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(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS AND BODIES

COURT OF JUSTICE

(2009/C 19/01)

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

OJ C 6, 10.1.2009

Past publications

OJ C 327, 20.12.2008

OJ C 313, 6.12.2008

OJ C 301, 22.11.2008

OJ C 285, 8.11.2008

OJ C 272, 25.10.2008

OJ C 260, 11.10.2008

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Second Chamber) of 4 December 2008 — Commission of the European Communities v Hellenic Republic

(Case C-84/07) ([1])

(Failure of a Member State to fulfil obligations — Directive 92/51/EEC — Recognition of diplomas — Studies completed in an 'independent study centre' not recognised as an educational establishment by the host Member State — Optician)

(2009/C 19/02)

Language of the case: Greek

Parties

Applicant: Commission of the European Communities (represented by: G. Zavvos and H. Stølvbæk, acting as Agents)

Defendant: Hellenic Republic (represented by: E. Skandalou, Agent)

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 3, 4(1)(b) and 12 of Council Directive 92/51/EEC of 18 June 1992 on a second general system for the recognition of professional education and training to supplement Directive 89/48/EEC (OJ L 209, p. 25)

Operative part of the judgment

The Court:

1. *Declares that the Hellenic Republic,*

   — *by failing to recognise the optician diplomas granted by the competent Italian authorities following training given under an agreement pursuant to which training given in Greece by a private body is homologised by those authorities;*

   — *by making consideration of applications for recognition of Italian optician diplomas subject to the provision, by the Italian authorities, of the answers to five questions previously sent to them by the Greek authorities; and*

   — *by allowing applicants for recognition of Italian optician diplomas, who applied before entry into force of Law 2916/2001 on the structure of university or similar education and the regulation of questions on the technological sector of that education, no choice between an adaptation period and an aptitude test,*

   has failed to fulfil its obligations under Article 3, the third section of Article 4(1)(b) and Article 12 of Council Directive 92/51/EEC of 18 June 1992 on a second general system for the recognition of professional education and training to supplement Directive 89/48/EEC, as amended by Directive 2001/19/EC of the European Parliament and of the Council of 14 May 2001;

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

([1]) OJ C 95, 28.4.2007.

Judgment of the Court (Second Chamber) of 4 December 2008 (reference for a preliminary ruling from the Simvoulio tis Epikratias (Greece)) — Theologos-Grigorios Khatzithanasis v Ipourgos Igeias kai Kinonikis Allilengiis, OEEK (Organismos Epangelmatikis Ekpaidefsis kai Katartisis)

(Case C-151/07) ([1])

(Directive 92/51/EEC — Recognition of diplomas — Studies completed in an 'independent study centre' not recognised as an educational establishment in the host Member State — Optician)

(2009/C 19/03)

Language of the case: Greek

Referring court

Simvoulio tis Epikratias

Parties to the main proceedings

Applicant: Theologos-Grigorios Khatzithanasis

Defendants: Ipourgos Igeias kai Kinonikis Allilengiis, OEEK (Organismos Epangelmatikis Ekpaidefsis kai Katartisis)

Re:

Reference for a preliminary ruling — Simvoulio tis Epikratias — Interpretation of Articles 149 and 150 EC and of Council Directive 92/51/EEC of 18 June 1992 on a second general system for the recognition of professional education and training to supplement Directive 89/48/EEC (OJ 1992 L 209, p. 25) — Failure to recognise, in the host Member State, a vocational training qualification conferring a right to pursue the profession of optician in the Member State where that qualification was awarded — Training received, for the greater part, at an establishment which lawfully operates in the host Member State, but which is not recognised, under the legislation of that State, as an educational establishment

Operative part of the judgment

Articles 1(a), 3 and 4 of Council Directive 92/51/EEC of 18 June 1992 on a second general system for the recognition of professional education and training to supplement Directive 89/48/EEC, as amended by Directive 2001/19/EC of the European Parliament and of the Council of 14 May 2001, must be interpreted as meaning that the competent authorities of a host Member State are required, under Article 3 of that directive, subject to the application of Article 4 of that directive, to recognise a diploma awarded by a competent authority in another Member State even though that diploma attests to education and training received, in whole or in part, at an establishment located in the host Member State which, according to the legislation of that State, is not recognised as an educational establishment.

([1]) OJ C 117, 26.5.2007.

Judgment of the Court (Fourth Chamber) of 4 December 2008 (reference for a preliminary ruling from the Sozialgericht Stuttgart (Germany)) — Krystyna Zablocka-Weyhermüller v Land Baden-Württemberg

(Case C-221/07) ([1])

(Benefits granted to surviving spouses of victims of war — Condition of residence on the national territory — Article 18(1) EC)

(2009/C 19/04)

Language of the case: German

Referring court

Sozialgericht Stuttgart

Parties to the main proceedings

Applicant: Krystyna Zablocka-Weyhermüller

Defendant: Land Baden-Württemberg

Re:

Reference for a preliminary ruling — Sozialgericht Stuttgart — Compatibility with Community law of national provisions limiting the exportability of benefits for surviving spouses of victims of war (Hinterbliebenenversorgung)

Operative part of the judgment

Article 18(1) EC is to be interpreted as precluding legislation of a Member State under which the latter refuses to pay certain benefits granted to surviving spouses of victims of war solely because they are domiciled in the territory of certain specific Member States.

([1]) OJ C 183, 4.8.2007.

Judgment of the Court (Fifth Chamber) of 4 December 2008 — Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland

(Case C-247/07) ([1])

(Failure of a Member State to fulfil its obligations — Directive 2003/35/EC — Drawing up of certain plans and programmes relating to the environment — Public participation — Failure to transpose within the prescribed period)

(2009/C 19/05)

Language of the case: English

Parties

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

Defendant: United Kingdom of Great Britain and Northern Ireland (represented by: V. Jackson, Agent)

Re:

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

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt, within the prescribed period, the laws, regulations and administrative provisions necessary to comply with Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under that directive;*

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

([1]) OJ C 170, 21.7.2007.

Judgment of the Court (Third Chamber) of 4 December 2008 — Commission of the European Communities v Kingdom of the Netherlands

(Case C-249/07) ([1])

(Failure of a Member State to fulfil obligations — Articles 28 EC and 30 EC — Directive 92/43/EC — Measure having equivalent effect — Prior authorisation for the planting of oysters and mussels of native species from other Member States — Justification — Protection of the life of animals — Maintenance of biodiversity and conservation of fish species in the interest of fisheries)

(2009/C 19/06)

Language of the case: Dutch

Parties

Applicant: Commission of the European Communities (represented by: M. Konstantinidis and S. Noe, acting as Agents)

Defendant: Kingdom of the Netherlands (represented by: C.M. Wissels and C. ten Dam, Agents)

Re:

Failure to fulfil obligations — Infringement of Articles 28 EC and 30 EC — System of prior authorisation for the planting of oysters and mussels from other Member States in Netherlands coastal waters

Operative part of the judgment

The Court:

1. *Declares that, by instituting a system of prior authorisation for the planting, in Netherlands coastal waters, of oysters and mussels coming lawfully from other Member States and being of species native to the Netherlands, the Kingdom of the Netherlands has failed to fulfil its obligations under Articles 28 EC and 30 EC;*

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

([1]) OJ C 183, 4.8.2007.

Judgment of the Court (First Chamber) of 27 November 2008 (reference for a preliminary ruling from the Court of Appeal (England and Wales) (Civil Division) — United Kingdom) — Intel Corporation Inc. v Cpm United Kingdom Limited

(Case C-252/07) ([1])

(Directive 89/104/EEC — Trade marks — Article 4(4)(a) — Trade marks with a reputation — Protection against the use of a later identical or similar mark — Use which takes or would take unfair advantage of, or is or would be detrimental to, the distinctive character or the repute of the earlier trade mark)

(2009/C 19/07)

Language of the case: English

Referring court

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

Parties to the main proceedings

Applicant: Intel Corporation Inc.

Defendant: Cpm United Kingdom Limited

Re:

Reference for a preliminary ruling — Court of Appeal (Civil Division) — Interpretation of Articles 4(4)(a) and 5(2) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989 L 40, p. 1) — Earlier mark having a reputation — Criteria to be taken into account in order to establish whether there is a link within the meaning of Case C-408/01 *Adidas-Salomon AG and Adidas-Benelux BV*

Operative part of the judgment

1. *Article 4(4)(a) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks must be interpreted as meaning that whether there is a link, within the meaning of Case C-408/01 Adidas-Salomon and Adidas Benelux, between the earlier mark with a reputation and the later mark must be assessed globally, taking into account all factors relevant to the circumstances of the case.*

2. *The fact that, for the average consumer, who is reasonably well informed and reasonably observant and circumspect, the later mark calls the earlier mark with a reputation to mind is tantamount to the existence of such a link, within the meaning of Adidas-Salomon and Adidas Benelux, between the conflicting marks.*

3. *The fact that:*

   — *the earlier mark has a huge reputation for certain specific types of goods or services, and*

   — *those goods or services and the goods or services for which the later mark is registered are dissimilar or dissimilar to a substantial degree, and*

   — *the earlier mark is unique in respect of any goods or services,*

   does not necessarily imply that there is a link, within the meaning of Adidas-Salomon and Adidas Benelux, between the conflicting marks.

4. *Article 4(4)(a) of Directive 89/104 must be interpreted as meaning that whether a use of the later mark takes or would take unfair advantage of, or is or would be detrimental to, the distinctive character or the repute of the earlier mark must be assessed globally, taking into account all factors relevant to the circumstances of the case.*

5. *The fact that:*

   — *the earlier mark has a huge reputation for certain specific types of goods or services, and*

   — *those goods or services and the goods or services for which the later mark is registered are dissimilar or dissimilar to a substantial degree, and*

   — *the earlier mark is unique in respect of any goods or services, and*

   — *for the average consumer, who is reasonably well informed and reasonably observant and circumspect, the later mark calls the earlier mark to mind,*

   is not sufficient to establish that the use of the later mark takes or would take unfair advantage of, or is or would be detrimental to, the distinctive character or the repute of the earlier mark, within the meaning of Article 4(4)(a) of Directive 89/104.

6. *Article 4(4)(a) of Directive 89/104 must be interpreted as meaning that:*

   — *the use of the later mark may be detrimental to the distinctive character of the earlier mark with a reputation even if that mark is not unique;*

   — *a first use of the later mark may suffice to be detrimental to the distinctive character of the earlier mark;*

   — *proof that the use of the later mark is or would be detrimental to the distinctive character of the earlier mark requires evidence of a change in the economic behaviour of the average consumer of the goods or services for which the earlier mark was registered consequent on the use of the later mark, or a serious likelihood that such a change will occur in the future.*

([1]) OJ C 183, 4.8.2007.

Judgment of the Court (Second Chamber) of 4 December 2008 (reference for a preliminary ruling from the Korkein hallinto-oikeus — Finland) — Lahti Energia Oy

(Case C-317/07) ([1])

(Directive 2000/76/EC — Incineration of waste — Purification and combustion — Crude gas produced from waste — Definition of waste — Incineration plant — Co-incineration plant)

(2009/C 19/08)

Language of the case: Finnish

Referring court

Korkein hallinto-oikeus

Parties in the main proceedings

Lahti Energia Oy

Re:

Reference for a preliminary ruling — Korkein hallinto-oikeus — Interpretation of Article 3(1), (4) and (5) of Directive 2000/76/EC of the European Parliament and of the Council of 4 December 2000 on the incineration of waste (OJ 2000 L 332, p. 91) — Purification and combustion in a boiler of a power plant — Concept of waste — Concepts of incineration plant and co-incineration plant

Operative part of the judgment

1) *The definition of 'waste' in Article 3(1) of Directive 2000/76/EC of the European Parliament and of the Council of 4 December 2000 on the incineration of waste does not cover gaseous substances;*

2) *The definition of 'incineration plant' in Article 3(4) of Directive 2000/76 relates to any technical unit and equipment in which waste is thermally treated, on condition that the substances resulting from the use of the thermal treatment process are subsequently incinerated and that, in that connection, the presence of an incineration line is not a necessary condition for the purposes of such classification;*

3) *In circumstances such as those at issue in the main proceedings:*

— *a gas plant whose objective is to obtain products in gaseous form, in this case purified gas, by thermally treating waste must be classified as a 'co-incineration plant' within the meaning of Article 3(5) of Directive 2000/76;*

— *a power plant which uses as an additional fuel, in substitution for fossil fuels used for the most part in its production activities, a purified gas obtained by the co-incineration of waste in a gas plant does not fall within the scope of that directive.*

([1]) OJ C 211, 8.9.2007.

