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(Notices)

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COURT OF JUSTICE

(2009/C 193/01)

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

OJ C 180, 1.8.2009

Past publications

OJ C 167, 18.7.2009

OJ C 153, 4.7.2009

OJ C 141, 20.6.2009

OJ C 129, 6.6.2009

OJ C 113, 16.5.2009

OJ C 102, 1.5.2009

These texts are available on:

EUR-Lex: http://eur-lex.europa.eu

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Reference for a preliminary ruling from the Raad van State (The Netherlands) lodged on 4 May 2009 — Stichting Natuur en Milieu, Stichting Greenpeace Nederland, B. Meijer and E. Zwaag, F. Pals v College van Gedeputeerde Staten van Groningen, interested third party: RWE Power AG

(Case C-165/09)

(2009/C 193/02)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Applicants: Stichting Natuur en Milieu, Stichting Greenpeace Nederland, B. Meijer, E. Zwaag, F. Pals

Defendants: College van Gedeputeerde Staten van Groningen

Interested third party: RWE Power AG

Questions referred

1. Does the obligation of interpretation in conformity with directives imply that the obligations under Directive 96/61/EC [1] concerning integrated pollution prevention and control (now Directive 2008/1/EC [2] concerning integrated pollution prevention and control), as transposed in the Wet Milieubeheer, can and should be interpreted as meaning that, in deciding on an application for an environmental permit, the national emission ceiling for SO_2 in Directive 2001/81/EC [3] on national emission ceilings for certain atmospheric pollutants ("the NEC Directive") should be fully taken into account, in particular as regards the obligations under Article 9(4) of Directive 96/61/EC, now Directive 2008/1/EC?

2. (a) Does the duty of a Member State to refrain from adopting measures liable seriously to compromise the result prescribed by a directive also apply during the period of 27 November 2002 to 31 December 2010 envisaged in Article 4(1) of the NEC Directive?

   (b) Do positive obligations rest with the Member State concerned during the relevant period of 27 November 2002 to 31 December 2010, either in parallel with the aforementioned duty to refrain, or in place thereof, if the national emission ceiling for SO_2 in the NEC Directive is exceeded or if there is a risk that it may be exceeded at the end of that period?

   (c) In answering Questions 2(a) and 2(b), is it significant that an application for an environmental permit for an installation which contributes to the national emission ceiling for SO_2 in the NEC Directive being exceeded or the risk of it being exceeded, indicates that the installation will become operational in the year 2011 at the earliest?

3. (a) Do the obligations referred to in question 2 imply that, in the absence of guarantees that the installation for which an environmental permit was sought would not contribute to the national emission ceiling for SO_2 in the NEC Directive being exceeded or the risk of it being exceeded, the Member State must refuse the application for the environmental permit or attach further conditions or restrictions to it? In answering that question, is the extent to which the installation contributes to the emission ceiling being exceeded or the risk of it being exceeded, of significance?

   (b) Or does the NEC Directive imply that, where the national emission ceiling for SO_2 is exceeded or risks being exceeded, a Member State also has the discretion to bring about the result prescribed by the Directive, not by refusing the permit or by making it subject to further conditions or restrictions, but rather by adopting other measures such as other forms of compensation?

4. Where obligations as referred to in questions 2 and 3 rest with a Member State, can a private individual bring the issue of compliance with those obligations before a national court?

5. (a) Can an individual rely directly on Article 4 of the NEC Directive?

   (b) If so, is it possible to do so from 27 November 2002 or only from 31 December 2010? Is it significant, when answering that question, that an application for an environmental permit indicates that the installation will become operational in the year 2011 at the earliest?

6. More particularly, if the granting of an environmental permit and/or other measures contribute to the national emission ceiling for SO_2 in the NEC Directive being exceeded or the risk of it being exceeded, is an individual entitled, on the basis of Article 4 of that Directive:

   (a) to make a general claim that the Member State concerned should adopt a package of measures which, by 2010 at the latest, would limit the annual national emissions of SO_2 to amounts not greater than the national emission ceilings in the NEC Directive, or, if that does not succeed, a package of measures which would limit the emissions to those amounts as soon as possible thereafter?

   (b) to make concrete claims that the Member State concerned should adopt specific measures in respect of an individual installation — for example, by refusing a permit or attaching further conditions or restrictions to the permit — which, by the year 2010 at the latest, would contribute to the annual national emissions of SO_2 being limited to amounts not greater than the emission ceilings in the NEC Directive, or, if that does not succeed, specific measures which would contribute to the emissions being limited to those amounts as soon as possible thereafter?

   (c) In answering questions 6(a) and 6(b), is the extent to which the installation contributes to the emission ceiling being exceeded or the risk of it being exceeded, of significance?

(1) Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control (OJ 1996 L 257, p. 26).
(2) Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control (Codified version) (Text with EEA relevance) (OJ 24, 29.1.2008, p. 8).
(3) Directive 2001/81/EC of the European Parliament and of the Council of 23 October 2001 on national emission ceilings for certain atmospheric pollutants (OJ L 309, 27.11.2001, p. 22).

Reference for a preliminary ruling from the Raad van State (The Netherlands) lodged on 11 May 2009 — Stichting Natuur en Milieu, Stichting Zuid-Hollandse Milieufederatie, Stichting Greenpeace Nederland, Vereniging van Verontruste Burgers van Voorne v Gedeputeerde Staten van Zuid-Holland, Interveners: Electrabel Nederland NV and Burgemeester en Wethouders Rotterdam

(Case C-166/09)

(2009/C 193/03)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Applicants: Stichting Natuur en Milieu, Stichting Zuid-Hollandse Milieufederatie, Stichting Greenpeace Nederland, Vereniging van Verontruste Burgers van Voorne

Defendant: Gedeputeerde Staten van Zuid-Holland

Interveners: Electrabel Nederland NV and Burgemeester en Wethouders Rotterdam

Questions referred

1. Does the obligation of interpretation in conformity with directives imply that the obligations under Directive 2008/1/EC (1) concerning integrated pollution prevention and control as transposed in the Wet Milieubeheer, can and should be interpreted as meaning that, in deciding on an application for an environmental permit, the national emission ceiling for SO2 and NOx in Directive 2001/81/EC (2) on national emission ceilings for certain atmospheric pollutants (hereinafter 'the NEC Directive') should be fully taken into account, in particular as regards the obligations under Article 9(4) of Directive 2008/1/EC?

2. (a) Does the duty of a Member State to refrain from adopting measures liable seriously to compromise the result prescribed by a directive also apply during the period of 27 November 2002 to 31 December 2010 envisaged in Article 4(1) of the NEC Directive?

   (b) Do positive obligations rest with the Member State concerned during the relevant period of 27 November 2002 to 31 December 2010, either in parallel with the aforementioned duty to refrain, or in place thereof, if the national emission ceilings for SO_2 and/or NO_x in the NEC Directive are exceeded or if there is a risk that they may be exceeded at the end of that period?

   (c) In answering Questions 2(a) and 2(b), is it significant that an application for an environmental permit for an installation which contributes to the national emission

ceiling for SO_2 and/or NO_x in the NEC Directive being exceeded or the risk of it being exceeded, indicates that the installation will become operational in the year 2011 at the earliest?

3. (a) Do the obligations referred to in question 2 imply that, in the absence of guarantees that the installation for which an environmental permit was sought would not contribute to the national emission ceilings for SO_2 and/or NO_x in the NEC Directive being exceeded or the risk of them being exceeded, the Member State must refuse the application for the environmental permit or attach further conditions or restrictions to it? In answering that question, is the extent to which the installation contributes to the emission ceilings being exceeded or the risk of them being exceeded, of significance?

   (b) Or does the NEC Directive imply that, where the national emission ceilings for SO_2 and/or NO_x are exceeded or risk being exceeded, a Member State also has the discretion to bring about the result prescribed by the Directive, not by refusing the permit or by making it subject to further conditions or restrictions, but rather by adopting other measures such as other forms of compensation?

4. Where obligations as referred to in questions 2 and 3 rest with a Member State, can a private individual bring the issue of compliance with those obligations before a national court?

5. (a) Can an individual rely directly on Article 4 of the NEC Directive?

   (b) If so, is it possible to do so from 27 November 2002 or only from 31 December 2010? Is it significant, when answering that question, that an application for an environmental permit indicates that the installation will become operational in the year 2011 at the earliest?

6. More particularly, if the granting of an environmental permit and/or other measures contributes to the national emission ceilings for SO_2 and/or NO_x in the NEC Directive being exceeded or the risk of their being exceeded, is an individual entitled, on the basis of Article 4 of that Directive:

   (a) to make a general claim that the Member State concerned should adopt a package of measures which, by 2010 at the latest, would limit the annual national emissions of SO_2 and NO_x to amounts not greater than the national emission ceilings in the NEC Directive, or, if that does not succeed, a package of measures which would limit the emissions to those amounts as soon as possible thereafter?

   (b) to make concrete claims that the Member State concerned should adopt specific measures in respect of an individual installation — for example, by refusing a permit or attaching further conditions or restrictions to the permit — which, by the year 2010 at the latest, would contribute to the annual national emissions of SO_2 and NO_x being limited to amounts not greater than the emission ceilings in the NEC Directive, or, if that does not succeed, specific measures which would contribute to the emissions being limited to those amounts as soon as possible thereafter?

   (c) In answering questions 6(a) and 6(b), is the extent to which the installation contributes to the emission ceilings being exceeded, or the risk of them being exceeded, of significance?

([1]) Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control (Codified version) (Text with EEA relevance) (OJ L 24, 29.1.2008, p. 8).

([2]) Directive 2001/81/EC of the European Parliament and of the Council of 23 October 2001 on national emission ceilings for certain atmospheric pollutants (OJ L 309, 27.11.2001, p. 22).

Reference for a preliminary ruling from the Raad van State (Netherlands) lodged on 11 May 2009 — Stichting Natuur en Milieu, Stichting Zuid-Hollandse Milieufederatie, Stichting Greenpeace Nederland, Vereniging van Verontruste Burgers van Voorne v Gedeputeerde Staten van Zuid-Holland, interested third parties: E.On Benelux and Burgemeester en Wethouders Rotterdam

(Case C-167/09)

(2009/C 193/04)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Applicants: Stichting Natuur en Milieu, Stichting Zuid-Hollandse Milieufederatie, Stichting Greenpeace Nederland, Vereniging van Verontruste Burgers van Voorne

Defendant: Gedeputeerde Staten van Zuid-Holland

Interested third parties: E.On Benelux and Burgemeester en Wethouders Rotterdam

Questions referred

1. Does the obligation of interpretation in conformity with directives imply that the obligations under Directive 96/61/EC ([1]) concerning integrated pollution prevention and control (now: Directive 2008/1/EC ([2]) concerning integrated pollution prevention and control), as transposed in the Wet Milieubeheer, can and should be interpreted as meaning that, in deciding on an application for an environmental permit, the national emission ceiling for SO_2 and NO_x in Directive 2001/81/EC ([3]) on national emission ceilings for certain atmospheric pollutants (hereinafter 'the NEC Directive') should be fully taken into account, in particular as regards the obligations under Article 9(4) of Directive 96/61/EC, now Directive 2008/1/EC?

2. (a) Does the duty of a Member State to refrain from adopting measures liable seriously to compromise the result prescribed by a directive also apply during the period of 27 November 2002 to 31 December 2010 envisaged in Article 4(1) of the NEC Directive?

   (b) Do positive obligations rest with the Member State concerned during the relevant period of 27 November 2002 to 31 December 2010, either in parallel with the aforementioned duty to refrain, or in place thereof, if the national emission ceilings for SO_2 and/or NO_x in the NEC Directive are exceeded or if there is a risk that they may be exceeded at the end of that period?

   (c) In answering Questions 2(a) and 2(b), is it significant that an application for an environmental permit for an installation which contributes to the national emission ceilings for SO_2 and/or NO_x in the NEC Directive being exceeded or the risk of their being exceeded, indicates that the installation will become operational in the year 2011 at the earliest?

3. (a) Do the obligations referred to in question 2 imply that, in the absence of guarantees that the installation for which an environmental permit was sought would not contribute to the national emission ceilings for SO_2 and/or NO_x in the NEC Directive being exceeded or the risk of them being exceeded, the Member State must refuse the application for the environmental permit or attach further conditions or restrictions to it? In answering that question, is the extent to which the installation contributes to the emission ceiling being exceeded or the risk of being exceeded, of significance?

   (b) Or does the NEC Directive imply that, where the national emission ceilings for SO_2 and/or NO_x are exceeded or risk being exceeded, a Member State also has the discretion to bring about the result prescribed by the Directive, not by refusing the permit or by making it subject to further conditions or restrictions, but rather by adopting other measures such as other forms of compensation?

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   (a) to make a general claim that the Member State concerned should adopt a package of measures which, by 2010 at the latest, would limit the annual national emissions of SO_2 and NO_x to amounts not greater than the national emission ceilings in the NEC Directive, or, if that does not succeed, a package of measures which would limit the emissions to those amounts as soon as possible thereafter?

   (b) to make concrete claims that the Member State concerned should adopt specific measures in respect of an individual installation — for example, by refusing a permit or attaching further conditions or restrictions to the permit — which, by the year 2010 at the latest, would contribute to the annual national emissions of SO_2 and NO_x being limited to amounts not greater than the emission ceilings in the NEC Directive, or, if that does not succeed, specific measures which would contribute to the emissions being limited to those amounts as soon as possible thereafter?

   (c) In answering questions 6(a) and 6(b), is the extent to which the installation contributes to the emission ceiling being exceeded, or the risk of it being exceeded, of significance?

([1]) Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control (OJ L 257, p. 26).

([2]) Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control (Codified version) (OJ L 24, p. 8).

([3]) Directive 2001/81/EC of the European Parliament and of the Council of 23 October 2001 on national emission ceilings for certain atmospheric pollutants (OJ L 309, p. 22).

