08)

(2008/C 223/119)

Language of the case: German

Parties

Applicant: Bettina Klug (Wiesbaden, Germany) (represented by: S. Zickgraf, lawyer)

Defendant: European Medicines Agency

Subject-matter and description of the proceedings

Annulment of the performance evaluation report drawn up by the defendant in respect of the applicant for the period from 31 December 2004 to 31 December 2006, and order for payment by the defendant of compensation for material and non-material damage.

Form of order sought

— Declare the performance evaluation report drawn up by the defendant in respect of the applicant for the period from 31 December 2004 to 31 December 2006 void;

— declare the non-renewal of the applicant's employment contract unlawful;

— order the defendant to pay to the applicant compensation for material damage in the sum of EUR 200 000;

— order the defendant to pay to the applicant compensation for non-material damage in the sum of EUR 35 000.

Action brought on 25 June 2008 — Z v Commission

(Case F-60/08)

(2008/C 223/120)

Language of the case: French

Parties

Applicant: Z (Brussels, Belgium) (represented by: S. Orlandi, A. Coolen, J.-N Louis, E. Marchal)

Defendant: Commission of the European Communities

Subject-matter and description of the proceedings

Annulment of the Commission decision to apply to the applicant, following to the opinion of the Invalidity Committee, the proviso laid down in Article 100 of the CEOS.

Form of order sought

— annul the Commission decision of 7 September 2007 fixing the conditions of employment of the applicant as a member of the contract staff for auxiliary tasks in so far as they provide for the application of the proviso laid down in Article 100 of the CEOS;

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

Order of the Civil Service Tribunal of 13 February 2008 — Ghem v Commission

(Case F-62/05) ([1])

(2008/C 223/121)

Language of the case: French

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

([1]) OJ C 229, 17.9.2008, p. 31 (initial judgment by the Court of First Instance of the European Communities in Case T-270/05 and transferred to the Civil Service Tribunal of the European Union by Order of 15 December 2005).

Order of the Civil Service Tribunal of 2 April 2008 — S v Parliament

(Case F-64/07) ([1])

(2008/C 223/122)

Language of the case: Italian

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

([1]) OJ C 199, 25.8.2007, p. 53.

Order of the Civil Service Tribunal of 6 March 2008 — Gering v Europol

(Case F-68/07) ([1])

(2008/C 223/123)

Language of the case: Dutch

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

([1]) OJ C 247, 20.10.2008, p. 42.