Judgment of the Court (Third Chamber) of 4 December 2008 (reference for a preliminary ruling from the Unabhängiger Finanzsenat, Außenstelle Wien — Austria) — Jobra Vermögensverwaltungs-Gesellschaft mbH v Finanzamt Amstetten Melk Scheibbs

(Case C-330/07) ([1])

(Freedom to provide services — Freedom of establishment — Tax legislation — Investment premium — National legislation conferring a tax advantage only on assets used in a domestic place of business — Exclusion of assets hired out for remuneration primarily used in other Member States — Leasing of vehicles — Prevention of abuse)

(2009/C 19/09)

Language of the case: German

Referring court

Unabhängiger Finanzsenat, Außenstelle Wien

Parties to the main proceedings

Applicant: Jobra Vermögensverwaltungs-Gesellschaft mbH

Defendant: Finanzamt Amstetten Melk Scheibbs

Re:

Preliminary ruling — Unabhängiger Finanzsenat — Interpretation of Articles 43 EC and 49 EC — National legislation reserving a tax advantage in respect of the acquisition of unused tangible assets (Investitionszuwachsprämie) to traders using those assets in a domestic place of business

Operative part of the judgment

Article 49 EC precludes Member State legislation, such as that at issue in the main proceedings, pursuant to which undertakings which acquire tangible assets are refused the benefit of an investment premium solely because the assets in respect of which that premium is claimed, which are hired out for remuneration, are used primarily in other Member States.

([1]) OJ C 269, 10.11.2007.

Judgment of the Court (First Chamber) of 4 December 2008 (reference for a preliminary ruling from the Finanzgericht Hamburg — Germany) — Glencore Grain Rotterdam BV v Hauptzollamt Hamburg-Jonas

(Case C-391/07) ([1])

(Regulation (EC) No 800/1999 — Export refunds on agricultural products — Article 16 — Differentiated refund — Proof that customs formalities for importation have been completed — Production of a copy or photocopy of the transport documents — Regulation (EC) No 1501/95 — Granting of export refunds on cereals — Article 13 — Derogation from Article 16 of Regulation (EC) No 800/1999)

(2009/C 19/10)

Language of the case: German

Referring court

Finanzgericht Hamburg

Parties to the main proceedings

Applicant: Glencore Grain Rotterdam BV

Defendant: Hauptzollamt Hamburg-Jonas

Re:

Reference for a preliminary ruling — Finanzgericht Hamburg — Interpretation of the second paragraph of Article 13 of Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals (OJ 1995 L 147, p. 7) — Simplified procedure: obligation to produce transport documents

Operative part of the judgment

Article 13 of Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals, as amended by Commission Regulation (EC) No 1259/97 of 1 July 1997, must be interpreted as meaning that the fact that the operator provides proof that a quantity of at least 1 500 tonnes of cereal product has left the customs territory of the European Community on board a vessel suitable for sea transport does not release him from the obligation laid down in Article 16(3) of Commission Regulation (EC) No 800/1999 of 15 April 1999 laying down common detailed rules for the application of the system of export refunds on agricultural products to produce a copy or a photocopy of the transport documents.

([1]) OJ C 269, 10.11.2007.

Judgment of the Court (Fourth Chamber) of 27 November 2008 (reference for a preliminary ruling from the Korkein oikeus — Finland) — Mirja Juuri v Fazer Amica Oy

(Case C-396/07) ([1])

(Social policy — Directive 2001/23/EC — Safeguarding of employees' rights — Transfer of undertakings — Article 4(2) — Substantial change in working conditions involved by a transfer — Collective agreement — Termination of the contract of employment by the employee — Termination for which the employer is regarded as responsible — Consequences — Financial compensation for which the employer is liable)

(2009/C 19/11)

Language of the case: Finnish

Referring court

Korkein oikeus

Parties to the main proceedings

Applicant: Mirja Juuri

Defendant: Fazer Amica Oy

Re:

Preliminary ruling — Korkein oikeus — Interpretation of Article 4(2) of Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (OJ 2001 L 82, p. 16) — Responsibility of the employer to an employee who has himself terminated his contract of employment after his working conditions have become substantially worse following the transfer of an undertaking which has resulted in a different collective agreement becoming applicable

Operative part of the judgment

Article 4(2) of Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses must be interpreted as meaning that, in cases where the termination of a contract of employment or an employment relationship is brought about because the conditions for the applicability of that provision have been met, independently of any failure on the part of the transferee employer to fulfil its obligations under that directive, the Member States are not required to guarantee the employee a right to financial compensation, for which the transferee employer is liable, in accordance with the same conditions as the right upon which an employee can rely where the contract of employment or the employment relationship is unlawfully terminated by his employer. However, the national court is required, in a case within its jurisdiction, to ensure that, at the very least, the transferee employer in such a case bears the consequences that the applicable national law attaches to termination by an employer of the contract of employment or the employment relationship, such as the payment of the salary and other benefits relating, under that law, to the notice period with which an employer must comply.

It is for the referring court to assess the situation at issue in the case before it in the light of the interpretation of Article 3(3) of Directive 2001/23 as meaning that the continued observance of the terms and conditions agreed in a collective agreement which expires on the date of the transfer of the undertaking is not guaranteed after that date.

([1]) OJ C 269, 10.11.2007.

Judgment of the Court (Seventh Chamber) of 27 November 2008 (reference for a preliminary ruling from the Bundesfinanzhof — Germany) — Metherma GmbH & Co. KG v Hauptzollamt Düsseldorf

(Case C-403/07) [1]

(Common Customs Tariff — Combined Nomenclature — Tariff classification — Headings 8101 and 8102 — Shattering and breaking-up of bars of tungsten or molybdenum 'obtained simply by sintering' — Unwrought tungsten and molybdenum, including bars obtained simply by sintering — Waste and scrap)

(2009/C 19/12)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Metherma GmbH & Co. KG

Defendant: Hauptzollamt Düsseldorf

Re:

Reference for a preliminary ruling — Bundesfinanzhof — Interpretation of Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1987 L 256, p. 1) — Change of tariff heading for tungsten or molybdenum bars obtained by sintering when the bars are shattered

Operative part of the judgment

The Combined Nomenclature which is laid down in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, in the version applicable in 2001, namely that deriving from Commission Regulation (EC) No 2388/2000 of 13 October 2000 amending Annex I to Regulation No 2658/87, must be interpreted as meaning that bars of tungsten or molybdenum 'obtained simply by sintering' fall respectively under its subheadings 8101 91 10 and 8102 91 10. Such bars, which consist of the metals in question in their unwrought form and not of articles thereof, cannot be processed, by being broken up or shattered, into scrap falling respectively under subheadings 8101 91 90 and 8102 91 90 of that Combined Nomenclature.

[1] OJ C 283, 21.11.2007.

Judgment of the Court (Fourth Chamber) of 27 November 2008 (reference for a preliminary ruling from the Conseil d'Etat — France) — Société Papillon v Ministère du budget, des comptes publics et de la function publique

(Case C-418/07) [1]

(Freedom of establishment — Direct taxation — Corporation tax — Group taxation regime — Resident parent company — Resident sub-subsidiaries held through a non-resident subsidiary)

(2009/C 19/13)

Language of the case: French

Referring court

Conseil d'Etat

Parties to the main proceedings

Applicant: Société Papillon

Defendant: Ministère du budget, des comptes publics et de la function publique

Re:

Reference for a preliminary ruling — Conseil d'Etat (France) — Interpretation of Articles 43 and 48 EC — Restriction on freedom of establishment and possible justification for a tax scheme making a distinction depending on whether the French sub-subsidiary of a parent company (also established in France) is held through a subsidiary established in that Member State or established in another Member State and not subject to French corporation tax — Justification based on the coherence of the tax system

Operative part of the judgment

Article 52 of the Treaty (now, after amendment, Article 43 EC) is to be interpreted as meaning that it precludes legislation of a Member State by virtue of which a group tax regime is made available to a parent company which is resident in that Member State and holds subsidiaries and sub-subsidiaries which are also resident in that State, but is unavailable to such a parent company if its resident sub-subsidiaries are held through a subsidiary which is resident in another Member State.

[1] OJ C 283, 24.11.2007.

Judgment of the Court (Fifth Chamber) of 4 December 2008 — Commission of the European Communities v Czech Republic

(Case C-41/08) ([1])

(Failure of a Member State to fulfil obligations — Directives 86/378/EEC and 96/97/EC — Equal treatment for men and women — Incomplete transposition)

(2009/C 19/14)

Language of the case: Czech

Parties

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

Defendant: Czech Republic (represented by: M. Smolek, Agent)

Re:

Failure of a Member State to fulfil obligations — Failure to transpose Council Directive 86/378/EEC of 24 July 1986 on the implementation of the principle of equal treatment for men and women in occupational social security schemes (OJ 1986 L 225, p. 40) and Council Directive 96/97/EC of 20 December 1996 amending Directive 86/378/EEC on the implementation of the principle of equal treatment for men and women in occupational social security schemes (OJ 1997 L 46, p. 20)

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt, within the period prescribed, all the laws, regulations and administrative provisions necessary to comply with Council Directive 86/378/EEC of 24 July 1986 on the implementation of the principle of equal treatment for men and women in occupational social security schemes and Council Directive 96/97/EC of 20 December 1996 amending Directive 86/378, the Czech Republic has failed to fulfil its obligations under those directives and Article 54 of the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded;*

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

([1]) OJ C 92, 12.4.2008.

Judgment of the Court (Fifth Chamber) of 4 December 2008 — Commission of the European Communities v Kingdom of Spain

(Case C-113/08) ([1])

(Failure of a Member State to fulfil obligations — Directive 2006/49/EC — Investment firms and credit institutions — Capital adequacy — Failure to transpose within the period prescribed)

(2009/C 19/15)

Language of the case: Spanish

Parties

Applicant: Commission of the European Communities (represented by: M.-A. Rabanal Suárez and P. Dejmek, acting as Agents)

Defendant: Kingdom of Spain (represented by: B. Plaza Cruz, Agent)

Re:

Failure of a Member State to fulfil its obligations — Failing to adopt, within the period prescribed, all the provisions necessary to comply with Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (recast) (OJ 2006 L 177, p. 201)

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt, within the period prescribed, all the laws, regulations and administrative provisions necessary to comply with Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (recast) and, in particular, Articles 17, 22 to 25, 30, 33, 35, 40, 41, 43, 44 and 50 and Annexes I, II and VII thereto, the Kingdom of Spain has failed to fulfil its obligations under that directive;*

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

([1]) OJ C 116, 9.5.2008.

Judgment of the Court (Seventh Chamber) of 4 December 2008 — Commission of the European Communities v Grand Duchy of Luxembourg

(Case C-223/08) ([1])

(Failure of a Member State to fulfil obligations — Directive 2006/100/EC — Non-transposition within the period prescribed)

(2009/C 19/16)

Language of the case: French

Parties

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

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

Re:

Failure of a Member State to fulfil its obligations — Failure to adopt or notify, within the prescribed period, the measures 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 (OJ 2006 L 363, p. 141)

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt, within the period prescribed, 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, the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive;*

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

([1]) OJ C 171, 5.7.2008.

Order of the Court (Eighth Chamber) of 24 October 2008 (reference for a preliminary ruling from the Tribunal de Première Instance d'Arlon — Belgium) — Vandermeir v État belge — SPF Finances

(Case C-364/08) ([1])

(First subparagraph of Article 104(3) of the Rules of Procedure — Freedom of establishment — Article 43 EC — Freedom to provide services — Article 49 EC — Motor vehicles — Use by a person residing in a Member State of a motor vehicle registered in another Member State — Taxation of that vehicle in the first Member State)

(2009/C 19/17)

Language of the case: French

Referring court

Tribunal de Première Instance d'Arlon

Parties

Applicant: Marc Vandermeir

Defendant: État belge — SPF Finances

Re:

Reference for a preliminary ruling — Tribunal de Première Instance d'Arlon — Interpretation of Article 43 and/or Article 49 EC — National provision of a Member State which requires a self-employed worker residing in that State to register his vehicle there which is already registered in another Member State in which he exercises his independent professional activity — Restriction on the freedom of establishment and/or to provide services

Operative part

Articles 43 EC and 49 EC must be interpreted as prohibiting national legislation of a Member State, such as that at issue in the main proceedings, according to which a self-employed worker residing in that Member State is required to register there a vehicle leased from a company established in another Member State, when it is not intended that that vehicle should be used primarily in the first Member State on a permanent basis and it is not, in fact, used in that manner.

([1]) OJ C 260, 11.10.2008.

Reference for a preliminary ruling from the Unabhänger Finanzsenat, Außenstelle Linz (Austria) lodged on 3 October 2008 — Haribo Lakritzen Hans Riegel BetriebsgmbH v Finanzamt Linz

(Case C-436/08)

(2009/C 19/18)

Language of the case: German

Referring court

Unabhänger Finanzsenat, Außenstelle Linz

Parties to the main proceedings

Applicant: Haribo Lakritzen Hans Riegel BetriebsgmbH

Defendant: Finanzamt Linz

Questions referred

1. Does Community law preclude a national authority — in order to avoid discriminating against foreign equity holdings which, unlike domestic (Austrian) equity holdings, are not tax exempt under legislation until the size of the equity holding reaches 25 % (under present legislation 10 %) — from applying the credit method because the Austrian Verwaltungsgerichtshof (Administrative Court) has ruled that this outcome is closest to the (hypothetical) intention of the legislature, whilst tax exemption would be granted if the discriminatory 25 % (10 %) threshold for foreign equity holdings were simply not applied?