Reference for a preliminary ruling from High Court of Justice in Northern Ireland, Queen's Bench Division (United Kingdom) made on 19 May 2009 — Seaport (NI) Limited v Department of the Environment for Northern Ireland

(Case C-182/09)

(2009/C 193/05)

Language of the case: English

Referring court

High Court of Justice in Northern Ireland, Queen's Bench Division

Parties to the main proceedings

Applicant: Seaport (NI) Limited

Defendant: Department of the Environment for Northern Ireland

Questions referred

(1) What is the scope of the power given to Member States under Article 13(3) of Directive 2001/42/EC [1] on the assessment of the effects of certain plans and programmes on the environment ('the SEA Directive') to determine that it is not feasible to require an environmental assessment of a plan or programme for which the first formal preparatory act occurred before 21 July 2004 and the matters the national authorities may take into account, on a case by case basis, in reaching such a determination?

(2) Whether it was open to the national authority of a Member State, having made a determination in 2004 that it was feasible for a plan to comply with the requirements of the SEA Directive [and having maintained that position thereafter and before the national court], to reconsider that decision and determine in November 2007 that it was not feasible for the said plan to comply with the SEA Directive?

(3) Whether the determination process described in question 2 amounts to a retrospective determination of a non feasibility determination, and if so, does Article 13(3) of the SEA Directive permit such retrospective determinations, and if so, under what conditions?

(4) Whether the factors taken into account by the national authority in the present case in determining on 6 November 2007 that it was not feasible to carry out an environmental assessment of the Draft North Area Plan were matters which it was entitled to take into account in making such a determination pursuant to Article 13(3) of the SEA Directive?

[1] OJ L 197, p. 30

Reference for a preliminary ruling from the Naczelny Sąd Administracyjny (Republic of Poland), lodged on 28 May 2009 — Dyrektor Izby Skarbowej w Białymstoku v 'Profaktor' Kulesza, Frankowski, Trzaska spółka jawna w Białymstoku

(Case C-188/09)

(2009/C 193/06)

Language of the case: Polish

Referring court

Naczelny Sąd Administracyjny

Parties to the main proceedings

Appellant: Dyrektor Izby Skarbowej w Białymstoku

Respondent: 'Profaktor' Kulesza, Frankowski, Trzaska spółka jawna w Białymstoku

Questions referred

1. Do the first and second paragraphs of Article 2 of First Council Directive 67/227/EEC [1] of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes, in conjunction with Articles 2, 10(1) and (2) and 17(1) and (2) of Sixth Council Directive 77/388/EEC [2] 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, rule out the possibility of introducing temporary forfeiture of the right to reduce the amount of tax due by an amount equivalent to 30 % of the input tax on the acquisition of goods and services in relation to taxable persons who effect sales to natural persons not engaged in commercial activities, and to persons engaged in commercial activities in the form of individual agricultural holdings, and who fail to fulfil the obligation to keep records of turnover and amounts of tax due by using cash registers, pursuant to Article 111(2) of the Ustawa o Podatku od Towarów i Usług (Law on the tax on goods and services) of 11 March 2004 (*Dziennik Ustaw* No 54, item 535, as subsequently amended), in conjunction with Article 111(1) thereof?

2. Can 'special measures' within the terms of Article 27(1) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, consist, regard being had to their character and purpose, in a temporary restriction of the scope of a taxable person's right to reduce tax referred to in Article 111(2) of the Ustawa o Podatku od Towarów i Usług of 11 March 2004 (*Dziennik Ustaw* No 54, item 535, as subsequently amended), in conjunction with Article 111(1) thereof, in relation to taxable persons who fail to fulfil the obligation to keep records of turnover and amounts of tax by using cash registers, with the result that the introduction thereof requires compliance with the procedure set out in Article 27(2) to (4) of the abovementioned Sixth Council Directive of 17 May 1977?

3. Does the right of a Member State referred to in Article 33(1) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, encompass the right to impose a sanction on taxable persons who fail to fulfil the obligation to keep records of turnover and amounts of tax by using cash registers in the form of temporary forfeiture of the right to reduce the amount of tax due by an amount equivalent to 30 % of the input tax on the acquisition of goods and services referred to in Article 111(2) of the Ustawa o Podatku od Towarów i Usług of 11 March

2004 (*Dziennik Ustaw* No 54, item 535, as subsequently amended), in conjunction with Article 111(1) thereof?

(1) OJ, English Special Edition 1967, p. 14.
(2) OJ 1977 L 145, p. 1.

Appeal brought on 29 May 2009 by Council of the European Union against the judgment of the Court of First Instance (Second Chamber) delivered on 10 March 2009 in Case T-249/06: Interpipe Nikopolsky Seamless Tubes Plant Niko Tube ZAT (Interpipe Niko Tube ZAT), formerly Nikopolsky Seamless Tubes Plant 'Niko Tube' ZAT, Interpipe Nizhnedneprovsky Tube Rolling Plant VAT (Interpipe NTRP VAT), formerly Nizhnedneprovsky Tube-Rolling Plant VAT v Council of the European Union

(Case C-191/09 P)

(2009/C 193/07)

Language of the case: English

Parties

Appellant: Council of the European Union (represented by: J.-P. Hix, Agent, G. Berrisch, Rechtsanwalt)

Other parties to the proceedings: Interpipe Nikopolsky Seamless Tubes Plant Niko Tube ZAT (Interpipe Niko Tube ZAT), anciennement Nikopolsky Seamless Tubes Plant 'Niko Tube' ZAT, Interpipe Nizhnedneprovsky Tube Rolling Plant VAT (Interpipe NTRP VAT), anciennement Nizhnedneprovsky Tube-Rolling Plant VAT, Commission of the European Communities

Form of order sought

The appellant claim that the Court should:

— set aside the judgment of the Court of First Instance of the European Communities of 10 March 2009 in so far as the CFI (1) annulled Article 1 of the Contested Regulation in so far as the anti-dumping duty fixed for exports towards the European Community of the products manufactured by the Applicants exceeds that which would have been applicable had the export price not been adjusted for a commission when sales took place through the intermediary of the affiliated trader, Sepco SA (point 1 of the operative part of the Contested Judgment) and (2) ordered the Council to bear its own costs and one quarter of the costs incurred by the Applicants (point 3 of the operative part of the judgment under appeal),

— give final judgment on the dispute by dismissing the Application in its entirety;

— order that the costs of the appeal proceedings and of the proceedings before the Court of First Instance be borne by the Applicants at first instance.

Pleas in law and main arguments

The Council submits that the Court of First Instance:

— erred in law when it applied the case-law on the single economic entity concept, by analogy, to the application of Article 2(10)(i) of the Basic Anti-dumping Regulation (1) because it failed to recognize that the calculation of the normal value, the calculation of the export price, and the question whether adjustments apply, are governed by distinct rules. In this regard, the CFI also breached the obligation to state reasons;

— erred in law when interpreting the burden of proof that the institutions must meet when making an adjustment pursuant to Article 2(10)(i) of the Basic Regulation by not applying the normal burden of proof in anti-dumping cases, and consequently, erred in law by not applying the correct standard of judicial review with respect to an economic assessment by the institutions;

— erred in law by applying the wrong legal test when assessing the institutions' decision to make the Article 2(10)(i) adjustment because it assessed the decision based on the assumption that the single economic concept applies to the comparison of the normal value and the export price;

— erred in law when it found that the institutions committed a manifest error of assessment in applying the first subparagraph of Article 2(10) of the Basic Regulation;

— erred in law in applying too strict an interpretation of the disclosure requirements;

— erred in law because it failed to apply correctly the legal test for a violation of the rights of defence which it had (correctly) identified;

— erred in law in assessing the effect of the alleged procedural irregularity also because it relied on the legally erroneous findings as to the legality of the Article 2(10)(i) adjustment.

(1) Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community OJ L 56, p. 1–20

Appeal brought on 1 June 2009 by Kaul GmbH against the judgment of the Court of First Instance (Fifth Chamber) delivered on 25 March 2009 in Case T-402/07: Kaul GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) — Bayer AG

(Case C-193/09 P)

(2009/C 193/08)

Language of the case: English

Parties

Appellant: Kaul GmbH (represented by: R. Kunze, Rechtsanwalt and Solicitor, G. Würtenberger, Rechtsanwalt)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), Bayer AG

Form of order sought

The appellant requests that:

— the judgment of the Court of First Instance of the European Communities of 25 March 2009 in Case T-402/07 Kaul GmbH v OHIM — Bayer (the judgment under appeal), by which that court dismissed the action brought against the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trademarks & Designs) (OHIM) of 1 August 2007 upholding the decision of the Opposition Division, by which the opposition directed against Community trademark application no. 000 195 370 'ACRCOL' was rejected, be set aside;

— following the conclusion of the written proceedings, an oral hearing before the Court of Justice be scheduled;

— the Defendant pay the costs of the proceedings.

Pleas in law and main arguments

The appellant submits that the Court of First Instance's decision constitutes an infringement of the pertinent provisions of Regulation EC 40/94 [1] and, moreover, is in breach of fundamental procedural principles. Hence, the appeal directed against the decision issued by the Court of First Instance dated 25 March 2009 is well founded on the ground that

— the Court of First Instance has incorrectly interpreted Article 74(2) Community Trademark Regulation 40/94/EC, and hence was in breach of said provision when issuing the judgment under appeal;

— the Court of First Instance in the judgment under appeal, according to which an infringement of the right to be heard was immaterial for the outcome of the proceedings, is flawed and in breach of Article 61(2) and Article 73 of Community Trademark Regulation 40/94/EC, AND

— the Court of Justice was incorrect in upholding the Board of Appeal's assessment pertaining to the criteria of likelihood of confusion pursuant to Article 8(1)(b) Community Trademark Regulation 40/94/EC.

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

Appeal brought on 1 June 2009 by Alcoa Trasformazioni Srl against the judgment of the Court of First Instance (First Chamber) delivered on 25 March 2009 in Case T-332/06: Alcoa Trasformazioni Srl v Commission of the European Communities

(Case C-194/09 P)

(2009/C 193/09)

Language of the case: English

Parties

Appellant: Alcoa Trasformazioni Srl (represented by: Messrs M. Siragusa, T. Müller-Ibold, T. Graf, F. Salerno, attorneys-at-law)

Other party to the proceedings: Commission of the European Communities

Form of order sought

The appellant claim that the Court should:

— Annul the judgment of the First Chamber of the Court of First Instance of 25 March 2009, in case T-332/06, Alcoa Trasformazioni Srl vs. Commission of the European Communities,

— Annul Commission Decision 2006/C 214/03 notifed to the Italian Republic on 19 July 2006, insofar as it concerns the electricity tariffs applicable to the aluminium plants owned by Alcoa Trasformazioni Srl.

Alternatively,

— Remand the case to the CFI for reconsideration in accordance with the Court's judgment.

And in either case,

— Order the Commission to pay the Appellant's legal fees and expenses in accordance with Article 69 of the Court's Rules of Procedure, including reimbursement of the sums paid to the Commission as expenses incurred in connection with the proceedings in first instance.

Pleas in law and main arguments

Given the Commission's past finding that the electricity tariffs applicable to energy intensive industries in Italy did not constitute a state aid, the question arises as to what standard of investigation and reasoning the Commission should apply in such circumstances before opening formal proceedings. Alcoa

submits that in a situation where the Commission has previously found that a measure does not constitute aid, the Commission cannot open such proceedings unless it has first conducted a comprehensive preliminary investigation in order to substantiate why the previous finding no longer holds. In addition the Commission must set out its reasons sufficiently clearly in its decision to open formal proceedings. Alcoa submits that the CFI erred in law in holding that the Commission could open formal proceedings without examining whether the original analysis of the 1996 decision had become invalid. The Commission's past finding that the measure did not constitute aid also raises the question of what procedure should apply in the event that the Commission decides to revisit the matter and to open formal proceedings against the measure in question. It follows both from the applicable procedural rules and the fundamental principles of legal certainty as well as from the protection of legitimate expectations that in such circumstances the procedure for investigating existing aid must apply. It is submitted that the CFI erred in law in holding that the Commission's reliance on the procedure for new aid in investigating Alcoa's tariffs was correct.

Reference for a preliminary ruling from High Court of Justice (Chancery Division) (Patents Court) (England and Wales) made on 29 May 2009 — Synthon BV v Merz Pharma Gmbh & Co KG

(Case C-195/09)

(2009/C 193/10)

Language of the case: English

Referring court

High Court of Justice (Chancery Division)

Parties to the main proceedings

Applicant: Synthon BV

Defendant: Merz Pharma Gmbh & Co KG

Questions referred

1. For the purposes of Articles 13 and 19 of Council Regulation (EC) No 1768/92 [1], is an authorisation a 'first authorization to place. on the market in the Community', if it is granted in pursuance of a national law which is compliant with Council Directive 65/65/EEC [2], or is it necessary that it be established in addition that, in granting the authorisation in question, the national authority followed an assessment of data as required by the administrative procedure laid down in that Directive?

2. For the purposes of Articles 13 and 19 of Council Regulation (EC) No 1768/92, does the expression 'first authorization to place. on the market in the Community', include authorisations which had been permitted by national law to co-exist with an authorisation regime which complies with Council Directive 65/65/EEC?

3. Is a product which is authorised to be placed on the market for the first time in the EEC without going through the administrative procedure laid down in Council Directive 65/65/EEC within the scope of Council Regulation (EC) 1768/92 as defined by Article 2?