2. Does Community law preclude: the general exemption of domestic equity holdings whilst the credit method is applied to foreign equity holdings of less than 25 % (10 %) and shareholders are faced with the impossible or disproportionately costly task of adducing evidence of a previous foreign charge to (corporation) tax; or

   — the grant of exemption to domestic equity holdings of less than 25 % (10 %) whilst the credit method is applied to foreign equity holdings of less than 25 % (10 %) and shareholders are charged with the impossible or disproportionately costly task of adducing evidence; or

   — the general exemption of domestic equity holdings and of foreign equity holdings of 25 % (10 %) or more whilst the credit method is applied to foreign equity holdings of less than 25 % (10 %) and shareholders are charged with the impossible or disproportionately costly task of adducing evidence?

   2.1 If the answer to the second question should be in the negative: Does Community law preclude the imposition of an obligation on a taxpayer to adduce evidence of a previous foreign charge to (corporation) tax so as to obtain relief from double economic taxation even though the production of such evidence is an impossible or disproportionately costly task, when it could be produced by the authority applying the Directive on mutual assistance?

3. Does Community law preclude a provision whereby the credit method is to apply to non-member-country equity holdings of less than 25 % (10 %) which fall within the scope of free movement of capital where the production of evidence of payment of a previous foreign charge to (corporation) tax is an impossible or disproportionately costly task because of the small size of the equity holdings, whilst provision is made for the exemption method to apply to domestic equity holdings in general — that is to say, irrespective of the size of the equity holdings — and relief from double economic taxation is therefore obtained in any event?

   3.1 If the answer to the third question should be in the affirmative: Does Community law preclude the refusal of exemption for income from non-member-country equity holdings where the size of the equity holding is less than 25 % (10 %) even though exemption for income from equity holdings of more than 25 % (10 %) is not linked to satisfaction of particular requirements compliance with which could be examined only by obtaining information from the competent authorities of the country concerned and exemption is granted in such cases without any other conditions being attached?

   3.2 If the answer to the third question should be in the negative: Does Community law preclude the refusal of a credit for foreign corporation tax for income from non-member-country equity holdings where the size of the equity holding is less than 25 % (10 %) even though tax exemption for income from holdings of more than 25 % (10 %) is not linked to satisfaction of particular requirements compliance with which could be examined only by obtaining information from the competent authorities of the country concerned and exemption is granted in such cases without any other conditions being attached?

Reference for a preliminary ruling from the Unabhängiger Finanzsenat, Außenstelle Linz (Austria) lodged on 3 October 2008 — Österreichische Salinen AG v Finanzamt Linz

(Case C-437/08)

(2009/C 19/19)

Language of the case: German

Referring court

Unabhängiger Finanzsenat, Außenstelle Linz

Parties to the main proceedings

Applicant: Österreichische Salinen AG

Defendant: Finanzamt Linz

Questions referred

1. Does Community law preclude a national authority — in order to avoid discriminating against foreign equity holdings which, unlike domestic (Austrian) equity holdings, are not tax exempt under legislation until the size of the equity holding reaches 25 % (under present legislation 10 %) — from applying the credit method because the Austrian Verwaltungsgerichtshof (Administrative Court) has ruled that this outcome is closest to the (hypothetical) intention of the legislature but not simultaneously permitting a deduction to be carried forward to subsequent years or a tax credit to be given for a loss year with regard, firstly, to the corporation tax to be credited and, secondly, to the withholding tax to be credited?

1.1 If the answer to the first question should be in the affirmative: Does Community law preclude a refusal to allow a deduction to be carried forward or a tax credit to be given in the case of non-member country dividends?

Reference for a preliminary ruling from the Oberverwaltungsgericht Berlin-Brandenburg (Germany) lodged on 27 October 2008 — Ümit Bekleyen v Land Berlin

(Case C-462/08)

(2009/C 19/20)

Language of the case: German

Referring court

Oberverwaltungsgericht Berlin-Brandenburg

Parties to the main proceedings

Applicant: Ümit Bekleyen

Defendant: Land Berlin

Question referred

Is the second paragraph of Article 7 of Decision No 1/80 of the EEC-Turkey Association Council on the development of the Association to be interpreted as meaning that the right of access to the labour market and the corresponding right of residence following the completion of a vocational training course in the host Member State can also be invoked in a situation in which the child who was born in the host Member State, but afterwards returned with her family to the family's country of origin, returns on her own to the relevant Member State after she has reached the age of majority in order to start a vocational training course, at a moment occurring 10 years after her parents, Turkish nationals who used to be employed in that Member State, had permanently left that Member State?

Reference for a preliminary ruling from the Audiencia Provincial de Barcelona (Spain) lodged on 31 October 2008 — Sociedad General de Autores y Editores de España (SGAE) v Padawan, S.L. and Entidad de Gestión de Derechos de los Productores Audiovisuales (EGEDA), intervener

(Case C-467/08)

(2009/C 19/21)

Language of the case: Spanish

Referring court

Audiencia Provincial de Barcelona

Parties to the main proceedings

Applicant: Sociedad General de Autores y Editores de España (SGAE)

Defendant: Padawan, S.L.

Other party: Entidad de Gestión de Derechos de los Productores Audiovisuales (EGEDA)

Questions referred

1. Does the concept of 'fair compensation' in Article 5(2)(b) of Directive 2001/29 [1] entail harmonisation, irrespective of the Member States' right to choose the system of collection which they deem appropriate for the purposes of giving effect to the right to fair compensation of intellectual property rightholders affected by the adoption of the private copying exception or limitation?

2. Regardless of the system used by each Member State to calculate fair compensation, must that system ensure a fair balance between the persons affected, the intellectual property rightholders affected by the private copying exception, to whom the compensation is owed, on the one hand, and the persons directly or indirectly liable to pay the compensation, on the other, and is that balance determined by the reason for the fair compensation, which is to mitigate the harm arising from the private copying exception.?

3. Where a Member State opts for a system of charging or levying in respect of digital reproduction equipment, devices and media, in accordance with the aim pursued by Article 5(2)(b) of Directive 2001/29 and the context of that provision, must that charge (the fair compensation for private copying) necessarily be linked to the presumed use of those equipment and media for making reproductions covered by the private copying exception, with the result that the application of the charge would be justified where it may be presumed that the digital reproduction equipment, devices and media are to be used for private copying, but not otherwise?

4. If a Member State adopts a private copying 'levy' system, is the indiscriminate application of that 'levy' to undertakings and professional persons who clearly purchase digital reproduction devices and media for purposes other than private copying compatible with the concept of 'fair compensation'?

5. Might the system adopted by the Spanish State of applying the private copying levy indiscriminately to all digital reproduction equipment, devices and media infringe Directive 2001/29, in so far as there is insufficient correlation between the fair compensation and the limitation of the private copying right justifying it, because to a large extent it is applied to different situations in which the limitation of rights justifying the compensation does not exist?

([1]) Corrigendum to Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ L 167 of 22.6.2001).

Reference for a preliminary ruling from the Helsingin käräjäoikeus (Finland) lodged on 4 November 2008 — Sanna Maria Parviainen v Finnair Oyj

(Case C-471/08)

(2009/C 19/22)

Language of the case: Finnish

Referring court

Helsingin käräjäoikeus

Parties to the main proceedings

Applicant: Sanna Maria Parviainen

Defendant: Finnair Oyj

Question referred

Is Article 11(1) of the Protection of Pregnant Workers Directive ([1]) to be interpreted as meaning that a worker who is transferred to other lower-paid work because of her pregnancy must, on the basis of that provision, be paid as much as she received on average before the transfer, and is it relevant in that respect what kind of allowances and on what basis the worker was paid in addition to her basic monthly pay?

([1]) Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) OJ L 348, 1992, p. 1.

Appeal brought on 6 November 2008 by Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE against the judgment of the Court of First Instance (Third Chamber) delivered on 10 September 2008 in Case T-59/05 Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE v Commission of the European Communities

(Case C-476/08 P)

(2009/C 19/23)

Language of the case: English

Parties

Appellant: Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE (represented by: N. Korogiannakis, P. Katsimani, Δικηγόροι)

Other party to the proceedings: Commission of the European Communities

Form of order sought

The appellant claim that the Court should:

— Set aside the decision of the Court of First Instance;

— annul the decision of the Commission (DG Agriculture) to evaluate the applicant's bid as not successful and award the contract to the successful contractor;

— order the Commission to pay the applicant's legal and other costs and expenses incurred in connection with the initial procedure, even if the current Appeal is rejected as well as those of the current Appeal, in case it is accepted

Pleas in law and main arguments

The appellant bases its appeal against the judgment T-59/05 of the Court of First Instance on the following grounds:

It is submitted that the Court of First Instance committed a breach of procedure by refusing to recognise an evident discrepancy between the award criteria as set out in section 5.2 of the EvCo Report and those mentioned in section 5.4 of the same Report and by misinterpreting the relevant procedural rules on the burden of proof. More specifically, the Court of First Instance does not refer to any evidence in support of its qualification as 'typographical error' of an obvious discrepancy, and no such evidence can by any means be deduced from the content of the Evaluation Report itself.

Further, the judgment fails to observe the consequences of the Commission's infringement of its duty of diligence and of the principle of good administration. Since the Court of First Instance, despite observing that the Commission infringed the rule of law, did not proceed into annulling the Commission's Decision on this ground, the Court of First Instance undoubtedly failed in applying the relevant provisions.

It is submitted that the Court of First Instance also failed to apply the relevant provisions on the duty of the contracting authority to provide reasons, which would lead it to annul the award decision; only scores and some general comments from the Evaluation Report have been submitted to the Appellant by the letter of 10 December 2004. In this sense the Court of First Instance distorted the evidence adduced before it, and for this reason its judgment should be annulled.

Reference for a preliminary ruling from the Tribunale Amministrativo Regionale della Sicilia (Italy) lodged on 6 November 2008 — Buzzi Unichem SpA and Others v Ministero dello Sviluppo Economico and Others

(Case C-478/08)

(2009/C 19/24)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale della Sicilia

Parties to the main proceedings

Applicants: Buzzi Unichem SpA and Others

Defendants: Ministero dello Sviluppo Economico and Others

Questions referred

1. May the 'polluter pays' principle laid down in Article 174(2) EC be interpreted as meaning that, even if only by way of exception, the obligations regarding emergency safety measures, decontamination and environmental reinstatement of a contaminated site (and/or the costs relating thereto) may be imposed on a person having no connection with the release into the environment of the substances which led to the ecological impairment of that site, or, in the event of a negative answer, does that principle preclude national legislation and/or an administrative approach which imposes obligations regarding emergency safety measures, decontamination and environmental reinstatement of a contaminated site (and/or the costs relating thereto) upon a person who claims to have no connection with the release into the environment of the substances which led to the ecological impairment of that site, without any prior ascertainment of any individual responsibility by virtue of a causal link, or merely because that person happens to operate in or has property rights in a contaminated area, in breach or disregard of the principle of proportionality?

2. Does the 'polluter pays' principle preclude national legislation, and in particular Article 2050 of the [Italian] Civil Code, which allows the Public Authority, where a number of industrial operators operate within the contaminated site, to impose on them the burdens of the decontamination of that site, without prior ascertainment on an individual basis of their respective responsibility for the pollution, or in any event merely because they are deemed accountable by virtue of their ownership of the means of production and are therefore subject to strict liability for the damage they cause to the environment or may they in any event be required to reinstate the area around the widespread pollution identified there even where no material causation has been established for the pollution and there is no proportional basis for it?

3. Does the Community directive on compensation for environmental damage (Directive 2004/35/EC [1]) of 21 April 2004 and in particular Article 7 thereof and Annex II thereto, to which that article refers) preclude national legislation which allows the Public Administration to require, 'as reasonable options for remedying environmental damage', that action be taken concerning environmental matrices (comprising in this case the 'physical confines' of the groundwater along the entire sea front) which are different from and go further than those chosen on completion of an appropriate investigation carried out on a consultative basis, which have already been approved and put into effect and are being implemented, without in any event having assessed the site-specific conditions, the costs of implementation in relation to the reasonably foreseeable benefits, the possible or probable collateral damage and adverse effects on public health and safety, and the necessary time scales for implementation?

4. Given the specificity of the situation prevailing in the Priolo Site of National Interest, does the Community directive on compensation for environmental damage (Directive 2004/35/CE of 21 April 2004 and in particular Article 7 and Annex II thereto, to which that article refers) preclude national legislation which allows the Public Administration to impose such requirements as conditions for an authorisation for the lawful use of the areas not directly affected by the decontamination in so far as they have already been decontaminated or were not in any event polluted, included within the limits of the Priolo Site of National Interest?

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[1] OJ L 143, p. 56.

Reference for a preliminary ruling from the Tribunale Amministrativo Regionale della Sicilia (Italy) lodged on 6 November 2008 — Dow Italia Divisione Commerciale srl v Ministero dello Sviluppo Economico and Others

(Case C-479/08)

(2009/C 19/25)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale della Sicilia

Parties to the main proceedings

Applicant: Dow Italia Divisione Commerciale srl

Defendant: Ministero dello Sviluppo Economico and Others

Questions referred

1. Does the 'polluter pays' principle preclude national legislation, and in particular Article 2050 of the [Italian] Civil Code, which allows the Public Authority, where a number of industrial operators operate within the contaminated site, to impose on them the burdens of the decontamination of that site, without prior ascertainment on an individual basis of their respective responsibility for the pollution, or in any event merely because they are deemed accountable by virtue of their ownership of the means of production and are therefore subject to strict liability for the damage they cause to the environment or may they in any event be required to reinstate the area around the widespread pollution identified there even where no material causation has been established for the pollution and there is no proportional basis for it?

2. In accordance with the 'polluter pays' principle, may the Administration require the costs of safety measures, decontamination and environmental reinstatement to be borne by persons established in contaminated areas, without there having been any prior ascertainment of the existence of a causal link between the conduct and the pollution identified?

3. In accordance with the 'polluter pays' principle and the principle of proportionality, may persons within contaminated areas be required to undertake action that does not directly reflect their individual contributions and is not proportionate to such contributions?

4. In accordance with the 'polluter pays' principle and the principle of proportionality, may persons who have not contributed to the release of substances polluting the environment be made subject to obligations involving safety, decontamination and environmental-reinstatement measures, the costs and actions involved being equivalent, if not identical, to those imposed on persons who, in contrast, have in fact contributed to the release of substances polluting the environment?

5. In accordance with the 'polluter pays' principle and the principle of proportionality, may the Administration require action to be taken where there has been no assessment of the appropriateness of the solutions imposed in the light of the sacrifice required of the private individual concerned, thereby prescribing measures that are wider or go further than those strictly necessary for attainment of the aim which that authority is required to achieve?

Appeal brought on 10 November 2008 by Alcon Inc. against the judgment of the Court of First Instance (Fourth Chamber) delivered on 10 September 2008 in Case T-106/07 Alcon Inc. v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-481/08 P)

(2009/C 19/26)

Language of the case: English

Parties

Appellant: Alcon Inc. (represented by: M. Graf, Rechtsanwalt)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), *Acri.Tec AG Gesellschaft für ophthalmologische Produkte

Form of order sought

The appellant claims that the Court should:

— Annul the Judgment under appeal and annul the contested decision

— Order OHIM to bear the costs

Pleas in law and main arguments

The appellant contends that the contested judgment should be set aside on the following grounds:

— Distortion of facts and evidence since the relevant consumers are normal consumers. This is a question of law which must be decided by the Court even when the argument was first raised in the oral hearing, 'da mihi facta, dabo tibi ius'.

— Error in application and interpretation of Article 8(1)(b) of Regulation No 40/94 ([1]) and distortion of facts and evidence since apparently only the pronunciation in the English language of the marks 'BioVisc' and 'DUOVISC' was taken into account, not the pronunciation in the French language.

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

Reference for a preliminary ruling from the Tribunal de Première Instance de Mons (Belgium) lodged on 11 November 2008 — Régie Communale Autonome du Stade Luc Varenne v Belgian State — SPF Finances

(Case C-483/08)

(2009/C 19/27)

Language of the case: French

Referring court

Tribunal de Première Instance de Mons

Parties to the main proceedings

Applicant: Régie Communale Autonome du Stade Luc Varenne

Defendant: Belgian State — SPF Finances

Question referred

Does Article 10 of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment ([1]), preclude an interpretation of national statutory provisions and an administrative practice which consist in fixing the starting point for an action for recovery of VAT, and therefore the date from which the limitation period for that action is to be calculated, as the date on which the VAT return is lodged in which the taxable person claims a right to deduct?

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

Reference for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 10 November 2008 — Caja de Ahorros y Monte de Piedad de Madrid v Asociación de Usuarios de Servicios Bancarios (Ausbanc)

(Case C-484/08)

(2009/C 19/28)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Applicant: Caja de Ahorros y Monte de Piedad de Madrid

Defendant: Asociación de Usuarios de Servicios Bancarios (Ausbanc)

Questions referred

1. Must Article 8 of Directive 93/13/EEC ([1]) of 5 April 1993 on unfair terms in consumer contracts be construed as meaning that a Member State may provide in its legislation, for the benefit of consumers, that the assessment as to whether contractual terms are unfair is to be carried out also in respect of terms which, pursuant to Article 4(2) of that Directive, fall outside the scope of such an assessment?

2. Consequently, does Article 4(2) of Directive 93/13/EEC of 5 April 1993, read in conjunction with Article 8 thereof, preclude a Member State from providing in its legislation, for the benefit of consumers, that the assessment as to whether contractual terms are unfair is to be carried out also in respect of terms which relate to 'the definition of the main subject matter of the contract' or to 'the adequacy of the price and remuneration, on the one hand, as against the services or goods supplies in exchange', even where those terms are in plain, intelligible language?

3. Is an interpretation of Articles 8 and 4(2) of Directive 91/13 under which it is possible for a Member State to provide for assessment by the courts as to whether contractual terms are unfair, which are in plain, intelligible language and which define the main subject-matter of the contract or the adequacy of the price and remuneration, on the one hand, as against the services or goods supplied in exchange, compatible with Articles 2, 3(1)(g) and 4(1) EC?

([1]) OJ L 95, p. 29.

Action brought on 11 November 2008 — Commission of the European Communities v Kingdom of Spain

(Case C-487/08)

(2009/C 19/29)

Language of the case: Spanish

Parties

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

Defendant(s): Kingdom of Spain

Form of order sought

— A declaration that, by giving different treatment to dividends distributed to foreign and domestic shareholders, the Kingdom of Spain has failed to fulfil its obligations under Article 56 EC and Article 40 of the EEA Agreement.

— Order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

Under the Spanish legislation, companies which have a substantial holding in the capital of a branch may deduct from their taxable income 100 % of the gross dividend received from that holding. In order to enjoy this facility, parent companies resident in Spain must have had a holding of at least 5 % of the capital of the resident branch of the company for an uninterrupted period of at least one year. Dividends which qualify for the application of that facility are exempt from deduction at source.

In order to enjoy that exemption, parent companies not resident in Spain were required to have a holding of 20 %, which was reduced to 15 % from 1 January 2007 and will be reduced to 10 % from 1 January 2009. Thus, unlike parent companies resident in Spain, parent companies from other Member States of the EC and Member States party to the Agreement on the European Economic Area which have a holding in the capital of at least 5 % but lower than the limits mentioned have to pay tax in respect of the dividends paid by the branch.

The Commission takes the view that by imposing a requirement of a larger holding in the capital for parent companies which are not resident than is imposed on resident companies in order to enjoy the exemption from tax for dividends distributed by the branches in Spain the difference in treatment under the Spanish legislation constitutes discrimination contrary to Article 56 EC and Article 40 of the EEA Agreement. The Commission can see no justification for this additional fiscal burden which falls on parent companies from other Member States and the Member States of the EEA.

Action brought on 14 November 2008 — Commission of the European Communities v French Republic

(Case C-492/08)

(2009/C 19/30)

Language of the case: French

Parties

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

Defendant: French Republic

Form of order sought

— Declare that by applying a reduced rate of value added tax (VAT) to services provided by lawyers, lawyers at the Council of State and at the Court of Cassation and *avoués*, for which they are paid in part or in whole by the State through legal aid, France has failed to fulfil its obligations under Articles 96 and 98(2) of the VAT directive ([1]);

— order the French Republic to pay the costs.

Pleas in law and main arguments

The Commission disputes the application, by the defendant, of a reduced rate of VAT for services provided in the context of legal aid by lawyers, lawyers at the Council of State and at the Court of Cassation as well as *avoués*, as such services are not included in any of the categories listed in Annex III of Directive 2006/112/EC.

In order to respond to the defendant's three main arguments, the Commission submits first that the guarantee of access to justice cannot be an appropriate reason for derogating from the normal rate of VAT on the services of lawyers to the extent that that guarantee is connected more to the range of aid granted by the State than to the rate of VAT, which is determined in a uniform manner at Community level.

Secondly, according to the applicant, the social nature of the activities at issue is not sufficient for them to be included in the other categories of services listed in Annex III of the directive, for which a reduction in the rate of VAT is allowed as compared to the normal applicable rate. According to the Court's settled case-law, a narrow interpretation of the nature of those services would be necessary so as to maintain the restrictive nature of that annex.

Finally, the Commission states that the aim both of Articles 96 and 98(2) of the VAT directive and of Annex III thereof is not to avoid distortions of competition between economic operators providing the same goods or services, but more simply to encourage a progressive harmonisation of the legislation of the Member States, by harmonising the rates of VAT applied and limiting the transactions which can be subject to reduced rates.

([1]) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).

Reference for a preliminary ruling from the Vestre Landsret (Denmark) lodged on 19 November 2008 — Ingeniørforeningen i Danmark for Ole Andersen v Region Syddanmark

(Case C-499/08)

(2009/C 19/31)

Language of the case: Danish

Referring court

Vestre Landsret

Parties to the main proceedings

Applicant: Ingeniørforeningen i Danmark for Ole Andersen

Defendant: Region Syddanmark

Question referred

Is the prohibition of direct or indirect discrimination on grounds of age contained in Articles 2 and 6 of Council Directive 2000/78/EC ([1]) to be interpreted as precluding a Member State from maintaining a legal situation whereby an employer, upon dismissal of a salaried employee who has been continuously employed in the same undertaking for 12, 15 or 18 years, must, upon termination of the salaried employee's employment, pay an amount equivalent to one, two or three months' salary respectively, but as meaning that this allowance is not to be paid where the salaried employee, upon termination of employment, is entitled to receive an old-age pension from a pension scheme to which the employer has contributed?

([1]) OJ L 303, 2.12.2000, p. 16.

Appeal brought on 20 November 2008 by Município de Gondomar against the order made by the Court of First Instance (Fourth Chamber) on 10 September 2008 in Case T-324/06 Município de Gondomar v Commission

(Case C-501/08 P)

(2009/C 19/32)

Language of the case: Portuguese

Parties

Appellant: Município de Gondomar (represented by J.L. da Cruz Vilaça and L. Pinto Monteiro, advogados)

Other party to the proceedings: Commission of the European Communities

Form of order sought

— A decision setting aside the order of the Court of First Instance and declaring admissible the action for annulment of Commission Decision C(2006) 3782 of 16 August 2006 on the cancellation of the financial assistance granted by the Cohesion Fund;

— alternatively, a decision setting aside the order of the Court of First Instance and ordering the case to be referred back to the Court of First Instance for it to give another decision;

— an order that the European Commission should pay all the costs including the appellant's, pursuant to Article 69 of the Rules of Procedure of the Court of Justice or, alternatively, that the decision as to costs should be reserved to the judgment or order closing the proceedings.

Pleas in law and main arguments

1. ERROR OF LAW IN THE ASSESSMENT OF THE CONDITION OF DIRECT CONCERN AND FAILURE TO STATE GROUNDS

The Município de Gondomar considers that the Portuguese legal order includes special features that ought to lead to an interpretation other than that made by the Court of First Instance in its order in Case T-324/06 declaring the action inadmissible, which is marred by errors of law.

It is clear from the Portuguese legislation, in particular from Articles 18 and 20 of the Regulation giving effect to the Cohesion Fund in Portugal, approved by the single article of Decree-Law No 191/2000 of 16 August 2000, that the Portuguese Republic enjoys no latitude at all in deciding whether or not to maintain the assistance allocated by the Cohesion Fund to the Município de Gondomar as the body responsible for the execution of the project, leading thus to the conclusion that the Commission's decision to cancel the aid granted by the Cohesion Fund is of an automatic nature, for the legislation concerned does not permit the bodies responsible for performance to be relieved of the duty to reimburse the sums overpaid.

The Court of First Instance, in its order in Case T-324/06 declaring the action inadmissible, refrained from making any reference to that question and so, the latter being an essential point for the purpose of determining whether the action is admissible, the Court of First Instance erred in law, with immediate effects on the exercise of the procedural rights conferred by Article 230 EC.

As a result of that failure to rule on the matter, the order is vitiated because the statement of grounds is lacking or defective. In accordance with Community case-law and legal writings, there is a general duty to state the reasons for the decisions made by administrative and judicial bodies, so as to make it easier for the Court of Justice to perform its task of judicial review.