4. If not, is an SPC granted in respect of such a product invalid?

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[1] Council Regulation (EEC) No 1768/92 of 18 June 1992 concerning the creation of a supplementary protection certificate for medicinal products OJ L 182, p. 1

[2] Council Directive 65/65/EEC of 26 January 1965 on the approximation of provisions laid down by Law, Regulation or Administrative Action relating to proprietary medicinal products OJ 22, p. 369 English special edition: Series I Chapter 1965-1966 p. 24

Reference for a preliminary ruling from the Chambre de recours des Écoles européennes lodged on 29 May 2009 — Paul Miles and Others, Robert Watson MacDonald v Secrétaire général des Écoles européennes

(Case C-196/09)

(2009/C 193/11)

Language of the case: French

Referring court

Chambre de recours des Ecoles européennes

Parties to the main proceedings

Applicants: Paul Miles and Others, Robert Watson MacDonald

Defendant: Secrétaire général des Ecoles européennes

Question(s) referred

1. Is Article 234 of the EC Treaty to be interpreted as meaning that a court or tribunal such as the Chambre de recours, which was established by Article 27 of the Convention defining the Statute of the European Schools, [1] falls within its scope of application and, since the Chambre de recours acts as a tribunal of last instance, is competent to make a reference for a preliminary ruling to the Court of Justice?

2. If the answer to the first question is in the affirmative, must Articles 12 and 39 of the EC Treaty be interpreted as meaning that they prevent the application of a remuneration system such as the system in force within the European Schools inasmuch as, although that system expressly refers to the system applying to Community officials, it does not allow for the taking into account, even retrospectively, of currency devaluation which leads to a decline in purchasing power for teachers who are seconded by the authorities of the Member State concerned?

3. If the answer to the second question is in the affirmative, can a difference in situation such as that established between teachers seconded to the European Schools, whose remuneration is funded both by their national authorities and by the European School in which they teach, on the one hand, and officials of the European Community, whose remuneration is funded by the Community alone, on the other hand, justify a situation in which, in the light of the principles laid down in the articles cited above and although the [Service Regulations for staff seconded to the European School] expressly refer to the Staff Regulations of Officials of the European Community, the exchange rates applied in order to maintain an equivalent purchasing power are not the same?

(1) OJ 1994 L 212, p. 3.

Reference for a preliminary ruling from the Augstākās tiesas Senāts (Republic of Latvia) lodged on 4 June 2009 — Schenker SIA v Valsts ieņēmumu dienests

(Case C-199/09)

(2009/C 193/12)

Language of the case: Latvian

Referring court

Augstākās tiesas Senāts

Parties to the main proceedings

Applicant: Schenker SIA

Defendant: Valsts ieņēmumu dienests

Question referred

Must Article 6(2) of Commission Regulation (EEC) No 2454/93 (1) of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code be interpreted as meaning that, with regard to an application for binding tariff information, binding information must be issued on identical goods, which share the same commercial denomination, article number or any other criterion which distinguishes or identifies the goods concerned?

(1) OJ 1993 L 253, p. 1.

Appeal brought on 27 May 2009 by Commission of the European Communities against the judgment of the Court of First Instance (Second Chamber) delivered on 10 March 2009 in Case T-249/06: Interpipe Nikopolsky Seamless Tubes Plant Niko Tube ZAT (Interpipe Niko Tube ZAT), formerly Nikopolsky Seamless Tubes Plant 'Niko Tube' ZAT, Interpipe Nizhnedneprovsky Tube Rolling Plant VAT (Interpipe NTRP VAT), formerly Nizhnedneprovsky Tube-Rolling Plant VAT v Council of the European Union

(Case C-200/09 P)

(2009/C 193/13)

Language of the case: English

Parties

Appellant: Commission of the European Communities (represented by: H. van Vliet, C. Clyne, Agents)

Other parties to the proceedings: Interpipe Nikopolsky Seamless Tubes Plant Niko Tube ZAT (Interpipe Niko Tube ZAT), formerly Nikopolsky Seamless Tubes Plant 'Niko Tube' ZAT, Interpipe Nizhnedneprovsky Tube Rolling Plant VAT (Interpipe NTRP VAT), formerly Nizhnedneprovsky Tube-Rolling Plant VAT, Council of the European Union

Form of order sought

The appellant claims that the Court should:

— set aside point 1 of the Judgment;

— dismiss the Application in its entirety;

— order the Applicants to pay the Commission's costs in bringing this Appeal

Pleas in law and main arguments

FIRST GROUND OF APPEAL — application of the Single Economic Entity-concept in the determination of the export price

The Commission considers that the Court of First Instance makes two legal errors when it states: 'According to consistent case-law concerning the calculation of normal value, but applicable by analogy to the calculation of the export price, the sharing of production and sales activities within a group formed by legally distinct companies does not alter the fact that one is dealing with a single economic entity which organises in that manner a series of activities which are carried out, in other cases, by an entity which is also a single entity from the legal point of view'.

Firstly, the CFI erred by not providing any reasoning whatsoever as to why the so-called single economic entity concept (SEE-concept) would also be applicable by analogy to the determination of the export price in dumping calculations.

Secondly, the CFI erred by not following the consistent earlier case-law of the Court of Justice with respect to the SEE-concept, including inter alia, Sharp Corporation, Minolta Camera, Ricoh and Canon-II, which decided the opposite.

SECOND GROUND OF APPEAL — Burden of Proof and standard of review

This ground of appeal relates to the burden of proof and the standard of judicial review. The Commission considers that on this point, in paragraphs 180-190, the CFI commits various legal errors by not applying the appropriate standard of review. While citing the judgment in Kundan and Tata, the CFI failed to take into account of the fact that after that judgment the wording of Art. 2(10)(i) of the Basic Regulation was adapted precisely to cater for situations such as the one at issue. This clearly leaves a certain margin of discretion to the institutions. The CFI applied the incorrect legal test, consequently requiring a particularly high burden of proof from the institutions, in an area where they enjoy the normal wide discretion. Therefore, the CFI has not shown, as it should have done, that there has been a manifest error in the appraisal of the facts by the institutions.

THIRD GROUND OF APPEAL — Article 2(10) first paragraph of the Basic Regulation.

This third ground challenges points 193-197 of the contested Judgment. It follows that if the first and or second ground of appeal are well-founded, then as a corollary to the CFI's own reasoning, its finding that 2(10), first paragraph, has been violated by the Institutions, is wrong in law.

FOURTH GROUND OF APPEAL — THE RIGHTS OF DEFENCE

This ground is directed at points 200-211 of the Contested Judgment. The Commission considers that in those points, the CFI applied an excessively stringent and therefore unjustified test regarding the Applicant's rights of defence. The amount of the adjustment and the transactions it concerned had already been known to the Applicants for some time (since the first final information document). Moreover, the second final information document provided a clarification, in reaction to a comment which the Applicants had made after receiving that document; the Commission clarified, that the earlier mentioning of Art. 2(9) as a legal basis for the adjustment had been erroneous. Therefore, Applicants were informed, fully, of the exact reasons why the Commission intended to apply an adjustment, namely that it considered that Sepco acts as a trader which performs, for the Applicants, functions similar to those of an agent working on a commission basis.

The Commission considers that by providing this information, it provided the Applicants with sufficient information to allow them to exercise their rights of defence. Therefore, the CFI commits a legal error when it implies, in point 201, that more should have been added in the paragraph of the final disclosure relating to this point. Contrary to what the CFI implies, the Applicants were aware of the reason why the Commission intended to include this adjustment in its proposal to the Council, namely that Sepco's relation with the applicants was covered by Art. 2(10)(i) second sentence. Moreover, the Commission considers that its position is supported by earlier rulings of the Court of Justice (e.g., the EFMA-case).

Finally, the Commission considers that the CFI makes a legal error in point 209 when it 'mixes' the substantive issue whether it was lawful to apply the adjustment with the question whether the Applicants' rights of defence have been respected. It states: 'It has been shown …. above, that [the institutions acted unlawfully by applying the adjustment]. Therefore, it must be concluded that' by not furnishing its final motivation already at the time of the 2nd final disclosure, the institutions violated the Applicants' rights of defence. There is, however, contrary to what the CFI implies, no causal link between the two. The mere fact that the CFI finds that an adjustment was, in its view, unlawfully applied, does not mean that the Applicant's rights of defence were violated. The question is whether the institutions provided the Applicants', during the administrative procedure, with the necessary information to allow it to submit information. The fact that the CFI considers the adjustment to be unlawful does not mean that 'therefore' during the administrative procedure the rights of defence of the Applicants have been violated.

AS TO THE QUESTION WHETHER THE COURT OF JUSTICE CAN RULE ON THE PLEAS AT ISSUE ITSELF (or whether it should refer the matter back to the CFI)

In the Commission's view, should the Court rule that the above pleas in law are founded, and set aside point 1 of the operative part of the Contested Judgment, it would have a sufficiently developed file in front of it to rule on the relevant pleas itself (and to reject them). However, this is a matter for the Court and the Commission will not go into it further.

Reference for a preliminary ruling from the Bundesverwaltungsgericht (Germany) lodged on 8 June 2009 — Flachglas Torgau GmbH v Federal Republic of Germany

(Case C-204/09)

(2009/C 193/14)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Applicant: Flachglas Torgau GmbH

Defendant: Federal Republic of Germany

Questions referred

1. (a) Is the second sentence of Article 2(2) of Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC ([1]) to be interpreted as meaning that only bodies and institutions for whom it is, under the law of the Member State, to take the final (binding) decision in the legislative process act in a legislative capacity, or do bodies and institutions which have been given certain functions and rights of involvement in the legislative process by the law of the Member State, in particular to table a draft law and to give opinions on draft laws, also act in a legislative capacity?

   (b) May the Member States always provide that the definition of 'public authority' does not cover bodies and institutions, in so far as they act in a judicial or legislative capacity, only if at the same time the constitutional provisions of those Member States did not provide, at the date of the adoption of the directive, for a review procedure within the meaning of Article 6 of Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC?

   (c) Are bodies and institutions, in so far as they act in a legislative capacity, excluded from the definition of 'public authority' only for the period until the conclusion of the legislative process?

2 (a) Is the confidentiality of proceedings within the meaning of indent (a) of Article 4(2) of Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC provided for by law where the national-law provision enacted to implement Directive 2003/4/EC lays down generally that a request for access to environmental information is to be refused if the disclosure of the information would adversely affect the confidentiality of the proceedings of authorities which are required to provide information, or is it necessary, for that purpose, for a separate statutory provision to provide for the confidentiality of the proceedings?

   (b) Is the confidentiality of proceedings within the meaning of indent (a) of Article 4(2) of Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC provided for by law where under national law there is a general unwritten legal principle that the administrative proceedings of public authorities are not public?

([1]) OJ L 41, p. 26

Reference for a preliminary ruling from the Verwaltungsgerichtshof (Austria) lodged on 10 June 2009 — Ilonka Sayn-Wittgenstein

(Case C-208/09)

(2009/C 193/15)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Applicant: Ilonka Sayn-Wittgenstein

Defendant: Landeshauptmann von Wien

Question referred

Does Article 18 EC preclude legislation pursuant to which the competent authorities of a Member State refuse to recognise that part of the surname of a (grown up) adopted child, determined in another Member State, which contains a title which is inadmissible in the former Member State, including under constitutional law?

Reference for a preliminary ruling from the Korkein hallinto-oikeus (Finland) lodged on 10 June 2009 — Lahti Energia Oy

(Case C-209/09)

(2009/C 193/16)

Language of the case: Finnish

Referring court

Korkein hallinto-oikeus

Parties to the main proceedings

Applicant: Lahti Energia Oy

Other parties to the proceedings: Lahden seudun ympäristölautakunta, Hämeen ympäristökeskus and Salpausselän luonnonystävät ry.

Questions referred

1. Is combustion as an additional fuel in the boiler of a power plant of gas generated in a gas plant to be regarded as an operation within the meaning of Article 3 of Directive 2000/76/EC, [1] if the gas conducted for combustion is not purified after the gasification process?

2. If the reply to the first question is basically in the negative, does the quality of the waste for incineration, or the particle content of the gas conducted for incineration, or the content of other impurities in it have any bearing on the matter when making an assessment?

[1] 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.

Action brought on 11 June 2009 — Commission of the European Communities v Hellenic Republic

(Case C-211/09)

(2009/C 193/17)

Language of the case: Greek

Parties

Applicant: Commission of the European Communities (represented by: M. Karanasou-Apostolopoulou and L. Balta, acting as Agents)

Defendant: Hellenic Republic

Form of order sought

The Court is asked to:

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2006/24/EC [1] of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC, or in any event by failing to communicate those provisions to the Commission, the Hellenic Republic has failed to fulfil its obligations under that directive;

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

The period prescribed for transposing Directive 2006/24/EC into national law expired on 15 September 2007.

[1] OJ L 105 of 13.4.2006, p. 54

Appeal brought on 12 June 2009 by Anheuser-Busch, Inc. against the judgment of the Court of First Instance (First Chamber) delivered on 25 March 2009 in Case T-191/07: Anheuser-Busch, Inc. v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM), Budějovický Budvar, národní podnik

(Case C-214/09 P)

(2009/C 193/18)

Language of the case: English

Parties

Appellant: Anheuser-Busch, Inc. (represented by: V. von Bomhard, Rechtsanwältin, B. Goebel, Rechtsanwalt)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), Budějovický Budvar, národní podnik

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the Court of First Instance of the European Communities of 25 March 2009 in Case T-191/07 and

— order that the costs of the proceedings be borne by the applicant at first instance.

Pleas in law and main arguments

Anheuser-Busch advances three grounds of appeal, namely, first, a violation of Article 41(2) 3rd sentence Regulation No. 207/2009 [1] in connection with Rules 16(1), (3) and 20(2) of Commission Regulation (EC) No. 2868/95 [2] of 13 December 1995 implementing Council Regulation (EC) No. 40/94 [3] on the Community trade mark, second, a violation of Article 76(2) Regulation No. 207/2009, and third, a violation of Article 42(2), (3) Regulation No. 207/2009.

The first two pleas concern procedural matters. Anheuser-Busch submits that these are of importance here. Only by taking into account the earlier registration IR 238 203 could the Board of Appeal decide the opposition based on Article 8(a) Regulation 207/2009, inasmuch as it concerned beers. This also meant that the arguments made previously in the course of the opposition proceedings as to whether the word 'Budweiser' dominated Budvar's figurative marks were disregarded.

The Court of First Instrance erred when considering that Budvar had been under no legal obligation to submit evidence of the

continued validity (i.e. renewal) of its registration IR 238 203. This obligation resulted from Article 41(2) 3rd sentence Regulation No. 207/2009 read in conjunction with Rules 16(1), (3) and 20(2) Implementing Regulation 1995, and the notification issued by OHIM on 18 January 2002, reiterating the invitation for Budvar to submit 'any further facts, evidence and arguments in support of his opposition'. The obligation was to submit such evidence by the deadline set in this notification, i.e. by 26 February 2002. Nevertheless, it was not submitted until 21 January 2004.

As a consequence, the finding of the Court of First Instance that Article 76(2) Regulation No. 207/2009 did not apply with respect to the submission of the renewal certificate, as there was no 'due time' for this submission, was also erroneous, and resulted in a violation of this provision. In fact there was a 'due time' and the Board of Appeal would have had to at least exercise its discretion under Article 76(2) as to whether it was going to take the evidence into account. The Court of First Instance has read the Board of Appeal decision as saying that the renewal certificate was filed in good time. As a result, the violation of Article 76(2) lay in the non-use of discretion by the Board of Appeal, and its confirmation by the Court of First Instance.

The Court of First Instance also failed to recognise that the evidence of use submitted by Budvar in support of its opposition was insufficient and referred, moreover, to trade marks other than the one on which the contested decision and the underlying Board of Appeal decision were based, thereby violating Article 42(2), (3) Regulation No. 207/2009.

(1) Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark OJ L 78, p. 1
(2) Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark OJ L 303, p. 1
(3) 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 Markkinaoikeus (Finland) lodged on 15 June 2009 — Mehiläinen Oy, Suomen Terveystalo Oyj v Oulun kaupunki

(Case C-215/09)

(2009/C 193/19)

Language of the case: Finnish

Referring court

Markkinaoikeus

Parties to the main proceedings

Applicants: Mehiläinen Oy, Suomen Terveystalo Oyj

Defendant: Oulun kaupunki

Questions referred

1. Is an arrangement by which a municipal contracting authority concludes with a private undertaking in the form of a company which is separate from it a contract establishing a new undertaking in the form of a share company, on an equal share basis both in terms of ownership and of power of control, from which the municipal contracting authority commits itself, when setting up the company, to purchasing occupational health and wellbeing services for its own staff, on an overall assessment, an arrangement which must be put out to tender, on the ground that the general contract is a contract for the procurement of services within the meaning of Directive 2004/18/EC of the European Parliament and of the Council on the coordination of procedures for the award of public supply contracts and public service contracts (1), or is the arrangement to be regarded as the establishment of a joint venture and the transfer of the business activity of a municipal enterprise to which that directive and the consequent obligation to put out to tender are not applicable?

2. Should any significance in this case also be attached

   (a) to the fact that the City of Oulu, as a municipal contracting authority, has undertaken to acquire in return for consideration the services referred to above over a four-year transitional period, after which the municipal contracting authority intends, according to its decision, once again to put out to tender the occupational health care services it requires;

   (b) to the fact that, prior to the arrangement in question, most of the turnover of the municipal enterprise that was part of the City of Oulu organisation came from occupational health care services other than those produced for the City's own employees;

   (c) to the fact that the founding of the new company has been organised with the intention of transferring as a capital contribution the activity of the municipal enterprise, which comprises the production of occupational health care services both for the City's employees and for private customers?

(1) OJ 2004 L 134, p. 114

Action brought on 16 June 2009 — Commission of the European Communities v Republic of Malta

(Case C-220/09)

(2009/C 193/20)

Language of the case: Maltese

Parties

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

Defendant: Republic of Malta

The applicant claims that the Court should

— declare that, by failing to transpose correctly into national law the Annex mentioned in Article 3(3) and the third sentence of Article 5 of Council Directive 93/13/EEC ([1]) of 5 April 1993 on unfair terms in consumer contracts, the Republic of Malta has failed to fulfil its obligations under Directive 93/13/CEE;

— order the Republic of Malta to pay the costs.

Pleas in law and main arguments

The Commission of the European Communities maintains that the Republic of Malta has failed to transpose correctly into national law the Annex mentioned in Article 3(3) and the third sentence of Article 5 of Council Directive 93/13/EEC (the 'Directive') and has thereby failed to fulfil its obligations under this directive.

The Commission argues that whilst legislative action on the part of each Member State is not necessarily required in order to implement a directive, it is essential for national law to guarantee that the national authorities will effectively apply the directive in full, that the legal position under national law should be sufficiently precise and clear and that individuals are made fully aware of their rights and, where appropriate, may rely on them before the national courts.

With regards, in particular, to the Annex mentioned in Article 3(3) of the Directive, the Commission maintains that the transposition of this annex into Maltese law is both necessary and important. It argues that inasmuch as the list contained in the Annex to the Directive is of indicative and illustrative value, it constitutes a source of information both for the national authorities responsible for applying the implementing measures and for individuals affected by those measures. Member States must therefore, in order to achieve the result sought by the Directive, choose a form and method of implementation that offer a sufficient guarantee that the public can obtain knowledge of it.

The Commission argues that the Republic of Malta has failed to take measures which provide a sufficient guarantee that the public would be informed of the whole list in the Annex to the Directive, in particular of points 1(a), (f), (g), (h) and of point 1(q) in its entirety. Moreover, the Republic of Malta has not indicated that the Annex to the Directive had been reproduced in its entirety in the preparatory work for the law implementing the Directive, preparatory work which constitutes, according to Maltese legal tradition, an important interpretation aid. Besides, no other indication was given that this information was going to be provided to the public in any other way.

With regards to the transposition into Maltese law of the third sentence of Article 5 of the Directive, the Commission argues that the transposition of this sentence into Maltese law is both necessary and important insofar as the proviso in the sentence in question is a binding legislative provision which confers more extensive rights and a greater protection on consumers and assists in determining the result which the Directive seeks to achieve.

([1]) OJ L 95 p. 29

COURT OF FIRST INSTANCE

Judgment of the Court of First Instance of 1 July 2009 — Spain v Commission

(Case T-259/05) [1]

(EAGGF — Guarantee Section — Expenditure excluded from Community financing — Fibre flax — Hemp — Bananas — OLAF report — Report of the Court of Auditors — Bilateral meeting under Article 8(1) of Regulation (EC) No 1663/95 — Breach of essential procedural requirements — Abusive practice — Existence of financial harm to the EAGGF)

(2009/C 193/21)

Language of the case: Spanish

Parties

Applicant: Kingdom of Spain (represented by: M. Muñoz Pérez, abogado del Estado)

Defendant: Commission of the European Communities (represented by: T. van Rijn, L. Parpala and F. Jimeno Fernández, acting as Agents)

Re:

Annulment in part of Commission Decision 2005/354/EC of 29 April 2005 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), Guarantee Section (OJ 2005 L 112, p. 14).

Operative part of the judgment

The Court:

1. *Annuls Commission Decision 2005/354/EC of 29 April 2005 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), Guarantee Section, in so far as it excludes from Community financing the expenditure by the Kingdom of Spain made under aid granted for the production of hemp in the years 1996/1997 to 1999/2000;*

2. *Dismisses the remainder of the action;*

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

[1] OJ C 217, 3.9.2005.

Judgment of the Court of First Instance of 30 June 2009 — Danjaq v OHIM — Mission Productions (Dr. No)

(Case T-435/05) [1]

(Community trade mark — Application for Community word mark Dr. No — Opposition by the proprietor of the non-registered word marks and signs Dr. No and Dr. NO — Failure to satisfy the requirement for earlier marks — Lack of a distinctive sign used in the course of trade — Article 8(1)(a) and (b), (2)(c) and (4) of Regulation (EC) No 40/94 (now Article 8(1)(a) and (b), (2)(c) and (4) of Regulation (EC) No 207/2009) — Obligation to state reasons — Article 73 of Regulation No 40/94 (now Article 75 of Regulation (EC) No 207/2009))

(2009/C 193/22)

Language of the case: English

Parties

Applicant: Danjaq LLC (Santa Monica, California, United States) (represented by: G. Hobbs QC, G. Hollingworth, Barrister, S. Skrein and L. Berg, Solicitors)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervening before the Court of First Instance: Mission Productions Gesellschaft für Film-, Fernseh- und Veranstaltungsproduktion mbH (Munich, Germany) (represented by: K. Lewinsky, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 21 September 2005 (Case R 1118/2004-1) relating to opposition proceedings between Danjaq LLC and Mission Productions Gesellschaft für Film-, Fernseh- und Veranstaltungsproduktion mbH

Operative part of the judgment

The Court:

1. *Dismisses the action.*

2. *Orders Danjaq LLC to pay the costs.*

[1] OJ C 60, 11.3.2006.

Judgment of the Court of First Instance of 1 July 2009 — ISD Polska and Others v Commission

(Joined Cases T-273/06 and T-297/06) ([1])

(State aid — Scheme for restructuring aid granted by the Republic of Poland to a steel producer — Decision declaring the aid to be in part incompatible with the common market and ordering its recovery — Protocol No 8 on the restructuring of the Polish steel industry — Actions for annulment — Right of action — Period within which proceedings must be brought — Admissibility — Legitimate expectations — Article 14(1) of Regulation (EC) No 659/1999 — Rate of interest to be applied to the repayment of incompatible aid — Duty to cooperate closely with the Member State — Compound interest rate — Articles 9(4) and 11(2) of Regulation (EC) No 794/2004)

(2009/C 193/23)

Language of the case: French

Parties

Applicants in Case T-273/06: ISD Polska sp. z o.o. (Warsaw Poland) and Industrial Union of Donbass Corp. (Donetsk Ukraine) (represented: initially by C. Rapin and E. Van den Haute, and subsequently by C. Rapin, E. Van den Haute and C. Pétermann, lawyers)

Applicant in Case T-297/06: ISD Polska sp. z o.o. (formerly Majątek Hutniczy sp. z o.o.) (Warsaw) (represented: initially by C. Rapin and E. Van den Haute, and subsequently by C. Rapin, E. Van den Haute and C. Pétermann, lawyers)

Defendant: Commission of the European Communities (represented by: C. Giolito and A. Stobiecka-Kuik, Agents)

Re:

Partial annulment of Commission Decision 2006/937/EC of 5 July 2005 on State aid C 20/04 (ex NN 25/04) in favour of Huta Częstochowa S.A. (OJ 2006 L 366, p. 1) to the extent to which it declares some of that aid to be incompatible with the common market and orders the Republic of Poland to effect its recovery.

Operative part of the judgment

The Court:

1. *Dismisses the actions;*

2. *Orders ISD Polska sp. z o.o. and Industrial Union of Donbass Corp. to pay the costs.*

([1]) OJ C 294, 2.12.2006.

Judgment of the Court of First Instance of 1 July 2009 — Regionalny Fundusz Gospodarczy v Commission

(Case T-288/06) ([1])

(State aid — Scheme for restructuring aid granted by the Republic of Poland to a steel producer — Decision declaring the aid to be in part incompatible with the common market and ordering its recovery — Protocol No 8 on the restructuring of the Polish steel industry — Rate of interest to be applied for the repayment of incompatible aid — Duty to cooperate closely with the Member State — Articles 9(4) and 11(2) of Regulation (EC) No 794/2004)

(2009/C 193/24)

Language of the case: Polish

Parties

Applicant: Regionalny Fundusz Gospodarczy S.A. (formerly Huta Częstochowa S.A.) (Częstochowa, Poland) (represented by: C. Sadkowski and D. Sałajewski, lawyers)

Defendant: Commission of the European Communities (represented by: C. Giolito and A. Stobiecka-Kuik, Agents)

Re:

Partial annulment of Commission Decision 2006/937/EC of 5 July 2005 on State aid C 20/04 (ex NN 25/04) in favour of Huta Częstochowa S.A. (OJ 2006 L 366, p. 1) to the extent to which it declares some of that aid to be incompatible with the common market and orders the Republic of Poland to effect its recovery.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Regionalny Fundusz Gospodarczy S.A. to pay the costs.*

([1]) OJ C 294, 2.12.2006.

Judgment of the Court of First Instance of 1 July 2009 — Operator ARP v Commission

(Case T-291/06) ([1])

(State aid — Scheme for restructuring aid granted by the Republic of Poland to a steel producer — Decision declaring the aid to be in part incompatible with the common market and ordering its recovery — Protocol No 8 on the restructuring of the Polish steel industry — Action for annulment — Interest in bringing proceedings — Admissibility — Concept of beneficiary — Article 14(1) of Regulation (EC) No 659/1999)

(2009/C 193/25)

Language of the case: Polish

Parties

Applicant: Operator ARP sp. z o.o. (Warsaw Poland) (represented: initially, by J. Szymanowska, subsequently, by J. Szymanowska and P. Rosiak, and, finally, by P. Rosiak, lawyers)

Defendant: Commission of the European Communities (represented by: C. Giolito and A. Stobiecka-Kuik, Agents)

Re:

Partial annulment of Commission Decision 2006/937/EC of 5 July 2005 on State aid C 20/04 (ex NN 25/04) in favour of Huta Częstochowa S.A. (OJ 2006 L 366, p. 1) to the extent to which it declares some of that aid to be incompatible with the common market and orders the Republic of Poland to effect its recovery.

Operative part of the judgment

The Court:

1. *Annuls the first subparagraph of Article 3(2) of Commission Decision 2006/937/EC of 5 July 2005 on State aid C 20/04 (ex NN 25/04) in favour of Huta Częstochowa S.A. in so far as it concerns Operator ARP sp. z o.o.;*

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

([1]) OJ C 310, 16.12.2006.