The Court of First Instance's failure to give a decision concerning the special features of the Portuguese legal order constitutes a failure to state the grounds capable of seriously affecting the appellant's interests.

2. BREACH OF THE PRINCIPLE OF EFFECTIVE JUDICIAL PROTECTION

The Município de Gondomar further considers that it runs the risk of being denied its right to effective judicial protection, for want of means of obtaining redress at the domestic level by which it might challenge the demand for reimbursement of the financial assistance granted by the Cohesion Fund, given that the measure notifying it of the Commission's decision to cancel the financial assistance granted by the Cohesion Fund is not a measure actionable under domestic law.

The communication of the Commission's decision, unactionable at domestic level, was made by letter of the sectorial management body for the Cohesion Fund of the Ministry of the Environment, dated 25 September 2006, that letter doing no more than 'notify' the Commission's decision, the latter being the act with operative content.

The lack of any means of redress is contrary to the principle of the right to effective judicial protection, as recognised in the most recent Community case-law and legal writings.

Action brought on 19 November 2008 — Commission of the European Communities v Federal Republic of Germany

(Case C-505/08)

(2009/C 19/33)

Language of the case: German

Parties

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

Defendant: Federal Republic of Germany

Form of order sought

— Declare that, by failing to adopt, in full, the laws, regulations and administrative provisions necessary to comply with Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications ([1]), or, as the case may be, by failing to fully inform the Commission of those provisions, the Federal Republic of Germany has failed to fulfil its obligations under that directive;

— order Federal Republic of Germany to pay the costs.

Pleas in law and main arguments

The prescribed period for implementing the Directive expired on 20 October 2007.

([1]) OJ 2005 L 255, p. 22

Appeal brought on 25 November 2008 by Makhteshim-Agan Holding BV, Alfa Agricultural Supplies SA, Aragonesas Agro, SA against the judgment of the Court of First Instance (Fourth Chamber) delivered on 9 September 2008 in Case T-75/06 Bayer CropScience AG and Others v Commission

(Case C-517/08 P)

(2009/C 19/34)

Language of the case: English

Parties

Appellants: Makhteshim-Agan Holding BV, Alfa Agricultural Supplies SA, Aragonesas Agro, SA (represented by: C. Mereu, K. Van Maldegem, avocats)

Other parties to the proceedings: Commission of the European Communities, Bayer CropScience AG, European Crop Protection Association (ECPA), Kingdom of Spain

Form of order sought

The appellant claims that the Court should, following an oral hearing:

— set aside the judgment of the Court of First Instance in Case T-75/06; and

— annul Commission Decision 2005/864/EC ([1]) of 2 December 2005 concerning the non-inclusion of endosulfan in Annex I to Directive 91/414/EEC ([2]) and the withdrawal of authorisations for plant protection products containing that substance; or

— alternatively, refer the case back to the Court of First Instance for judgment; and

— order the Respondent to pay all the costs of these proceedings (including the costs before the Court of First Instance).

Pleas in law and main arguments

The Appellants submit that, in dismissing their application for annulment in respect of Commission Decision 2005/864/EC of 2 December 2005 concerning the non-inclusion of endosulfan in Annex I to Directive 91/414/EEC and the withdrawal of authorisations for plant protection products containing that substance, the Court of First Instance breached Community law. In particular, the Appellants contend that the Court of First Instance committed a number of errors in its interpretation of the facts and of the legal framework as applicable to the Appellants' situation. That resulted in it making a number of errors in law, in particular:

(i) in failing to find that the Appellants had been placed in a situation of *force majeure* by the conduct of the competent authorities such that the failure of the competent authorities to defer the procedural deadlines amounted to a manifest error of assessment; and

(ii) in holding that the Appellants' legal and procedural rights had not been infringed.

(1) OJ L 317, p. 25.
(2) Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market (OJ L 230, p. 1).

Action brought on 27 November 2008 — Commission of the European Communities v Kingdom of Spain

(Case C-523/08)

(2009/C 19/35)

Language of the case: Spanish

Parties

Applicant: Commission of the European Communities (represented by M. Condou-Durande and M.-A. Rabanal Suárez, Agents,)

Defendant: Kingdom of Spain

Form of order sought

— a declaration that the Kingdom of Spain, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Council Directive 2005/71/EC [1] on a specific procedure for admitting third-country nationals for the purposes of scientific research and, in any case, by failing to communicate such provisions to the Commission, has failed to fulfil its obligations under that Directive;

— an order that the Kingdom of Spain should pay the costs.

Pleas in law and main arguments

The period allowed for the transposition into domestic law of Directive 2005/71/EC expired on 12 October 2007.

(1) OJ 2005 L 289, p. 15.

Action brought on 1 December 2008 — Commission of the European Communities v Portuguese Republic

(Case C-524/08)

(2009/C 19/36)

Language of the case: Portuguese

Parties

Applicant: Commission of the European Communities (represented by N. Yerrell and P. Guerra e Andrade, Agents)

Defendant: Portuguese Republic

Form of order sought

— a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2005/68/EC [1] of the European Parliament and of the Council of 16 November 2005 on reinsurance and amending Council Directives 73/239/EEC, 92/49/EEC as well as Directives 98/78/EC and 2002/83/EC or, in any case, by failing to communicate such provisions 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 allowed for transposition of the Directive expired on 10 December 2007.

(1) OJ 2005 L 323, p. 1.

Action brought on 28 November 2008 — Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland

(Case C-527/08)

(2009/C 19/37)

Language of the case: English

Parties

Applicant: Commission of the European Communities (represented by: K. Simonsson, A.A. Gilly, 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 2005/65/EC [1] of the European Parliament and of the Council of 26 October 2005 on enhancing port security, 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;

— 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 15 July 2007.

([1]) OJ L 310, p. 28.

Action brought on 2 December 2008 — Commission of the European Communities v Republic of Hungary

(Case C-530/08)

(2009/C 19/38)

Language of the case: Hungarian

Parties

Applicant(s): Commission of the European Communities (represented by: H. Støvlbaek and B. Béres, acting as Agent(s))

Defendant(s): Republic of Hungary

Form of order sought

— Declare that by failing to adopt the laws, regulations and administrative provisions necessary to implement Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications ([1]) or, at least, by failing to communicate those provisions to the Commission, the Republic of Hungary has failed to fulfil its obligations under that directive.

— order the Republic of Hungary to pay the costs.

Pleas in law and main arguments

The period prescribed for the implementation of Directive 2005/36/EC expired on 20 October 2007.

([1]) OJ 2005 L 255, p. 22.

Action brought on 2 December 2008 — Commission of the European Communities v Portuguese Republic

(Case C-531/08)

(2009/C 19/39)

Language of the case: Portuguese

Parties

Applicant: Commission of the European Communities (represented by P. Guerra e Andrade and P. Demjek, Agents)

Defendant: Portuguese Republic

Form of order sought

— a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2005/56/EC ([1]) of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies or, in any case, by failing to communicate such provisions 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 transposition of the Directive expired on 15 December 2007.

([1]) OJ 2005 L 310, p. 1.

Action brought on 4 December 2008 — Commission of the European Communities v Portuguese Republic

(Case C-543/08)

(2009/C 19/40)

Language of the case: Portuguese

Parties

Applicant: Commission of the European Communities (represented by G. Braun, P. Guerra e Andrade and M. Teles Romão, Agents)

Defendant: Portuguese Republic

Form of order sought

— a declaration that, by maintaining the State's special rights in the EDP — Energias de Portugal, granted in connection with the State's golden shares, the Portuguese Republic has failed to fulfil its obligations under Articles 56 EC and 43 EC;

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

Pleas in law and main arguments

The EDP's articles of association provide for one vote for every share, but do not take into consideration the votes attaching to ordinary shares not held by the State cast by a shareholder exceeding 5 % of all votes corresponding to share capital.

Under the Portuguese legislation, the State has special rights in the EDP regardless of the number of shares it holds. Those special rights are, in particular, the right to veto resolutions of the general meeting relating to changes to the memorandum and articles of association (including decisions to increase capital, and merger, demerger and winding-up decisions), to the conclusion of joint contracts relating to groups or subsidiaries and to the abolition or limitation of the preferential subscription right of shareholders on an increase of capital.

The State also has the special right to appoint an administrator when it has voted against the choice of administrators proposed and approved.

The Commission believes that both the limiting of votes and the special rights amount to a restriction of the movement of capital and of freedom of establishment. Those measures constitute an obstacle to direct investment in the EDP, an obstacle to portfolio investment and an obstacle to the exercise of freedom of establishment.

Those special rights of the State constitute State measures, for the golden shares do not stem from the normal application of company law.

The limiting of votes, in the circumstances in which it was introduced, also amounts to a State measure.

Those golden shares and the limiting of votes do not respond to legitimate objectives in the common interest or, in particular, to those pleaded by the Portuguese State, namely, public safety and security of supply and the concession of a public service.

In any case, the Portuguese State has failed to observe the principle of proportionality, for the measures in question are not apt to ensure the attainment of the objectives pursued and they go beyond what is necessary in order to achieve them.

COURT OF FIRST INSTANCE

Judgment of the Court of First Instance of 28 November 2008 — Hotel Cipriani and Others v Commission

(Joined Cases T-254/00, T-270/00 and T-277/00) ([1])

(State aid — Relief from social security contributions for firms in Venice and Chioggia — Decision declaring the aid scheme incompatible with the common market and requiring recovery of the aid paid out — Admissibility — Individual concern — Conditions concerning effect on trade between Member States and competition — Derogations under Article 87(3)(b) to (e) EC and Article 87(2)(b) EC — Categorisation as new aid or as existing aid — Principles of legal certainty, protection of legitimate expectations, equal treatment and proportionality — Duty to state reasons)

(2009/C 19/41)

Language of the case: Italian

Parties

Applicant in Case T-254/00: Hotel Cipriani SpA (Venice, Italy) (represented by: initially M. Marinoni, G.M. Roberti and F. Sciaudone, and later G.M. Roberti, F. Sciaudone and A. Bianchini, lawyers)

Applicant in Case T-270/00: Società italiana per il gas SpA (Italgas) (Turin, Italy) (represented by: M. Merola, C. Tesauro, M. Pappalardo and T. Ubaldi, lawyers)

Applicants in Case T-277/00: Coopservice — Servizi di fiducia Soc. coop. rl (Cavriago, Italy); and Comitato 'Venezia vuole vivere' (Venice) (represented by: A. Bianchini and A. Vianello, lawyers)

Defendant: Commission of the European Communities (represented by: V. Di Bucci, Agent, assisted by A. Dal Ferro, lawyer)

Intervener in support of the applicant in Case T-270/00: Italian Republic (represented by: initially U. Leanza, and later I. Braguglia, Agents, and by P. Gentili and S. Fiorentino, lawyers)

Re:

Action for annulment of Commission Decision 2000/394/EC of 25 November 1999 on aid to firms in Venice and Chioggia by way of relief from social security contributions under Laws Nos 30/1997 and 206/1995 (OJ 2000 L 150, p. 50)

Operative part of the judgment

The Court:

1. *Dismisses the applications;*

2. *Orders Hotel Cipriani SpA, Società italiana per il gas SpA (Italgas), Coopservice — Servizi di fiducia Soc. coop. rl and the Comitato 'Venezia vuole vivere' to bear their own costs and to pay those of the Commission, and orders Coopservice and the Comitato 'Venezia vuole vivere' also to bear the costs of the interlocutory proceedings.*

([1]) OJ C 355, 9.12.2000.

Judgment of the Court of First Instance of 26 November 2008 — Agraz and Others v Commission

(Case T-285/03) ([1])

(Non-contractual liability — Agriculture — Common organisation of the markets in processed fruit and vegetable products — Production aid for processed tomato products — Method of calculating the amount — 2000/2001 marketing year — Determination of the loss)

(2009/C 19/42)

Language of the case: French

Parties

Applicants: Agraz, SA (Madrid, Spain) and the 86 applicants listed in Annexes I and II to the judgment (represented by: J.L. da Cruz Vilaça, D. Choussy and S. Estima Martins)

Defendant: Commission of the European Communities (represented by: M. Nolin, Agent)

Re:

Action for damages for the loss allegedly suffered by the applicants as the result of the method used to calculate the amount of production aid under Commission Regulation (EC) No 1519/2000 of 12 July 2000 setting for the 2000/2001 marketing year the minimum price and the amount of production aid for processed tomato products (OJ 2003 L 174, p. 29).

Operative part of the judgment

The Court:

1. *Orders the Commission to pay to Agraz, Sa and the 86 other companies listed in Annexes I and II damages equivalent to an increase of 15.54 % in the amount of production aid which they received for the 2000/2001 marketing year, as set by Annex II to Regulation No 1519/2000.*

2. *Orders those damages to be reassessed using compensatory interest as from the time of actual payment of the aid to each applicant up to the date of delivery of the present judgment, at the rate fixed by the ECB for principal refinancing operations, plus two points, in respect of the applicants listed in Annex I, and at the rate of annual inflation determined for the period in question by Eurostat in the Member State where they are established, in respect of the applicants listed in Annex II.*

3. *Orders that the damages, as reassessed, be accompanied by default interest, as from the date of delivery of the present judgment until complete payment, at the rate set by the ECB for principal refinancing operations, plus two points.*

([1]) OJ C 251, 18.10.2003.