Judgment of the Court of First Instance of 1 July 2009 — ThyssenKrupp Stainless v Commission

(Case T-24/07) ([1])

(Competition — Agreements, decisions and concerted practices — Stainless steel flat products — Decision finding an infringement of Article 65 CS after expiry of the ECSC Treaty, pursuant to Regulation (EC) No 1/2003 — Alloy surcharge — Powers of the Commission — Imputability of the unlawful conduct — Res judicata — Rights of the defence — Access to the file — Limitation period — Principle of non bis in idem — Cooperation during the administrative procedure)

(2009/C 193/26)

Language of the case: German

Parties

Applicant: ThyssenKrupp Stainless AG (Duisburg, Germany) (represented by: M. Klusmann and S. Thomas, lawyers)

Defendant: Commission of the European Communities (represented by: F. Castillo de la Torre, R. Sauer and O. Weber, Agents)

Re:

Application for annulment, in whole or in part, of the Commission's decision of 20 December 2006 relating to a proceeding under Article 65 [CS] (Case No COMP/F/39.234 — Alloy surcharge — readoption) and, in the alternative, an application for reduction of the fine imposed on ThyssenKrupp Stainless by that decision.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders ThyssenKrupp Stainless AG to pay the costs.*

([1]) OJ C 82, 14.4.2007.

Judgment of the Court of First Instance of 1 July 2009 — KG Holding and Others v Commission

(Joined Cases T-81/07, T-82/07 and T-83/07) [1]

(State aid — Restructuring aid granted by the Netherlands authorities to KG Holding NV — Decision declaring the aid incompatible with the common market and ordering its recovery — Action for annulment — Partial inadmissibility — Recovery of aid from recipient undertakings declared bankrupt — Community Guidelines on State aid for rescuing and restructuring firms in difficulty)

(2009/C 193/27)

Language of the case: Dutch

Parties

Applicant in Case T-81/07: Jan Rudolf Maas, acting in his capacity as administrator in the bankruptcy proceedings relating to KG Holding NV (Rotterdam, Netherlands) (represented by: G. van der Wal and T. Boesman, lawyers)

Applicant in Case T-82/07: Jan Rudolf Maas and Cornelis van den Bergh, acting in their capacity as administrators in the bankruptcy proceedings relating to Kliq BV (Rotterdam) (represented by: G. van der Wal and T. Boesman, lawyers)

Applicant in Case T-83/07: Jean Leon Marcel Groenewegen, acting in his capacity as administrator in the bankruptcy proceedings relating to Kliq Reïntegratie (Utrecht, Netherlands) (represented by: G. van der Wal and T. Boesman, lawyers)

Defendant: Commission of the European Communities (represented by: H. van Vliet, Agent)

Re:

Action for annulment of Commission Decision 2006/939/EC of 19 July 2006 on the aid measure notified by the Netherlands for KG Holding NV (OJ 2006 L 366, p. 40).

Operative part of the judgment

The Court:

1. *Annuls Article 2 of Commission Decision 2006/939/EC of 19 July 2006 on the aid measure notified by the Kingdom of the Netherlands for KG Holding NV;*

2. *Dismisses the remainder of the applications;*

3. *Orders Jan Rudolf Maas, in his capacity as administrator in the bankruptcy proceedings relating to KG Holding NV, to bear his own costs in Case T-81/07;*

4. *Orders Jan Rudolf Maas and Cornelis van den Bergh, in their capacity as administrators in the bankruptcy proceedings relating to Kliq BV, to bear their own costs in Case T-82/07;*

5. *Orders Jean Leon Marcel Groenewegen, in his capacity as administrator in the bankruptcy proceedings relating to Kliq Reïntegratie, to bear, in addition to his own costs in Case T-83/07, those incurred by the Commission in Case T-83/07;*

6. *Orders the Commission to bear its own costs in Cases T-81/07 and T-82/07.*

[1] OJ C 117, 29.5.2007.

Judgment of the Court of First Instance of 2 July 2009 — Euro-Information v OHIM (Representing a hand holding a card with three triangles))

(Case T-414/07 [1]

(Community trade mark — Application for a Community figurative mark representing a hand holding a card with three triangles — Absolute ground for refusal — Absence of distinctive character — Article 7(1)(b) of Regulation (EC) No 40/94 (now Article 7(1)(b) of Regulation (EC) No 207/2009)

(2009/C 193/28)

Language of the case: French

Parties

Applicant: Européenne de traitement de l'information (Euro-Information) (Strasbourg, France) (represented by: P. Greffe, M. Chaminade and L. Paudrat, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: O. Montalto and R. Bianchi, Agents)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 6 September 2007 (Case R 290/2007-1), rejecting the application for registration of a sign representing a hand holding a card with three triangles as a Community trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Européenne de traitement de l'information (Euro-Information) to pay the costs.*

[1] OJ C 22, 26.1.2008.

Judgment of the Court of First Instance of 1 July 2009 — Okalux v OHIM — Messe Düsseldorf (OKATECH)

(Case T-419/07) ([1])

(Community trade mark — Forfeiture proceedings — Community word mark OKATECH — Partial revocation — Period allowed for appeal — Articles 57 and 77a of Regulation (EC) No 40/94 (now Articles 58 and 80 of Regulation (EC) No 207/2009) — Principles of protection of legitimate expectations and legal certainty — Right to a hearing)

(2009/C 193/29)

Language of the case: German

Parties

Applicant: Okalux GmbH (Marktheidenfeld, Germany) (represented by: M. Beckensträter, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance: Messe Düsseldorf GmbH (Düsseldorf, Germany) (represented initially by: I Friedhoff, and subsequently by: S. von Petersdorff-Campen, lawyers)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 3 September 2007 (Case R 766/2007-2) concerning forfeiture proceedings between Messe Düsseldorf GmbH and Okalux GmbH.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Okalux GmbH to pay the costs.*

([1]) OJ C 8, 12.1.2008.

Judgment of the Court of First Instance of 30 June 2009 — CPEM v Commission of the European Communities

(Case T-444/07) ([1])

(ESF — Cancellation of financial assistance — OLAF report)

(2009/C 193/30)

Language of the case: French

Parties

Applicant: Centre de promotion de l'emploi par la micro-entreprise (CPEM) (Marseilles, France) (represented by: C. Bonnefoi, lawyer)

Defendant: Commission of the European Communities (represented by: L. Flynn and A. Steiblytė, acting as Agents)

Re:

Application for annulment of Commission Decision C(2007) 4645 of 4 October 2007, cancelling the assistance granted by the European Social Fund (ESF) by Decision C(1999) 2645 of 17 August 1999, and also application for damages

Operative part of the judgment

The Court:

1. *dismisses the action;*

2. *orders the Centre de promotion de l'emploi par la micro-entreprise (CPEM) to pay the costs, including those relating to the interim proceedings.*

([1]) OJ C 37, 9.2.2008.

Judgment of the Court of First Instance of 1 July 2009 — Perfetti Van Melle v OHIM — Cloetta Fazer (CENTER SHOCK)

(Case T-16/08) ([1])

(Community trade mark — Invalidity proceedings — Community word mark CENTER SHOCK — Earlier national word marks CENTER — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) and Article 52(1)(a) of Regulation (EC) No 40/94 (now Article 8(1)(b) and Article 53(1)(a) of Regulation (EC) No 207/2009))

(2009/C 193/31)

Language of the case: English

Parties

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

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance: Cloetta Fazer AB (Ljungsbro, Sweden) (represented by: J. Runsten and S. Sparring initially, and subsequently by M. Treis, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 7 November 2007 (Case R 149/2006-4), relating to invalidity proceedings between Cloetta Fazer AB and Perfetti Van Melle SpA.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Perfetti Van Melle SpA to pay the costs.*

(1) OJ C 64, 8.3.2008.

Judgment of the Court of First Instance of 2 July 2009 — Fitoussi v OHIM — Loriot (IBIZA REPUBLIC)

(Case T-311/08) (1)

(Community trade mark — Opposition proceedings — Application for figurative Community trade mark IBIZA REPUBLIC — Earlier figurative national mark depicting a five-pointed star in a circle — Absolute ground for refusal — No likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94 (now Article 8(1)(b) of Regulation (EC) No 207/2009))

(2009/C 193/32)

Language of the case: French

Parties

Applicant: Paul Fitoussi (Vincennes, France) (represented by: K. Manhaeve, T. van Innis and G. Glas, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Bernadette Nicole J. Loriot (Ibiza, Spain)

Re:

Action brought against the decision of 7 May 2008 of OHIM's Second Board of Appeal (Case R 1135/2007-2) relating to opposition proceedings between Paul Fitoussi and Bernadette Nicole J. Loriot

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Paul Fitoussi to pay the costs.*

(1) OJ C 272, of 25.10.2008.

Order of the Court of First Instance of 10 June 2009 — Poland v Commission

(Case T-258/04) (1)

(Action for annulment — Transitional measures to be adopted by reason of the accession of new Member States — Regulation (EC) No 60/2004 laying down transitional measures in the sugar sector — Time-limit for bringing action — Point from which time starts to run — Lateness — Inadmissibility)

(2009/C 193/33)

Language of the case: Polish

Parties

Applicant: Republic of Poland (represented by: J. Pietras and E. Ośniecka-Tamecka, initially, then T. Nowakowski and finally M. Dowgielewicz, Agents)

Defendant: Commission of the European Communities (represented by: L. Visaggio and A. Stobiecka-Kuik, initially, then T. van Rijn, L. Visaggio and A. Stobiecka-Kuik, Agents)

Intervener in support of the applicant: Republic of Cyprus (represented by: P. Kliridis, Agent)

Re:

Annulment of Articles 5, 6(1) to (3), 7(1) and 8(2)(a) of Commission Regulation (EC) No 60/2004 of 14 January 2004 laying down transitional measures in the sugar sector by reason of the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia (OJ 2004 L 9, p. 8)

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *The Republic of Poland is ordered to bear its own costs and to pay those of the Commission.*

3. *The Republic of Cyprus is ordered to bear its own costs.*

(1) OJ C 251, of 9.10.2004.

Order of the Court of First Instance of 2 June 2009 — AVLUX v Parliament

(Case T-524/08) [1]

(Action for annulment — Public service contracts — Call for tenders for the refurbishment and extension of the Konrad Adenauer Building, Luxembourg — Rejection of a tenderer's offer — Annulment of the public procurement procedure — No need to adjudicate)

(2009/C 193/34)

Language of the case: French

Parties

Applicant: AIB-Vinçotte, Luxembourg (AVLUX ASBL) (Luxembourg, Luxembourg) (represented by: R. Adam, lawyer)

Defendant: European Parliament (represented by: M. Ecker and D. Petersheim, Agents)

Re:

Application for annulment of the European Parliament's decision of 2 October 2008 rejecting the offer made by the applicant in connection with a call for tenders for the refurbishment and extension of the Konrad Adenauer Building, Luxembourg (OJ 2008 S 193-254240)

Operative part of the order

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

2. *The European Parliament is ordered to pay the costs.*

[1] OJ C 44, of 21.2.2009.

Order of the President of the Court of First Instance of 30 June 2009 — Tudapetrol Mineralölerzeugnisse Nils Hansen v Commission

(Case T-550/08 R)

(Application for interim measures — Commission decision imposing a fine — Application for suspension of operation of the measure and interim relief (repayment of the fine already paid and waiver of a bank guarantee — No prima facie case and no urgency)

(2009/C 193/35)

Language of the case: German

Parties

Applicant: Tudapetrol Mineralölerzeugnisse Nils Hansen KG (Hamburg, Germany) (represented by: M. Dallmann and U. Krauthause, lawyers)

Defendant: Commission of the European Communities (represented by: A. Antoniadis and R. Sauer, acting as Agents)

Re:

Application for suspension of the operation of Commission Decision C(2008) 5476 final of 1 October 2008 relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement in Case COMP/39181 — Candle waxes, in so far as it imposes a fine on the applicant, application to release the applicant from the obligation to provide a bank guarantee as a condition for release from the obligation of payment, and other applications for interim measures

Operative part of the order

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

2. *Costs are reserved.*

Order of the President of the Court of First Instance of 8 June 2009 — Z v Commission

(Case T-173/09 R)

(Interim measures — Access by a third party concerned to a Commission decision imposing a fine but not yet published — Application for interim measures — No need to adjudicate — No urgency)

(2009/C 193/36)

Language of the case: German

Parties

Applicant: Z (X, Germany) (represented by: C. Grau and N. Jäger, lawyers)

Defendant: Commission of the European Communities (represented by: R. Sauer, V. Bottka and A. Bouquet, Agents)

Re:

Access to the Commission's decision of 28 January 2009 in a proceeding pursuant to Article 81 EC and Article 53 of the EEA Agreement (Case COMP/G/39.406 — Marine hoses) and deletion of the applicant's name from the text of that decision

Operative part of the order

1. *The application for interim measures is dismissed insofar as it has not already become devoid of purpose.*

2. *This order annuls and replaces the order of 6 May 2009.*

3. *The costs are reserved.*

Action brought on 14 May 2009 — Hellenic Republic v Commission

(Case T-184/09)

(2009/C 193/37)

Language of the case: Greek

Parties

Applicant: Hellenic Republic (represented by: V. Kontolaimos, E. Leftheriotou, V. Karra)

Defendant: Commission of the European Communities

Form of order sought

— grant the application and annul the contested decision or, in the alternative, alter it so that the financial correction is reduced to 5 % or, in the alternative, the correction of 10 % is applied only to the amount which corresponds to the sugar imported by E.V.Z.;

— order the Commission to pay the costs.

Pleas in law and main arguments

In its application for annulment of the Commission decision of 19 March 2009 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), which was notified under document number C(2009) 1945 and published under No 2099/253/EC (OJ 2009 L 75, p. 15) and which concerns the imposition of corrections in respect of export refunds and the common organisation of the market in sugar, because of a lack of controls, the Hellenic Republic puts forward the following pleas for annulment.

By the first plea for annulment, the Hellenic Republic submits that the procedure for clearance of the accounts was invalid because of breach of a substantial procedural requirement that is laid down by Article 8(1) of Regulation (EC) No 1663/95, [1] relating to the failure to engage in bilateral discussion, so far as concerns the imposition of a correction for refunds in respect of sugar in non-Annex I products.

By the second plea for annulment, the Hellenic Republic alleges misappraisal of the facts, an insufficient statement of reasons and that the limits of the Commission's discretion were exceeded, as regards the assessment of risk for the Fund.

By the third plea for annulment, it alleges breach of the principle of proportionality.

[1] Commission Regulation (EC) No 1663/95 of 7 July 1995 laying down detailed rules for the application of Council Regulation (EEC) No 729/70 regarding the procedure for the clearance of the accounts of the EAGGF Guarantee Section (OJ 1995 L 158, p. 6).

Action brought on 2 June 2009 — Denmark v Commission

(Case T-212/09)

(2009/C 193/38)

Language of the case: Danish

Parties

Applicant: Kingdom of Denmark (represented by: J. Bering Liisberg, Agent, assisted by P. Biering and J. Pinborg, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Primarily, set aside the Commission decision of 19 March 2009 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) and under the European Agricultural Guarantee Fund (EAGF), in so far as that decision involves the exclusion from Community financing of the expenditure declared by Denmark;

— In the alternative, set aside in part the Commission decision of 19 March 2009 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) and under the European Agricultural Guarantee Fund (EAGF), in so far as that decision involves the exclusion from Community financing of the expenditure declared by Denmark, to the extent to which the exclusion from Community financing is based on:

— an alleged breach of the rules on, and weakness in, the control of set-aside areas in 2002, 2003 and/or 2004; and/or

— an alleged breach of the rules on, and weakness in, remote-sensing control in 2003 and/or 2004;

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

Pleas in law and main arguments

The applicant seeks the annulment of Commission Decision 2009/253/EC of 19 March 2009 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) and under the European Agricultural Guarantee Fund (EAGF), in so far as that decision involves the exclusion from Community financing of the expenditure declared by Denmark. [1]

The applicant submits that the Commission's decision is, in a number of respects, based on an erroneous understanding and application of the legal basis, particularly in regard to the issue of maintenance of the set-aside areas and the requirements relating to remote-sensing control.

It is further submitted that the decision suffers from fundamental defects in its reasoning and is in a number of respects at variance with the principle of the protection of legitimate expectations and with the principle of legal certainty.

In conclusion, the applicant contends that the correction was carried out in a manner contrary to the Commission's own guidelines, has an insufficient basis in the facts and is disproportionate in light of the fact that the European Agricultural Guidance and Guarantee Fund was not faced with a genuine financial risk in this case.

([1]) OJ 2009 L 75, p. 15; notified under document number C(2009) 1945.

Action brought on 9 June 2009 — British Telecommunications v Commission

(Case T-226/09)

(2009/C 193/39)

Language of the case: English

Parties

Applicant: British Telecommunications plc (London, United Kingdom) (represented by: G. Robert and M. M. Newhouse, Solicitors)

Defendant: Commission of the European Communities

Form of order sought

— annul the contested decision;

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicant seeks the annulment of Commission Decision C(2009) 685 final of 11 February 2009 declaring incompatible with the common market the aid granted by the British authorities in favour of the applicant by means of Crown guarantee to BT Pension Fund (State aid N° C 55/2007 (ex NN 63/2007, CP 106/2006)).

The applicant puts forward seven pleas in law in support of its claims.

First, the applicant claims that in concluding that the applicant has a selective economic advantage, the Commission erred in law and committed a manifest error of assessment incorrectly applying Article 87(1) EC and the notion of State aid. The applicant submits that the Commission failed to take into account the full economic and factual context in which the applicant acts.

Second, the applicant contends that in concluding that the applicant enjoys a selective economic advantage because the Trustees of the BT Pension Scheme (BTPS) do not contribute to the Pension Protection Fund (PPF) in respect of the pensions of BTPS members covered by the Crown guarantee, the Commission committed a manifest error of assessment and infringed the principle of equal treatment by failing to compare like with like. In the applicant's opinion, the Commission failed to take into consideration differences between the private sector schemes covered by PPF and civil service-type scheme inherited by the applicant at the time of privatisation.

Third, the applicant argues that the Commission erred in law and infringed the principle of legitimate expectations in re-characterising a measure which was not aid at the time it was granted as the 'underlying reason' why it should be considered to be an aid twenty years later because a legislative measure has been adopted in the meantime.

Fourth, the applicant submits that in requiring the BTPS Trustees to contribute to the PPF, the Commission infringed the principles of equal treatment and proportionality.

Fifth, it claims that the Commission committed a manifest error of assessment and failed to investigate as to whether the selective economic advantage alleged by the Commission distorts competition and affects trade between Member States within the meaning of Article 87(1) EC.

Sixth, the applicant argues that the Commission made a manifest error of fact and law in concluding that there existed a transfer of state resources.

Seventh, it submits that, by failing to provide reasons for the contested decision, the Commission infringed Article 253 EC.

Action brought on 10 June 2009 — Feng Shen Technology v OHIM — Majtczak (FS)

(Case T-227/09)

(2009/C 193/40)

Language in which the application was lodged: English

Parties

Applicant: Feng Shen Technology Co. Ltd (Gueishan, Taiwan) (represented by: W. Festl-Wietek and P. Rath, lawyers)

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

Other party to the proceedings before the Board of Appeal: Jarosław Majtczak (Łódź, Poland)

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 1 April 2009 in case R 529/2008-4;

— Declare Community trade mark No 4 431 391 invalid; and

— Order OHIM to pay the costs incurred in the proceedings before the Court and the Board of Appeal.

Pleas in law and main arguments

Registered Community trade mark subject of the application for a declaration of invalidity: The mark "FS" for goods in class 26 — Community trade mark No 4 431 391

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

Trade mark right of the party requesting the declaration of invalidity: Several earlier trade mark registrations for the figurative sign "FS" in Taiwan, China and Ghana in relation to zippers and related products

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

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Articles 51(1)(b) of Council Regulation 40/94 (which became Article 52(1)(b) of Council Regulation 207/2009), as the Board of Appeal failed to properly evaluate the evidence and documents provided by the parties and failed to properly analyse the facts as a precondition for a finding that the trade mark application concerned was made in bad faith

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Action brought on 10 June 2009 — BT Pension Scheme Trustees v Commission

(Case T-230/09)

(2009/C 193/41)

Language of the case: English

Parties

Applicant: BT Pension Scheme Trustees Ltd (London, United Kingdom) (represented by: J. Derenne and A. Müller-Rappard, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— annulment of the decision;

— in the alternative, annulment of Article 1 of the decision to the extent that it refers to the fact that the State aid has unlawfully been put into effect, as well as Article 2, Article 3, first indent, and Article 4 to the extent that it refers to aid recovery, of the decision;

— order the Commission to pay the applicant's costs.

Pleas in law and main arguments

This application is brought by the Trustee of the British Telecommunications Pension Scheme ('BTPS') — the pension scheme sponsored by British Telecommunications plc ('BT') — that is responsible for the administration of the scheme, namely, for the collection, investment of contributions and payment of benefits to retired employees of BT and their dependants, in accordance with the trust deeds governing the BTPS and the general law.

By means of its application, the applicant seeks the annulment of the Commission decision, C(2009) 685 final of 11 February 2009 (State aid No C 55/2007 (ex NN 63/2007, CP 106/2006)), insofar as it qualifies the measure concerned — '*the exemption*' from the payment of levies in respect of the BTPS to the Pension Protection Fund ('PPF'), '*as concerns the beneficiary's pension liabilities covered by the Crown guarantee*' — as unlawful and incompatible State aid within the meaning of Article 87(1) EC and to the extent that it provides that the aid should be recovered from the beneficiary with interest from the date that it was put into effect until the date of its recovery.

In its first plea, the applicant submits that the decision violated Article 87(1) EC in four respects:

First, according to the applicant, the condition of selectivity has been violated in that the decision did not clearly determine the correct reference system and its objective and the Commission therefore incorrectly found that the BTPS benefited from a so-called 'exemption'.

Second, it is claimed that the condition of economic advantage has been violated in that the Commission could not find that BT benefits from an economic advantage within the meaning of Article 87(1) EC because the Trustee pays reduced levies to the PPF, without having compared BT's overall situation to that of its competitors who do not suffer from the same structural disadvantage in terms of pension costs as BT.

Third, it is submitted that the condition on distortion of competition and effect on trade has been breached in that in the absence of any advantage as demonstrated under the second limb, there cannot be any distortion of competition and/or effect on trade.

Fourth, the applicant contends that the condition of transfer of State resources has been breached in that the decision could not have qualified the transfer of State resources relating to the Crown guarantee as the relevant transfer of State resources for the purposes of qualifying the illegibility of the BTPS to enter the PPF as State aid.

In its second plea, the applicant claims that the decision violates Article 253 EC in that it fails to state reasons as to the following points:

— the statement of reasons regarding the assessment of the general reference system under its analysis of the existence of a selective advantage is contradictory;

— with regard to analysis of the condition on selectivity, in particular by not carrying out in detail the three step analysis provided for by the relevant case-law;

— the Commission has allegedly insufficiently justified why it considers that the additional liabilities borne by BT upon privatisation are irrelevant for the purpose of considering BT's overall position on the market in comparison with its competitors;

— the Commission allegedly failed to explain how the transfer of State resources pertaining to the Crown guarantee could constitute the relevant transfer of State resources for several exemptions (under the Pensions Act 2004 provisions) which follow from the existence of Crown guarantees.

In its third plea, the applicant claims that the decision violated the notion of unlawful aid pursuant to Article 88(3) EC in combination with Articles 1 f) and 14 of Council Regulation (EC) No 659/1999 ([1]) in that there is no aid to be recovered, either from BT or the BTPS and its Trustee, the alleged aid not having been put into effect, as a result of an escrow agreement.

([1]) Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 1999 L 83, p. 1)

Action brought on 8 June 2009 — Evropaïki Dynamiki v Commission

(Case T-236/09)

(2009/C 193/42)

Language of the case: English

Parties

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

Defendant: Commission of the European Communities

Form of order sought

— annul Commission's decision to reject the bid of the applicant, filed in response to the open Call for Tenders RTD-R4-2007-001 Lot 1 for the 'On-site development expertise (intra-muros)' and for Lot 2 Off-site development projects (extra-muros) (OJ 2007/S 238-288854) communicated to the applicant by two separate letters dated 27 March 2009 and all further decisions of the Commission including the one to award the contract to the successful contractor;

— order the Commission to pay the applicant's damages suffered on account of the tendering procedure in question for an amount of EUR 69 445 200 (33 271 920 for Lot 1 and 36 173 280 for Lot 2);

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

Pleas in law and main arguments

In the present case the applicant seeks the annulment of the defendant's decisions to reject its bid submitted in response to a call for an open tender for external service provision for development, studies and support of information systems (RTD-R4-2007-001-ISS-FP7) both for Lot 1 for the 'On-site development expertise (intra-muros)' and for Lot 2 Off-site development projects (extra-muros) and to award the contract to the successful contractor. The applicant further requests compensation for the alleged damages in account of the tender procedure.

In support of its claims the applicant puts forward following pleas in law.

First, the applicant claims that the defendant committed various and manifest errors of assessment and that it refused to provide any justification or explanation to the applicant in breach of the financial regulation ([1]) and its implementing rules as well as in breach of directive 2004/18 ([2]) and of Article 253 EC.

Second, the applicant claims that the defendant infringed the financial regulation by obliging tenderers to extend their tenders against their will. In addition, the applicant argues that even if one assumed that the defendant had right to do so, *quod non*, it was in violation of the principles of good administration, transparency and equal treatment that it decided to proceed with the completion of the award process even after the expiration of the extension as, in the applicant's opinion, no contract can be signed when one or more tenders are not valid anymore.

Third, the applicant claims that the outcome of the procedure laid down by the call for tenders was distorted by leakage of information associated with an attempt to impede the applicant from exercising its rights.

Further, the applicant puts forward specific arguments in respect of each lot.

In respect of the Lot 1, the applicant claims that the defendant infringed the principles of equal treatment and of good administration as it failed to observe the exclusion criteria provided for by Articles 93(1) and 94 of the financial regulation regarding one of the members of the winning consortium which was in breach of its contractual obligations to the defendant. Furthermore, the applicant submits that the winning tenderer was allowed illegally to use resources from companies based in non WTO/GPA countries and that this practice is illegal.

In respect of the Lot 2, the applicant argues that the defendant should not allow tenderers subcontracting to non WTO/GPA countries to participate in the biding proceedings; should it do so, the applicant contends that it should proceed on a fair, transparent and non discriminatory manner, clarifying the selection criteria it would use for excluding certain companies or accepting others. Therefore, in the applicant's opinion, the defendant applied particularly discriminatory approach failing to describe the selection criteria it used to select tenderers. Furthermore, it submits that the defendant failed to observe the exclusion criteria provided for by Articles 93(1) and 94 of the financial regulation and Articles 133a and 134 of the implementing rules and Article 45 of Directive 2004/18 and intending to exclude from public procurement companies that have either been condemned or that have been involved in illegal activities such as fraud, corruption, briberies and professional misconduct. The applicant submits that in the present case the winning tenderer has acknowledged its involvement to the above activities and has been condemned by the German courts.

Finally, the applicant also claims that the defendant committed several manifest errors of assessment in respect of both lots and regarding the quality of the tenderer's proposal for the overall management of the service, for ordering services and for delivery of services as well as the tenderer's technological proposal in the domain of the lots.

([1]) Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 248, p. 1)

([2]) Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ 2004 L 134, p. 114)

Action brought on 17 June 2009 — Région Wallonne v Commission

(Case T-237/09)

(2009/C 193/43)

Language of the case: French

Parties

Applicant: Région Wallonne (represented by: J.-M. De Backer, A. Lapièce, and I.-S. Brouhns, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— An order annulling the Commission's decision of 27 March 2009 concerning the Belgian National Allocation Plan on the ground that the decision rejects the allocation of allowances to installation No 116 for the period 2008 — 2012, and permitting allocation by annual tranches in accordance with Annex Va to the NAP;

— An order that the Commission pay the costs.