Judgment of the Court of First Instance of 2 December 2008 — Karatzoglou v EAR

(Case T-471/04) ([1])

(Staff cases — Temporary staff — Referral back to the Court of First Instance after setting aside — Termination of contract — Obligation to state the reasons on which the decision is based — Misuse of powers — Principle of sound administration)

(2009/C 19/43)

Language of the case: English

Parties

Applicant: Georgios Karatzoglou (Préveza, Greece) (represented by: S. Pappas, lawyer)

Defendant: European Agency for Reconstruction (EAR) (represented by: S. Orlandi and J.-N. Louis, lawyers)

Re:

Application for annulment of the decision of the EAR of 26 February 2004 to terminate the applicant's contract of employment

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Mr Georgios Karatzoglou and the European Agency for Reconstruction (EAR) each to bear their own costs incurred before the Court of Justice and the Court of First Instance.*

([1]) OJ C 57, 5.3.2005.

Judgment of the Court of First Instance of 2 December 2008 — Nuova Agricast and Cofra v Commission

(Case T-362/05 and T-363/05) ([1])

(Non-contractual liability of the Community — Aid scheme provided for under Italian legislation — Scheme declared compatible with the common market — Transitional measure — Certain undertakings excluded — Principle of protection of legitimate expectations — Sufficiently serious breach of a rule of law conferring rights on individuals — None)

(2009/C 19/44)

Language of the case: Italian

Parties

Applicant: Nuova Agricast Srl (Cerignola, Italy) and Cofra Srl (Barletta, Italy) (represented by: M.A. Calabrese, lawyer)

Defendant: Commission of the European Communities (represented by: V. Di Bucci and E. Righini, Agents)

Re:

Action for damages for the loss allegedly suffered by the applicants as a result of the adoption by the Commission of the Decision of 12 July 2000 declaring compatible with the common market an aid scheme for investment in the less-favoured regions of Italy (State aid No 715/1999 — Italy (SG 2000 D/105754)) and as a result of the Commission's conduct during the procedure which preceded the adoption of that decision.

Operative part of the judgment

The Court:

1. *Joins Case T-362/05 and T-363/05 for the purposes of the judgment.*

2. *Dismisses the actions.*

3. *Orders Nuova Agricast Srl to bear its own costs and to pay those incurred by the Commission in Case T-362/05.*

4. *Orders Cofra Srl to bear its own costs and to pay those incurred by the Commission in Case T-363/05.*

([1]) OJ C 296, 26.11.2005.

Judgment of the Court of First Instance of 26 November 2008 — Rajani v OHIM — Artoz-Papier (ATOZ)

(Case T-100/06) ([1])

(Community trade mark — Opposition proceedings — Application for Community word mark ATOZ — Earlier international word mark ARTOZ — No requirement to provide evidence of genuine use — Starting point for the five-year time-limit — Date of registration of the earlier mark — Article 43(2) and (3) of Regulation (EC) No 40/94 — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94 — Obligation to state the reasons on which a measure is based — Articles 73 and 79 of Regulation (EC) No 40/94 and Article 6 of the ECHR)

(2009/C 19/45)

Language of the case: English

Parties

Applicant: Deepak Rajani (Berlin, Germany) (represented by: A. Dustmann, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Artoz-Papier AG (Lenzburg, Switzerland)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 11 January 2006 (Case R 1126/2004-2), concerning opposition proceedings between Artoz Papier AG and Deepak Rajani.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Deepak Rajani to pay the costs.*

([1]) OJ C 235, 6.10.2007.

Judgment of the Court of First Instance of 26 November 2008 — En Route International v OHIM (FRESHHH)

(Case T-147/06) ([1])

(Community trade mark — Application for registration of the word mark FRESHHH as a Community trade mark — Absolute ground for refusal — Descriptive character — Article 7(1)(c) of Regulation (EC) No 40/94)

(2009/C 19/46)

Language of the case: German

Parties

Applicant: En Route International Ltd (Datchet, United Kingdom) (represented by: W. Göpfert, lawyer)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 7 March 2006 (Case R 352/2005-4) concerning registration of the word sign FRESHHH as a Community trade mark.

Operative part of the judgment

1. *The action is dismissed.*

2. *En Route International Ltd is ordered to pay the costs.*

([1]) OJ C 178 of 29.7. 2006.

Judgment of the Court of First Instance of 26 November 2008 — Greece v Commission

(Case T-263/06) ([1])

(EAGGF — Guarantee Section — Expenditure excluded from Community financing — Measures ancillary to rural development — Time-limit of 24 months — Assessment of the expenditure to be excluded — Key controls — Principle of ne bis in idem — Extrapolation of the findings of default — Principle of proportionality)

(2009/C 19/47)

Language of the case: Greek

Parties

Applicant: Hellenic Republic (represented by: I. Chalkias and G. Kanellopoulos, Agents)

Defendant: Commission of the European Communities (represented by: F. Jimeno Fernández and H. Tserepa-Lacombe, acting as Agents, and N. Korogiannakis, lawyer)

Re:

Annulment of Commission Decision 2006/554/EC of 27 July 2006 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ 2006 L 218, p. 12), in so far as it excludes certain expenditure incurred by the Hellenic Republic in the sector of measures ancillary to rural development

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

([1]) OJ C 281, 18.11.2006.

Judgment of the Court of First Instance of 26 November 2008 — United Kingdom v Commission

(Case T-278/06) ([1])

(EAGGF — Guarantee Section — Expenditure excluded from Community financing — Butter — Check of the quantity of product obtained — On-the-spot checks — Article 23(2) of Regulation (EC) No 2571/97)

(2009/C 19/48)

Language of the case: English

Parties

Applicant: United Kingdom of Great Britain and Northern Ireland (represented initially by: E. O'Neill and subsequently by I. Rao, Agents, and by H. Mercer, Barrister)

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

Re:

Action for annulment in part of Commission Decision 2006/554/EC of 27 July 2006 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ 2006 L 218, p. 12), in so far as it excludes certain expenses incurred by the United Kingdom of Great Britain and Northern Ireland in the sector of concentrated butter in the food industry.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

([1]) OJ C 294, 2.12.2006.

Judgment of the Court of First Instance of 2 December 2008 — Ford Motor v OHIM (FUN)

(Case T-67/07) ([1])

(Community trade mark — Application for Community word mark FUN — Absolute grounds for refusal — Lack of descriptive character — Article 7(1)(b) and (c) of Regulation (EC) No 40/94)

(2009/C 19/49)

Language of the case: German

Parties

Applicant: Ford Motor Co. (Dearborn, Michigan, United States) (represented by: R. Ingerl, lawyer)

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

Re:

ACTION brought against the decision of the Second Board of Appeal of OHIM of 20 December 2006 (Case R 1135/2006-2), concerning an application for registration of the Community word mark FUN.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 20 December 2006 (Case R 1135/2006 2);*

2. *Orders OHIM to pay the costs.*

([1]) OJ C 95, 28.4.2007.

Judgment of the Court of First Instance of 26 November 2008 — Avon Products OHIM (ANEW ALTERNATIVE)

(Case T-184/07) ([1])

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

(2009/C 19/50)

Language of the case: English

Parties

Applicant: Avon Products, Inc. (New York, New York, United States) (represented by: C. Heitmann-Lichtenstein and U. Stelzenmüller, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: initially by S. Laitinen and P. Bullock, and subsequently by G. Schneider, Agents)

Re:

ACTION brought against the decision of the Second Board of Appeal of OHIM of 22 March 2007 (Case R 1471/2006 2), concerning an application for registration as a Community trade mark of the word mark ANEW ALTERNATIVE.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Avon Products, Inc. to pay the costs.*

([1]) OJ C 170, 21.7.2007.

Order of the Court of First Instance of 2 December 2008 — Harman International Industries v OHIM — Becker (Barbara Becker)

(Case T-212/07) ([1])

(Community trade mark — Opposition proceedings — Application for the Community word mark Barbara Becker — Earlier Community word mark BECKER — Relative ground for refusal — Likelihood of confusion — Similarity of the signs — Article 8(1)(b) of Regulation (EC) No 40/94)

(2009/C 19/51)

Language of the case: English

Parties

Applicant: Harman International Industries, Inc. (Northridge, California, United States) (represented by: M. Vanhegan, Barrister)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance: Barbara Becker (Miami, Florida, United States) (represented by: P. Baronikians, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 7 March 2007 (Case R 502/2006-1) relating to opposition proceedings between Harman International Industries, Inc. and Barbara Becker.

Operative part of the order

1. *Annuls the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 7 March 2007 (Case R 502/2006-1);*

2. *Dismisses as inadmissible the application of Harman International Industries, Inc., requesting that the application for registration of Barbara Becker as a Community trade mark be rejected;*

3. *Orders OHIM to bear its own costs and pay the costs of Harman International Industries;*

4. *Orders Barbara Becker to bear her own costs.*

([1]) OJ C 183, 4.8.2007.

Judgment of the Court of First Instance of 2 December 2008 — Ebro Puleva v OHIM — Berenguel (BRILLO'S)

(Case T-275/07) ([1])

(Community trade mark — Opposition proceedings — Application for Community word mark BRILLO'S — Earlier national figurative marks featuring the word element 'brillante' — Relative ground for refusal — Likelihood of confusion — Similarity of the signs — Article 8(1)(b) of Regulation (EC) No 40/94)

(2009/C 19/52)

Language of the case: Spanish

Parties

Applicant: Ebro Puleva, SA (Madrid, Spain) (represented by: P. Casamitjana Lleonart, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance: Luis Berenguel, SL (El Barranquete-Níjar, Spain) (represented by: C. Hernández Hernández)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 21 May 2007 (Case R 493/2006-2) concerning opposition proceedings between Ebro Puleva, SA and Luis Berenguel, SL.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Ebro Puleva, SA to pay the costs.*

([1]) OJ C 235, 6.10.2007.

Judgment of the Court of First Instance (First Chamber) of 26 November 2008 — OHIM v López Teruel

(Case T-284/07 P) ([1])

(Appeal — Staff cases — Officials — Admissibility — Invalidity — Application for an Invalidity Committee to be convened — Circumscribed powers of the Appointing Authority)

(2009/C 19/53)

Language of the case: French

Parties

Appellant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (represented by: I. de Medrano Caballero and E. Maurage, Agents)

Other party to the proceedings: Adelaida López Teruel (Guadalajara, Spain) (represented by: initially L. Levi and C. Ronzi, then L. Levi, lawyers)

Re:

Appeal against the judgment of the Civil Service Tribunal of the European Union (First Chamber) of 22 May 2007 in Case F-97/06 *López Teruel* v *OHIM*, not yet published in the ECR, asking for that judgment to be set aside.

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) to pay the costs.*

([1]) OJ C 211, 8.9.2007.

Judgment of the Court of First Instance of 26 November 2008 — New Look v OHIM (NEW LOOK)

(Case T-435/07) ([1])

(Community trade mark — Application for the Community word mark NEW LOOK — Absolute ground for refusal — Lack of distinctive character acquired through use — Article 7(3) of Regulation (EC) No 40/94)

(2009/C 19/54)

Language of the case: English

Parties

Applicant: New Look Ltd (Weymouth, United Kingdom) (represented by: S. Malynicz, Barrister, and M. Blair and K. Gilbert, Solicitors)

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

Re:

Action against the decision of the Second Board of Appeal of OHIM of 3 September 2007 (Case R 670/2007-2) relating to the registration of the word sign NEW LOOK as a Community trade mark

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders New Look Ltd to pay the costs.*

([1]) OJ C 37, 9.2.2008.

Judgment of the Court of First Instance of 4 December 2008 — People's Mojahedin Organization of Iran v Council

(Case T-284/08) ([1])

(Common foreign and security policy — Restrictive measures directed against certain persons and entities with a view to combating terrorism — Freezing of funds — Actions for annulment — Rights of the defence — Judicial review)

(2009/C 19/55)

Language of the case: English

Parties

Applicant: People's Mojahedin Organization of Iran (Auvers-sur-Oise, France) (represented by: initially, J.-P. Spitzer, lawyer, and D. Vaughan QC, subsequently by J.-P. Spitzer, D. Vaughan QC and M.E. Demetriou, Barrister)

Defendant: Council of the European Union (represented by: initially, G.J. Van Hegleson, M. Bishop and E. Finnegan, subsequently by M. Bishop and E. Finnegan, Agents)

Interveners in support of the defendant: French Republic (represented by: G. de Bergues and A.L. During, Agents); and Commission of the European Communities (represented by: P. Aalto and S. Boelaert, Agents)

Re:

Application for annulment of Council Decision 2008/583/EC of 15 July 2008 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Decision 2007/868/EC (OJ 2008 L 188, p. 21), so far as it concerns the applicant.