Pleas in law and main arguments

The applicant claims annulment of the Commission's decision of 27 March 2009 concerning the national plan for allocation of greenhouse gas emission allowances for Belgium for the period from 2008 to 2012, by which the Commission refused the correction to the 'National Allocation Plan table' according allowances to installation No 116.

In support of its action, the applicant relies on four pleas in law:

— breach of Article 44(2) of Commission Regulation (EC) No 2216/2004, ([1]) since the Commission relied on grounds which were not provided for by the applicable provision;

— breach of its obligation to state reasons for the contested decision, from which it cannot be ascertained in what way the correction to Belgium's 'National Allocation Plan table' in respect of installation No 116 is not based on the national plan for allocation of greenhouse gas emission allowances notified by Belgium and approved by the Commission beforehand;

— breach of the principle of legal certainty and of legitimate expectations, on the ground that the contested decision is contrary to the national plan for allocation of greenhouse gas emission allowances approved by the Commission;

— breach of the principle of good faith in Community matters and of sound administration, since the Commission adopted a decision which is contrary to a previous decision adopted six months earlier.

([1]) Commission Regulation (EC) No 2216/2004 of 21 December 2004 for a standardised and secured system of registries pursuant to Directive 2003/87/EC of the European Parliament and of the Council and Decision No 280/2004/EC of the European Parliament and of the Council (OJ 2004 L 386, p. 1)

Action brought on 23 June 2009 — Sniace v Commission

(Case T-238/09)

(2009/C 193/44)

Language of the case: Spanish

Parties

Applicant: Sniace (Madrid, Spain) (represented by: F.J. Moncholí Fernández, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— declare that this action for annulment has been lodged in accordance with the provisions of Article 230 EC and that it is well founded;

— annul and declare inapplicable the provisions of Article 1(2) of the decision of 10 March 2009 which states that the following State aid implemented by Spain in favour of Sniace is incompatible with the common market: (i) the agreement concluded on 8 March 1996 between Sniace and the Social Security Treasury relating to debt rescheduling; (ii) the implementation of the agreement concluded on 5 November 1993 between Sniace and FOGASA and (iii) the agreement concluded on 31 October 1995 between Sniace and FOGASA;

— annul and declare inapplicable the provisions of Articles 2(2) and 3(2)of the Decision of 10 March 2009 ordering Spain to:

  (i) recover from the beneficiary the aid granted plus the corresponding interest with immediate effect, and,

  (ii) inform the Commission with two months of the total amount, the measures adopted and anticipated in order to comply with the decision and documentary evidence to show that the recipient has been ordered to repay the aid;

— order the European Commission to pay all the costs incurred by the applicant in these proceedings.

Pleas in law and main arguments

The contested measure in this case is Commission Decision C(2009) 1479 final of 10 March 2009 relating to measure No C/2000 (ex NN 118/1997) implemented by Spain in favour of the applicant (SNIACE), and amending Decision 1999/395/EC of 28 October 1998. That decision held that the aid granted by the Fondo de Garantía Salarial (FOGASA) and by the Social Security Treasury (TGSS) in favour of SNIACE to be unlawful and incompatible with the common market, on the ground that the agreements for debt repayment concluded between SNIACE and FOGASA and the rescheduling agreement concluded between SNIACE and the TGSS did not comply with market conditions as regards the type of interest applicable. [1]

The contested decision has declared the aid set out in paragraph 2 of the form of order incompatible with the common market.

In support of its form of order, the applicant claims first that, when examining the agreements and concluding that neither FPGASA nor the TGSS acted in the same way as a private creditor would have done, the Commission incorrectly interpreted the applicable law. The applicant states in that respect that the defendant's position is based on a comparison of the position of the private creditor BANESTO with that of FOGASA, making a generalisation which consists in unjustifiably assuming that all private creditors would behave in the same way as BANESTO.

In any event, the applicant states, in its capacity as a public creditor it conducted itself in manner almost identical to that of BANESTO.

SNIACE also alleges the infringement of the duty to state reasons. It states in particular that the Commission fails to give any reasons for the 'threatened distortion of competition' which is the key for finding that aid is State aid.

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[1] See Case C-342/96 *Spain* v *Commission* [1999] ECRI-2459, Case C-525/04 P *Spain* v *Commission* [2007] ECR I-9947, and Case T-36/99 *Lentzig AG* v *Commission* [2004] ECR II-3597.

Appeal brought on 16 June 2009 by Luigi Marcuccio against the order of the Civil Service Tribunal made on 31 March 2009 in Case F-146/07, Marcuccio v Commission

(Case T-239/09 P)

(2009/C 193/45)

Language of the case: Italian

Parties

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

Other party to the proceedings: Commission of the European Communities

Form of order sought by the appellant

In any event:

— Set aside in its entirety and without exception the order under appeal;

— Declare that the action at first instance, in relation to which the order under appeal was made, was perfectly admissible in its entirety and without any exception whatsoever.

In the main:

— Allow in its entirety and without any exception whatsoever the relief sought at first instance, and order the Commission to reimburse the applicant in respect of all costs and fees incurred in relation to the present case at all stages of the proceedings.

In the alternative:

— Refer the case back to the Civil Service Tribunal, sitting in a different formation, for a fresh decision.

Pleas in law and main arguments

The present appeal has been brought against the order of 31 March 2009 in Case F-146/07 by which the Civil Service Tribunal (CST) dismissed, as partly inadmissible and partly unfounded, an action for annulment of the Commission's decision not to follow up on the appellant's request for an investigation into a postal package contaminated by anthrax, of which the applicant was a victim during the period when he was posted to the Commission's delegation in Angola, as well as a claim for compensation in respect of the damage suffered as a result of that decision.

In support of his appeal, the appellant claims that the CST erred in law in the case of a number of statements that it made concerning the inadmissibility and the unfounded nature of the appellant's submissions at first instance; the appellant also claims misrepresentation and distortion of the facts.

Action brought on 22 June 2009 — Accenture Global Services v OHIM — Silver Creek Properties (acsensa)

(Case T-244/09)

(2009/C 193/46)

Language in which the application was lodged: English

Parties

Applicants: Accenture Global Services GmbH (Shaffhausen, Switzerland) (represented by: R. Niebel, lawyer)

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

Other party to the proceedings before the Board of Appeal: Silver Creek Properties SA (Panama, Panama)

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 20 March 2009 in case R 802/2008-2;

— Annul the decision of the Trade Marks Department of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 25 March 2008 in opposition No B 1019274; 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 other party to the proceedings before the Board of Appeal

Community trade mark concerned: The figurative mark 'acsensa', for goods and services in classes 9, 35, 36, 38, 33, 41 and 42

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

Mark or sign cited: German trade mark registration for the word mark 'ACCENTURE' for goods and services in classes 9, 16, 35, 36, 37, 41 and 42; German trade mark registration of the figurative mark 'accenture' for goods and services in classes 9, 16, 35, 36, 37, 41 and 42; Community trade mark registration of the word mark 'ACCENTURE' for goods and services in classes 9, 16, 35, 36, 37, 41 and 42; Community trade mark registration of the figurative mark 'accenture' for goods and services in classes 9, 16, 35, 36, 37, 41 and 42

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

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation 207/2009 as the Board of Appeal erred in its finding that there is no likelihood of confusion between the trade marks concerned; Infringement of Articles 75 and 76 of Council Regulation 207/2009 as the Board of Appeal wrongly ignored statements of fact submitted by the applicant.

Action brought on 24 June 2009 — Shell Hellas v Commission

(Case T-245/09)

(2009/C 193/47)

Language of the case: French

Parties

Applicant: Shell Hellas Oil and Chemical SA (Shell Hellas AE) (Attica, Greece) (represented by: P. Hubert, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— Annul, in its entirety or in part, the implied negative response of the Commission of 16 April 2009 to the request for access to documents held by the Commission (reference GESTDEM 6159/2008) and draw all the appropriate conclusions therefrom with regard to the applicant's access to the documents requested;

— In the alternative, should the Court consider it a decision, annul, in its entirety or in part, the letter of 15 April 2009 from the Secretariat General of the Commission stating that it is not possible to reply to the applicant's request for access to the Commission documents (reference GESTEDEM 6159/2008) and draw all the appropriate conclusions therefrom with regard to the applicant's access to the documents requested;

— Order the Commission to pay all the costs.

Pleas in law and main arguments

By the present action, the applicant seeks annulment of the implied decision of the Commission refusing it access to all the correspondence, relating to the enquiry on the fuel market, between the Commission and the Greek competition authority under Article 11(4) of Regulation No 1/2003. In the alternative, should the Court consider it an express decision of refusal, the applicant seeks annulment of the letter of the Secretariat General which states that the Commission is not in a position to reply to the request made by the applicant for access to the documents.

In support of its claim, the applicant raises three pleas in law.

By the first plea, alleging breach of Article 523 EC, the applicant submits that, since the refusal was implied, the defendant has not, by the very nature of the decision, given reasons which would have enabled the applicant to know why the request was refused.

By the second plea, raised in the alternative, should the Court consider either that the letter of the Secretariat General of the Commission is the decision capable of challenge or that the fresh letter of the Secretariat General of 18 June 2009 gives the true reasons for the implied decision, the applicant submits that the reasons given do not meet the requirements of Article 253 EC and contravene both the letter and the spirit of Regulation No 1049/2001. ([1])

By the third plea, alleging breach of Article 255 EC and of Regulation No 1049/2001, the applicant submits that the documents to which access was requested do not fall within the scope of the exceptions to the principle of openness laid down by Regulation No 1049/2001. In that regard, the applicant submits that:

— the Commission has not undertaken a document by document analysis but has made a general assessment of the exceptions under the Regulation on the basis of the categories of documents;

— the Commission could not directly consult the Greek competition authority on the basis of Article 4(5) of Regulation No 1049/2001 to obtain its view on disclosure of the documents, since Member States alone are empowered to refuse disclosure of documents on that basis;

— the Commission was incorrect in relying on the exception relating to the protection of commercial interests (first indent of Article 4(2) of Regulation No 1049/2001) in order to refuse disclosure of the documents in their entirety when it was in a position to purge the documents of confidential information;

— the Commission could not rely on the exception relating to investigatory activities (third indent of Article 4(2) of Regulation No 1049/2001) since the Greek competition authority had already adopted its final decision in the matter in question;

— nor could it rely on the exception relating to protection of the decision-making process, either because the documents to which access was requested do not form part of a decision-making process or because that process would not be seriously undermined.

Finally, the applicant submits that, in any event, there is an overriding public interest in obtaining disclosure of the documents in question, namely, that of effectively enabling uniform application of Community law.

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

Action brought on 29 June 2009 — Insula v Commission

(Case T-246/09)

(2009/C 193/48)

Language of the case: French

Parties

Applicant: Conseil scientifique international pour le développement des îles (Insula) (Paris, France) (represented by: P. Marsal and J.-D. Simonet, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— declare the action to be admissible and well-founded;

— declare that the Commission's application for the reimbursement of the sum of EUR 189 241,64 is unfounded and, accordingly, order the Commission to issue a credit note in the amount of EUR 189 241,64;

— order the Commission to pay damages of EUR 212 597;

— in the alternative, declare that the applicant has the right to a compensatory allowance of EUR 230 025;

— order the Commission to pay the costs.

Pleas in law and main arguments

By the present action, which is based on an arbitration clause, the applicant requests that the Court find that the debit notes of 25 September 2008, 26 March 2009 and 26 May 2009, by which the Commission called, following an audit report by OLAF, for the recovery of advances paid to the applicant, are inconsistent with the clauses of the contracts IST-2001-35077 DIAS.NET and IST-1999-20896 MEDIS concluded in the context of a specific programme for Community research, technological development and demonstration activities in the field of the information society (1998-2002). In the alternative, the applicant submits a claim for damages.

In support of its action, the applicant relies on four pleas in law.

By its first plea, it disputes that the debt claimed by the Commission is due and submits that all the costs it declared to the Commission should be regarded as eligible.

By its second plea, it submits that the Commission infringed the obligation to cooperate in good faith in performing the contract in the sense that it did not properly carry out it own contractual obligations, in particular by waiting for a long time before replying to the proposal for additional action submitted by the applicant and by wrongfully terminating the MEDIS contract on the basis of inadequate results even though that issue had never been raised previously and could, in the applicant's view, only have been attributed to the Commission.

By its third plea, the applicant invokes the disproportionate nature of the pecuniary sanction imposed by the Commission for the alleged failure to comply with certain accounting obligations which, even if they were to be proven to exist, would not give rise to a right, in accordance with the principles of Belgian administrative and civil law, to reimbursement of almost all of the advances agreed to. Consequently, the applicant maintains that it has a right to compensation in respect of the services carried out.

By its fourth plea, the applicant maintains that the Commission failed to comply with the principle of sound administration and of the rights to a fair hearing in the management of the verification and audit process.

Action brought on 23 June 2009 — Cesea Group Srl v OHIM — Mangini & C. (mangiami)

(Case T-250/09)

(2009/C 193/49)

Language in which the application was lodged: Italian

Parties

Applicant: Cesea Group Srl (Rome, Italy) (represented by: D. De Simone, lawyer, D. Demarinis, lawyer, J. Wrede, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Mangini & C. Srl (Sestri Levante, Italy)

Form of order sought

— Cesea Group Srl seeks the annulment — or, in the alternative, the amendment and limitation, in accordance with its pleas in law — of the decision taken on 20 April 2009 and notified on 24 April 2009 by the Second Board of Appeal of OHIM, by which it decided Case No R 982/2008-2, which had been brought following the outcome of invalidity proceedings No 2063 C brought by Mangini & C. Srl.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: Figurative mark containing the term 'mangiami' (application for registration No 3 113 933) for goods in Classes 29, 30 and 32.