Operative part of the judgment

The Court:

1. *Annuls Council Decision 2008/583/EC of 15 July 2008 implementing Article 2(3) of Regulation No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Decision 2007/868/EC, in so far as it concerns the People's Mojahedin Organization of Iran.*

2. *Orders the Council to bear, in addition to its own costs, the costs of the People's Mojahedin Organization of Iran.*

3. *Orders the French Republic and the Commission to pay their own costs.*

([1]) OJ C 236, 13.9.2008.

Order of the Court of First Instance of 27 October 2008 — S.C. Gerovital Cosmetics v OHIM — S.C. Farmec (GEROVITAL H3 Prof. Dr. A. Aslan)

(Case T-163/07) ([1])

(Community trade mark — Invalidity proceedings — Withdrawal of the application for a declaration of invalidity — No need to adjudicate)

(2009/C 19/56)

Language of the case: English

Parties

Applicant: S.C. Gerovital Cosmetics S.A. (Ilfov County, Romania) (represented by: D. Boștină, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervening before the Court of First Instance: S.C. Farmec S.A. (Cluj Napoca, Romania) (represented by: G. Turcu and M. Rosu, lawyers)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 27 February 2007 (Case R 271/2006-2) relating to invalidity proceedings between S.C. Farmec S.A. and S.C. Gerovital Cosmetics S.A.

Operative part of the order

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

2. *S.C. Gerovital Cosmetics S.A. and S.C. Farmec S.A. shall each bear their own costs and half of those incurred by the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM).*

([1]) OJ C 183, 4.8.2007.

Action brought on 6 October 2008 — Evropaïki Dynamiki v BEI

(Case T-461/08)

(2009/C 19/57)

Language of the case: English

Parties

Applicant: Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE (Athènes, Greece) (represented by: N. Korogiannakis and P. Katsimani, lawyers)

Defendant: European Investment Bank

Form of order sought

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

— Order the European Investment Bank to pay the applicant's damages suffered on account of the tendering procedure in question for an amount of EUR 1 940 000,00;

— Order the European Investment Bank to pay the applicant's legal and other costs and expenses incurred in connection with this application, even if the current application is rejected.

Pleas in law and main arguments

By means of its application pursuant to Articles 230 EC and 235 EC, the applicant seeks, on one hand, the annulment of the decision of the European Investment Bank of 26 July 2008 to reject the bid of the applicant filed in response to the open Call for Tenders 'EIB-Assistance in the Maintenance Support and Development of the loans front Office system (SERAPIS) at the European Investment Bank' (OJ 2007/S 176-215155), and on the other hand, compensation for damages.

The applicant claims that the outcome of the tender has not been communicated to it and that it came only incidentally to its knowledge that a contract award notice had been published in the Official Journal ([1]) of 26 July 2008. The applicant argues that the contested decision was taken by the defendant in violation of the principles of transparency and of equal treatment, and of the relevant provisions of the EIB's Guide for Procurement and the EC law on public procurement. It is submitted moreover that by not notifying the applicant of its award decision, by failing to provide sufficient justification of its decision to award the contract to another tenderer, by setting criteria that result in unequal treatment, by mixing selection and award criteria, by using a discriminatory evaluation formula of a ratio 75 %/25 %, the defendant allegedly failed to ensure undistorted competition through repeated infringements of the obligation of transparency and equal treatment.

The applicant furthermore claims that should the Court find that the defendant infringed the community law of public procurement and/or principles of legal transparency and of equal treatment, the applicant requests monetary compensation equal to 50 % of EUR 3 880 000,00 (EUR 1 940 000,00) from EIB, corresponding to the estimated gross profit from the aforementioned public procurement procedure, should the contract have been awarded to the applicant.

The applicant further requests the Court to condemn the defendant to pay the applicant's legal costs even if the Court rejects the application, in accordance with Article 87(3)(b) of the Rules of Procedure of the Court of First Instance, since it considers that it was the defendant's deficient evaluation of the applicant's tender, as well as the failure to state reasons and inform the applicant timely on the relative merits of the successful tenderer that forced the applicant to seek legal redress before this Court.

([1]) OJ 2008/S 144-192307.

Action brought on 11 November 2008 — Giordano Enterprises v OHIM — José Dias Magalhães & Filhos (GIORDANO)

(Case T-483/08)

(2009/C 19/58)

Language in which the application was lodged: English

Parties

Applicant: Giordano Enterprises Ltd (Jalan Merdeka, Malaysia) (represented by: M. Nentwig, lawyer)

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

Other party to the proceedings before the Board of Appeal: José Dias Magalhães & Filhos Lda (Arrifana, 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 28 July 2008 in case R 1864/2007-2, as far as it dismissed the appeal of the applicant; and

— Order OHIM 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 'GIORDANO' for goods in classes 18 and 25

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 322 534 of the word mark 'GIORDANO' for goods in class 25

Decision of the Opposition Division: Partially upheld the opposition

Decision of the Board of Appeal: Annulled the decision of the Opposition Division to the extent that it upheld the opposition for certain goods in class 18 and dismissed the appeal for the reminder

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 40/94 as the Board of Appeal erred in its finding that there is a likelihood of confusion between the trade marks concerned; Infringement of Article 42 of Council Regulation No 40/94 as well as Rule 15 of Commission Regulation No 2868/95 [1] as the Board of Appeal wrongly rendered a decision pursuant to Article 8(1)(a) of Council Regulation No 40/94 while the other party to the proceedings before the Board of Appeal based its opposition only on Article 8(1)(b) of Council Regulation 40/94.

[1] Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark (OJ 1995 L 303, p. 1).

Appeal brought on 13 November 2008 by Paul Lafili against the judgment of the Civil Service Tribunal delivered on 4 September 2008 in Case F-22/07 Lafili v Commission

(Case T-485/08 P)

(2009/C 19/59)

Language of the case: French

Parties

Appellant: Paul Lafili (Genk, Belgium) (represented by: L. Levi, lawyer)

Other party to the proceedings: Commission of the European Communities

Form of order sought by the appellant

The appellant claims the Court should:

— annul the judgment of the Civil Service Tribunal of the European Union of 4 September 2008 in Case F-22/07 in so far as it rejected the pleas in law alleging infringement of Articles 44 and 46 of the Staff Regulations and Article 7 of Annex XIII to the Staff Regulations and an infringement of the principle of legitimate expectations;

— consequently, allow the appellant's claims at first instance and, therefore,

  — the annulment of the decision to classify the appellant in Grade AD 13, step 5, contained in a note of DG ADMIN of 11 May 2006 and in the appellant's salary slip of June 2006 and in his subsequent salary slips;

  — leading to:

    — the reinstatement, with effect from 1 May 2006, of the applicant in grade AD 13, step 2, retaining the multiplication factor 1.1172071;

    — the full restructuring of the appellant's career with retroactive effect from 1 May 2006 to the date of his classification in grade and step as thus corrected (including the valuation of his experience in his classification as thus corrected, his rights of advancement to a higher step and his pension rights), which includes the payment of default interest at the base rate fixed by the European Central Bank for its main refinancing operations, applicable during the period concerned, increased by two points, on the total sum of the difference between the remuneration for his classification as set out in the classification decision and the classification to which he should have been entitled until the date on which the decision on his corrected classification is taken;

  — the order that the Commission is to pay all the costs;

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

Pleas in law and main arguments

By this appeal, the appellant is seeking the annulment of the judgment of the Civil Service Tribunal (CST) of 4 September 2008, given in Case F-22/07 *Lafili* v *Commission*, by which the CST annulled the decision of the Head of Unit A6 'Career structure, evaluation and promotion' in the 'Personnel and Administration' General-Directorate of the Commission of the European Communities of 11 May 2006, in so far as the judgment under appeal rejects the appellant's pleas in law alleging infringement of Articles 44 and 46 of the Staff Regulations of Officials of the European Communities ('the Staff Regulations') and Article 7 of Annex XIII to the Staff Regulations and an infringement of the principle of legitimate expectations.

In support of his appeal, the appellant raised a single plea alleging the infringement, at first instance, of Articles 44 and 46 of the Staff Regulations, of Article 7 of Annex XIII to the Staff Regulations, the infringement of the principles of interpretation of Community law and of the obligation to state reasons, and a distortion of the evidence.

Action brought on 17 November 2008 — Kureha v OHIM — Sanofi-Aventis (KREMEZIN)

(Case T-487/08)

(2009/C 19/60)

Language in which the application was lodged: English

Parties

Applicant: Kureha Corp. (Tokyo, Japan) (represented by: W. von der Osten-Sacken and O. Sude, lawyers)

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

Other party to the proceedings before the Board of Appeal: Sanofi-Aventis SA (Gentilly, France)

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 15 September 2008 in case R 1631/2007-4; and

— Order 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 'KREMEZIN' for goods in class 5 — application No 2 906 501

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: International trade mark registration No 529 937 of the word mark 'KRENOSIN' for goods in class 5

Decision of the Opposition Division: Upheld the opposition in its entirety

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Rule 19 and of Rule 20(1) of Commission Regulation No 2868/95 ([1]), as well as misuse of power, as the Board of Appeal wrongly considered that the other party to the proceedings before it has sufficiently proven the existence and validity of the earlier trade mark; Infringement of Article 8(1)(b) in connection with Article 43(2) and (3) of Council Regulation No 40/94 as the Board of Appeal erred in its finding that there is a likelihood of confusion between the trade marks concerned.

([1]) Commission Regulation (EC) No 2868/95 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 14 November 2008 — Galileo International Technology v OHIM — GALILEO SISTEMAS Y SERVICIOS (GSS GALILEO SISTEMAS Y SERVICIOS)

(Case T-488/08)

(2009/C 19/61)

Language in which the application was lodged: English

Parties

Applicant: Galileo International Technology LLC (Bridgetown, Barbados) (represented by: S. Malynicz, Barrister, K. Gilbert and M. Blair, Solicitors)

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

Other party to the proceedings before the Board of Appeal: Galileo Sistemas y Servicios, SL (Tres Cantos, Spain)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 28 August 2008 in case R 403/2006-4; and

— Order the defendant and the other party to the proceedings before the Board of Appeal to bear their own costs and those incurred by the applicant.

Pleas in law and main arguments

Applicant for the Community trade mark: The other party to the proceedings before the Board of Appeal

Community trade mark concerned: The figurative mark 'GSS GALILEO SISTEMAS Y SERVICIOS', for goods and services in classes 9 and 38.

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

Mark or sign cited: Community trade mark application No 170 167 of the word mark 'GALILEO' for goods and services in classes 9, 39, 41 and 42; Community trade mark registration No 2 157 501 of the word mark 'GALILEO' for goods and services in classes 9, 16, 35, 38, 39, 41 and 42; Community trade mark registration No 516 799 of the figurative mark 'powered by Galileo' for goods and services in classes 9, 16, 35, 38, 39, 41 and 42; Community trade mark registration No 330 084 of the figurative mark 'GALILEO INTERNATIONAL' for goods and services in classes 9, 39, 41 and 42; Community trade mark registration No 2 159 069 of the figurative mark 'GALILEO INTERNATIONAL' for goods and services in classes 9, 16, 35, 38, 39, 41 and 42; Earlier signs protected in various Member States namely, a non-registered trade mark, a trade name, and a sign, all used in the course of trade for the specified goods and services.

Decision of the Opposition Division: Upheld the opposition against the contested goods and services

Decision of the Board of Appeal: Annulled the decision of the Opposition Division

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation 40/94 as: (i) the Board of Appeal failed to carry out a global assessment of the Community trade mark concerned in relation to the word only trade marks for 'GALILEO'; (ii) the Board of Appeal erred in its assessment of the Community trade mark concerned in relation to the earlier composite trade marks containing the word 'GALILEO'; and (iii) the Board of Appeal erred in its assessment of the similarity of the goods; Infringement of Article 63(2) of Council Regulation 40/94 as the Board of Appeal failed to remit the case back to the Opposition Division for a finding under Articles 8(4) and 8(5) of Council Regulation 40/94.

Action brought on 14 November 2008 — Sun World International v OHIM — Kölla Hamburg Overseas Import (SUPERIOR SEEDLESS)

(Case T-493/08)

(2009/C 19/62)

Language in which the application was lodged: English

Parties

Applicant: Sun World International LLC (Bakersfield, United States) (represented by: M. Holah, Solicitor)

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

Other party to the proceedings before the Board of Appeal: Kölla Hamburg Overseas Import GmbH & Co. KG (Hamburg, 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 3 September 2008 in case R 1378/2007-1; and

— Order OHIM to pay the costs.

Pleas in law and main arguments

Registered Community trade mark subject of the application for a declaration of invalidity: The word mark 'SUPERIOR SEEDLESS' for goods in class 31 — Community trade mark registration No 610 980

Proprietor of the Community trade mark: The applicant

Party requesting the declaration of invalidity of the Community trade mark: The other party to the proceedings before the Board of Appeal

Decision of the Cancellation Division: Partial invalidity of the Community trade mark concerned

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Articles 7(3) and 51(2) of Council Regulation No 40/94 as the Board of Appeal: (i) wrongly identified the relevant public; (ii) wrongly refused to allow a withdrawal of the Community trade mark registration in respect of some of the goods in the specification; (iii) made an unlawful assumption based on the lack of a United Kingdom or Irish registration; and (iv) incorrectly assessed the evidence filed.

Action brought on 18 November 2008 — NEC Display Solutions Europe v OHIM — C More Entertainment (see more)

(Case T-501/08)

(2009/C 19/63)

Language in which the application was lodged: English

Parties

Applicant: NEC Display Solutions Europe GmbH (Munich, Germany) (represented by: P. Munzinger, lawyer)

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

Other party to the proceedings before the Board of Appeal: C More Entertainment AB (Stockholm, Sweden)

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 28 August 2008 in case R 1388/2007-4 and reject the opposition;

— Order OHIM to pay the costs; and

— Order the other party to the proceedings before the Board of Appeal to pay the costs, should it become an intervener in this case.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The figurative mark 'see more' for goods in class 9 — application No 4 034 741

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: Danish trade mark registration No VR 2004 01590 of the word mark 'CMORE' for goods and services in classes 9, 16, 35, 38 and 41; Finish trade mark registration No 231 366 of the word mark 'CMORE' for goods and services in classes 9, 16, 35, 38 and 41

Decision of the Opposition Division: Upheld the opposition in its entirety

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 40/94 as the Board of Appeal erred in its finding that there is a likelihood of confusion between the trade marks concerned.

Action brought on 21 November 2008 — Psytech International v OHIM — Institute for Personality & Ability Testing (16PF)

(Case T-507/08)

(2009/C 19/64)

Language in which the application was lodged: English

Parties

Applicant: Psytech International Ltd (Pulloxhill, United Kingdom) (represented by: N. Phillips, Solicitor and N. Saunders, Barrister)

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

Other party to the proceedings before the Board of Appeal: Institute for Personality & Ability Testing, Inc. (Champaign, United States)

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 23 July 2008 in case R 1012/2007-2 and remit the application for a declaration of invalidity to the OHIM to allow it to proceed, and

— Order OHIM to pay the costs.

Pleas in law and main arguments

Registered Community trade mark subject of the application for a declaration of invalidity: The word mark '16PF' for goods and services in classes 9, 16, 35, 41 and 42 — Community trade mark registration No 1 892 652

Proprietor of the Community trade mark: The other party to the proceedings before the Board of Appeal

Party requesting the declaration of invalidity of the Community trade mark: The applicant

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

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Articles 7(1)(b), 7(1)(c), 7(1)(d) and 51(1)(b) of Council Regulation 40/94 as the Board of Appeal: (i) should have found on the evidence before it that the registered Community trade mark subject of the application for a declaration of invalidity was devoid of any distinctive character; (ii) failed to apply the correct legal test and failed to properly evaluate the evidence before it; and (iii) should have found on the evidence before it that the application for the registered Community trade mark subject of the application for a declaration of invalidity was made in bad faith.

Action brought on 24 November 2008 — Bang & Olufsen v OHIM (Representation of a loudspeaker)

(Case T-508/08)

(2009/C 19/65)

Language of the case: English

Parties

Applicant(s): Bang & Olufsen A/S (Struer, Denmark) (represented by K. Wallberg, lawyer)

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

Form of order sought

— Annul paragraph 2 the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 10 September 2008 in case R 497/2005-1; and

— Order OHIM to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: The three-dimensional mark representing a loudspeaker for goods in classes 9 and 20 — application No 3 354 371

Decision of the examiner: Rejection of the application

Decision of the Board of Appeal: Partial annulment of the decision of the examiner

Pleas in law: Infringement of Article 63(6) of Council Regulation No 40/94 as the Board of Appeal failed to take the necessary measures to comply with the judgment of the Court of Justice; Infringement of Article 7(1)(e)(iii) of Council Regulation No 40/94 as the Board of Appeal wrongly took the view that the Community trade mark concerned is a sign which consists exclusively of a shape which gives substantial value to the goods.

Action brought on 20 November 2008 — Toqueville v OHIM — Schiesaro (TOCQUEVILLE 13)

(Case T-510/08)

(2009/C 19/66)

Language in which the application was lodged: Italian

Parties

Applicant: Toqueville Srl (Milan, Italy) (represented by: S. Bariatti, I. Palombella and E. Cucchiara, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Marco Schiesaro (Milan, Italy)

Form of order sought

— Annul the decision of the Second Board of Appeal of OHIM of 26 August 2008 in Case R 829/2008-2 Toqueville Srl v M. Schiesaro.

— Order the defendant to pay the costs.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: word mark 'TOCQUEVILLE 13' (Community trade mark No 1.406.982) to designate goods and services in Classes 25, 41 and 42.

Proprietor of the Community trade mark: the applicant.

Applicant for the declaration of invalidity: Marco Schiesaro.

Decision challenged before the Board of Appeal: the decision of the Cancellation Division to grant the application for partial revocation of the trade mark in question.

Decision of the Board of Appeal: declaration that the appeal is inadmissible and rejection of a request for *restitutio in integrum* as regards the time-limit for filing an appeal against the decision of the Cancellation Division.

Pleas in law: Infringement of Articles 73 and 78 if Regulation (EC) No 40/94 on the Community trade mark, Articles 2 and 9 of Regulation (EC) No 2869/95 on the fees payable to the Office for Harmonization in the Internal Market and Article 50 of Regulation (EC) No 2868/95 implementing Regulation (EC) No 40/94.

Action brought on 26 November 2006 — Laboratorios Byly v OHIM — Ginis (BILLY'S Products)

(Case T-514/08)

(2009/C 19/67)

Language in which the application was lodged: Spanish

Parties

Applicant: Laboratorios Byly, SA (Barcelona, Spain) (represented by: L. Plaza Fernandez-Villa, 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: Vasileios Ginis (Athens, Greece)

Form of order sought

— The contested decision be annulled;

— the defendant be ordered to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Vasileios Ginis.

Community trade mark concerned: Figurative mark 'BILLY'S products' (application No 4.215.273) for goods in Class 3.

Proprietor of the mark or sign cited in the opposition proceedings: Laboratorios Byly.

Mark or sign cited in opposition: Community word marks 'BYLY' (application No 156.216) for goods in Class 3, and 'byly' (application No 2.604.015) for goods in Classes 3 and 5, and services in Class 35.

Decision of the Opposition Division: Opposition rejected.

Decision of the Board of Appeal: Appeal dismissed.

Pleas in law: Incorrect interpretation of Article 8(1)(b) of Regulation (EC) No 40/94 on the Community trade mark.

Order of the Court of First Instance of 19 November 2008 — UPC v Commission

(Case T-367/05) ([1])

(2009/C 19/68)

Language of the case: French

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

([1]) OJ C 315, 10.12.2005.

Order of the Court of First Instance of 25 November 2008 — Commission v Northumbrian Water

(Case T-334/06) ([1])

(2009/C 19/69)

Language of the case: English

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

([1]) OJ C 326, 30.12.2006.

Order of the Court of First Instance of 27 November 2008 — Kuiburi Fruit Canning v Council

(Case T-330/07) ([1])

(2009/C 19/70)

Language of the case: English

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

([1]) OJ C 269, 10.11.2007.

Order of the Court of First Instance of 27 November 2008 — Dow AgroSciences and Others v Commission

(Case T-367/07) ([1])

(2009/C 19/71)

Language of the case: English

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

([1]) OJ C 283, 24.11.2007.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Judgment of the Civil Service Tribunal (First Chamber) of 2 December 2008 — Baniel-Kubinova v European Parliament

(Case F-131/07) ([1])

(Staff case — Members of the temporary staff and members of the auxiliary staff appointed probationary officials — Article 10 of Annex VII to the Staff Regulations — Right to the daily allowance after receiving part of the installation allowance)

(2009/C 19/72)

Language of the case: French

Parties

Applicants: Barbora Baniel-Kubinova (Alzingen, Luxembourg) and thirteen other officials of the European Parliament (represented by: S. Orlandi, J.-N. Louis and E. Marchal, lawyers)

Defendant: European Parliament (represented by: R. Ignătescu and S. Seyr, agents)

Re:

Annulment of several of the decisions of the Appointing Authority of the European Parliament refusing to grant the applicants the daily allowance referred to in Article 10 of Annex VII to the Staff Regulations of Officials.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

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

([1]) OJ C 183, 19.7.2008, p. 32.

Judgment of the Civil Service Tribunal (First Chamber) of 4 December 2008 — Blias v ECB

(Case F-6/08) ([1])

(Staff case — ECB staff — Remuneration — Expatriation allowance — Conditions set out in Article 17 of the ECB conditions of employment — Applicant ordered to pay the costs — Requirements of fairness — Article 87(2) of the Rules of Procedure)

(2009/C 19/73)

Language of the case: German

Parties

Applicant: Jessica Blias (Frankfurt on Main, Germany) (represented by: B. Karthaus, lawyer)

Defendant: European Central Bank (represented by: F. Malfrère and F. Feyerbacher, Agents, assisted by B. Wägenbaur, lawyer)

Re:

Staff cases — Annulment of the decision of the European Central Bank of 15 August 2007 refusing to grant the applicant entitlement to the expatriation allowance on the ground that she does not fulfil the conditions set out in Article 17 of the Conditions of Employment of the ECB.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

2. *Orders Ms Blias to pay, in addition to her own costs, half the costs of the European Central Bank;*

3. *Orders the European Central Bank to pay half of its own costs.*

([1]) OJ C 142, 7.6.2008, p. 39.

Action brought on 13 October 2008 — Clarke, Papathanasiou and Periañez-González v OHIM

(Case F-82/08)

(2009/C 19/74)

Language of the case: German

Parties

Applicant(s): Nicole Clarke (Alicante, Spain), Elisavet Papathanasiou (Alicante, Spain) and Mercedes Periañez-González (Brussels, Belgium) (represented by: H. Tettenborn, Rechtsanwalt)

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

Subject-matter and description of the proceedings

Application for, first, a declaration of the invalidity of the clauses in the applicants' contracts which make provision for automatic termination of their contracts in the event that they are not included on the reserve list drawn up following the first open competition for their function group and, second, for a declaration that the open competitions OHIM/AD/02/07 and OHIM/AST/02/07 have no effect on the contracts of the applicants or for the annulment of that competition. Application for damages.

Form of order sought

— Declaration of the invalidity of the terms of Article 5 of the employment contract of each of the applicants;

— A declaration that the notice of competition published on 12.12.2007 under the numbers OHIM/AD/02/07 and OHIM/AST/02/07 in the Official Journal of the EU C 300 A has no effect on the employment relationships of the applicants;

— In the alternative, annulment of the decisions taken by OHIM on 12.7.2008 in the form of an implied rejection pursuant to the third indent of Article 90(2) of the Staff Regulations (as regards applicants 1, 2 and 3) and the decision of OHIM of 18.7.2008 (as regards applicant 2);

— In the further alternative, the annulment of the decisions by OHIM of 7.3.2008 to reject the requests made by the applicants under Article 90(1) of the Staff Regulations,

Insofar as those decisions reject

— The approval of the variation of the applicants' contracts of indefinite duration so that the provision in Article 5 of the contracts regarding the requirement of an additional external competition is entirely deleted without being replaced, or in the alternative is deleted at least as regards the first sentence,

— The declaration of the continued existence of the contracts of indefinite duration concluded with the applicants,

— The declaration, that the applicants' participation in an open competition is not required in order to continue to be employed in OHIM as members of the temporary staff under a contract of indefinite duration,

And the application made in the alternative for a

— Declaration that there is no requirement for the participation of the applicants in the competition published on 12.12.2007 under numbers OHIM/AD/02/07 and OHIM/AST/02/07 in the Official Journal of the EU C 300 A in order for them to continue to be employed in OHIM as members of the temporary staff under a contract of indefinite duration,

— The annulment of the statements by the Personnel Division of OHIM in the letters to the applicants of 19.12.2007 in which OHIM linked the publication in the Official Journal of 12.12.2007 with the terms of Article 5 of the employment contracts concluded with the applicants;

— And in the alternative the annulment of the competition published in Official Journal of the EU C 300 A of 12.12.2007, insofar as it causes prejudice to the applicants;

— An order that OHIM pay compensation to the applicants in such an amount as the Court shall order for the psychological and non-material damage caused to them by the decisions to be annulled in accordance with the present application;

— An order that the Office for Harmonisation in the Internal Market (Trade Marks and Designs) pay the costs.