Proprietor of the Community trade mark: The applicant.

Applicant for the declaration of invalidity: Mangini & C. Srl.

Trade mark right of applicant for the declaration: Italian registration No 819 926 of the word mark 'MANGINI' for goods and services in Classes 30 and 42; Italian figurative mark No 668 388, which contains the term 'Mangini', for goods and services in Classes 30 and 42; Italian figurative mark No 648 507, which contains the term 'Mangini', for goods in Class 30; international registration No 738 072 of the word mark 'MANGINI' for goods and services in Classes 30 and 42; word mark 'MANGINI' which, in Italy, is well known within the meaning of Article 6bis of the Paris Convention, for 'production of pastries, confectionery, coffee, ices and sweet goods in general, bar, cafeteria and catering services'; and the trade name 'MANGINI', used in Italy by way of normal commercial practice, for 'production of pastries, confectionery, coffee, ices and sweet products in general, bar, cafeteria and catering services'.

Decision of the Cancellation Division: Dismissed the application for a declaration of invalidity.

Decision of the Board of Appeal: Annulled the contested decision and upheld in part the application for a declaration of invalidity.

Pleas in law:

— Infringement of Rule 40(6) of Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark, ([1]) in that the Board of Appeal based the decision on an examination of documents which had not been produced before the Cancellation Division, even though the documents in question had not been available and had not been produced within the period specified by the Cancellation Division;

— Unlawfulness of the declaration of invalidity in relation to the goods in Class 29, which is not covered by the international trade mark of Mangini & C. Srl, and to the goods in Class 30, which are not similar to sweets.

(1) OJ L 303 of 15.12.1995, p. 1.

Action brought on 26 June 2009 — Société des Pétroles Shell v Commission

(Case T-251/09)

(2009/C 193/50)

Language of the case: French

Parties

Applicant: Société des Pétroles Shell (Colombes, France) (represented by: P. Hubert, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— Annul, in its entirety or in part, the implied negative response of the Commission of 9 May 2009 to the request for access to documents held by the Commission (reference GESTDEM 372/2009) and draw all the appropriate conclusions therefrom with regard to the applicant's access to the documents requested;

— In the alternative, should the Court consider it a decision, annul, in its entirety or in part, the letter of 7 May 2009 from the Secretariat General of the Commission stating that it is not possible to reply to the applicant's request for access to the Commission documents (reference GESTEDEM 372/2009) and draw all the appropriate conclusions therefrom with regard to the applicant's access to the documents requested;

— Order the Commission to pay all the costs.

Pleas in law and main arguments

By the present action, the applicant seeks annulment of the implied decision of the Commission refusing it access to all the correspondence, relating to the enquiry into practices on the jet fuel supply market in La Réunion, held by the Commission or exchanged by the Commission and the French competition authority, in particular under Article 11(4) of Regulation No 1/2003. In the alternative, should the Court consider it an express decision of refusal, the applicant seeks annulment of the letter of the Secretariat General which states that the Commission is not in a position to reply to the request made by the applicant for access to the documents.

In support of its action, the applicant raises pleas in law identical or similar to those raised in Case T-245/09 *Shell Hellas* v *Commission*.

Action brought on 30 June 2009 — Caixa Geral de Depósitos v OHIM — Caixa d'Estalvis i Pensions de Barcelona ('la Caixa')

(Case T-255/09)

(2009/C 193/51)

Language in which the application was lodged: Spanish

Parties

Applicant: Caixa Geral de Depósitos (Lisbon, Portugal) (represented by: F. de la Rosa and M. Lobato García-Miján, 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: Caixa d'Estalvis i Pensions de Barcelona

Form of order sought

— annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market of 24 March 2009 based on Article 8(1)(b) of the Regulation on the Community trade mark;

— alternatively, annul the earlier decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market of 24 March 2009 based on Article 7(1)(b) of the Regulation on the Community trade mark;

— order OHIM and, if appropriate, the intervener, to pay the costs incurred in these proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: CAIXA D'ESTALVIS I PENSIONS DE BARCELONA

Community trade mark concerned: Figurative mark which contents the verbal element 'la Caixa' (Application No 4 685 145) for goods and services in classes 9, 16, 36, 38 and 45.

Proprietor of the mark or sign cited in the opposition proceedings: CAIXA GERAL DE DEPOSITOS S.A.

Mark or sign cited in opposition: Various Portuguese word marks which contain the prefix 'caixa' (Nos 357 311, 261 198, 268 466, 302 708, 303 290, 325 155, 325 156, 325 224, 330 542 and 342 311) for goods and services in classes 9, 16 and 36, and Portuguese figurative mark (No 357 310) which contains the word 'caixa' for goods and services in classes 9, 16 and 36.

Decision of the Opposition Division: Opposition upheld in part.

Decision of the Board of Appeal: Appeal allowed and contested decision annulled.

Pleas in law: Infringement of Article 8(1)(b) of Regulation (EC) No 207/2009 on the Community trade mark and, alternatively, Article 7(1)(b) thereof.

Order of the Court of First Instance of 26 June 2009 — Lemans v OHIM — Turner (ICON)

(Case T-218/08) ([1])

(2009/C 193/52)

Language of the case: English

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

([1]) OJ C 197, 2.8.2008.

Order of the Court of First Instance of 26 June 2009 — Lemans v OHIM — Turner (ICON)

(Case T-389/08) ([1])

(2009/C 193/53)

Language of the case: English

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

([1]) OJ C 301, 22.11.2008.

Order of the Court of First Instance of 25 June 2009 — Tokita Management Service v OHIM — Eminent Food (Tomatoberry)

(Case T-435/08) ([1])

(2009/C 193/54)

Language of the case: English

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

([1]) OJ C 313, 6.12.2008.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Judgment of the Civil Service Tribunal (Third Chamber) of 6 May 2009 — Campos Valls v Council

(Case F-39/07) [1]

(Staff case — Officials — Recruitment — Appointment — Post of Head of Unit — Rejection of the applicant's candidature — Conditions required for the notice of vacancy — Manifest error of assessment)

(2009/C 193/55)

Language of the case: French

Parties

Applicant: Manuel Campos Valls (Brussels, Belgium) (represented by: S. Orlandi, A. Coolen, J.-N. Louis and É. Marchal, lawyers)

Defendant: Council of the European Union (represented by: M. Arpio Santacruz and I. Šulce, Agents)

Re:

First, annulment of the decisions of the appointing authority to reject the applicant's candidature for the post of head of the Spanish Language Unit of DG A, Directorate 3 — Translation and Document Production — Language Service, referred to in Staff Note CP46/06 and, second, of the decision to appoint another candidate to that post.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

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

[1] OJ C 129, 9.6.2007, p. 28.

Judgment of the Civil Service Tribunal (Third Chamber) of 6 May 2009 — Sergio v Commission

(Case F-137/07) [1]

(Staff case — Rights and obligations — Freedom of association — Protocol of Agreement between the Commission and the trade union or professional organisations — Individual decisions on secondment/release from service based on a protocol — Act adversely affecting an official — Locus standi — Official acting on his own account and not on the account of a trade union — Admissibility — Notification of the rejection of the complaint to the applicants' lawyer — Starting point for the time-limit for bringing an action)

(2009/C 193/56)

Language of the case: French

Parties

Applicants: Giovanni Sergio (Brussels, Belgium) and Others (represented by: M. Lucas, lawyer)

Defendant: Commission of the European Communities (represented by: J. Currall and B. Eggers, Agents)

Re:

First, annulment of the 'Protocol of Agreement between the trade union or professional organisations and the Directorate General for Personnel and Administration (DG ADMIN)' and the decisions of the appointing authority confirmed by the Protocol of 19 December 2006 and the decision of 14 November 2006 and, second, a claim for damages in the form of a symbolic EUR 1.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

2. *Orders Mr Sergio, Mr Blanchard, Mr Marquez-Garcia, Mr Scheuer and Mr Wurzler to pay the costs.*

[1] OJ C 79, 29.3.2008, p. 37.

Judgment of the Civil Service Tribunal (Second Chamber) of 18 June 2009 — Spee v Europol

(Case F-43/08) [1]

(Staff case — Europol staff — Vacant post — Selection procedure)

(2009/C 193/57)

Language of the case: Dutch

Parties

Applicant: David Spee (Rijswijk, Netherlands) (represented by: P. de Casparis, lawyer, initially, and I. Blekman, lawyer, subsequently)

Defendant: European Police Office (Europol) (represented by: D. Neumann, D. El Khoury, B. Wägenbaur and R. Van der Hout, lawyers)

Re:

Annulment of Europol's decision to withdraw an offer of employment in respect of which the applicant had submitted an application and subsequently to republish it, along with an claim for damages.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

2. *Orders Mr Spee to pay all the costs.*

[1] OJ C 183, 19.7.2008, p. 33.

Order of the Civil Service Tribunal (Third Chamber) of 11 June 2009 — Ketselidis v Commission

(Case F-72/08) [1]

(Staff cases — Officials — Action — Prior administrative complaint — Tacit reply — Excusable error — None — Implicit rejection decision — Complaint out of time — Inadmissibility — Judgment of a Community court — Substantial new fact — None)

(2009/C 193/58)

Language of the case: French

Parties

Applicant: Michalis Ketselidis (Brussels, Belgium) (represented by: S. A. Pappas, lawyer)

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

Re:

Annulment of the implicit decision rejecting the applicant's request for revision of the calculation of the pension annuities to be taken into account for the transfer of pension rights acquired in Greece to the Community scheme.

Operative part of the order

1. *The application is dismissed as manifestly inadmissible;*

2. *Mr Ketselidou is ordered to pay the costs in their entirety.*

[1] OJ C 272 of 25.10.2008, p. 51

Order of the Civil Service Tribunal (Third Chamber) of 11 June 2009 — Ketselidou v Commission

(Case F-81/08) [1]

(Staff cases — Officials — Action — Judgment of a Community court — Substantial new fact — None)

(2009/C 193/59)

Language of the case: French

Parties

Applicant: Zoe Ketselidou (Brussels, Belgium) (represented by: S. A. Pappas, lawyer)

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

Re:

Annulment of the implicit decision rejecting the applicant's request for revision of the calculation of the pension annuities to be taken into account for the transfer of pension rights acquired in Greece to the Community scheme.

Operative part of the order

1. *The application is dismissed as manifestly unfounded;*

2. *Ms Ketselidou is ordered to pay the costs in their entirety.*

[1] OJ C 313 of 6.12.2008, p. 59.

Action brought on 25 June 2009 — Strack v Commission

(Case F-61/09)

(2009/C 193/60)

Language of the case: German

Parties

Applicant: Guido Strack (Cologne, Germany) (represented by: H. Tetterborn, Lawyer)

Defendant: Commission of the European Communities

Subject-matter and description of the proceedings

Annulment of the defendant's decision to refuse the applicant access to various files

Form of order sought

— Annul the implied and express decisions by the defendant, in particular those regarding the access granted to various files on 12 September 2008, 3 October 2008 and 14 November 2008, the decision of Mr Jansen of 19 September 2008 and, in so far as necessary, the decision of 25 March 2009 on the rejection of complaint No R/554/08 made by the applicant, in so far as they refuse or restrict full access by the applicant to all available data and documents concerning him held by the defendant, and to complete personal, medical and other files maintained in accordance with correct procedures and uniform standards and in a language and form which are readily understandable and accessible for him — which therefore comply with Articles 26 and 26a of the Staff Regulations and have been completed as necessary to that end — and which thereby reject, at least in part, the applicant's requests of, inter alia, 10 July 2008, 19 September 2008 and 28 November 2008;

— Order the defendant to pay to the applicant an appropriate sum in damages on account of the unlawful conduct described in this action, at a level to be fixed at the discretion of the court but which should amount to at least EUR 2 500;

— Order the defendant to pay each month to the applicant a sum in damages from the time of service of this action until complete access is actually provided to all the data and documents which are the subject of this action and to his properly maintained personal and medical file, the sum to be paid each month to be fixed at the discretion of the court but which should amount to at least EUR 200;

— Order the defendant to reimburse to the applicant the necessary costs and expenses incurred when inspecting the files on further occasions as required, on the same basis as the defendant's right to mission expenses, in the alternative to reimburse on the same basis those costs already incurred by the applicant as a result of his travel to Luxembourg on 12 September 2008 and 14 November 2008;

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

Action brought on 26 June 2009 — Strack v Commission

(Case F-62/09)

(2009/C 193/61)

Language of the case: German

Parties

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

Defendant: Commission of the European Communities

Subject-matter and description of the proceedings

Annulment of the defendant's decision to reject the applicant's complaint of 27 November 2008 as unfounded and to reject the applicant's claim for damages

Form of order sought

— Annul the implied rejection by the European Commission of 8 November 2008 of the applicant's request of 8 May 2008, and in so far as necessary in relation to this plea in law or the fourth plea in law, also annul the Commission's decision on the complaint of 27 March 2009;

— Order the defendant to pay an appropriate sum in damages amounting to at least EUR 15 000 in respect of the delays and damage caused by the Commission's earlier unlawful conduct in relation to the appraisal and promotion procedures and also by the failure to comply with Cases T-85/04 and T-394/04 by the time at which this action was brought;

— Order the defendant, in addition, with regard to the similar additional damage caused, to pay appropriate damages of at least EUR 10 per day, from the day following the bringing of the action until the day on which there is full and lawful compliance with Cases T-85/04 and T-394/04 by lawful completion of the appraisal and promotion procedures concerning the applicant to which those cases refer, equal to the payment of the full surrogate damages which would be payable in the event of acceptance of the fifth plea-in-law below;

— Order the defendant, on account of the untrue allegations made in the defendant's letter of 27 March 2009 which go beyond the mere rejection of the complaint by impugning his dignity and professional reputation, to pay damages to the applicant amounting to at least EUR 5 000;

— Order the defendant, on account of its sole responsibility for having prevented the appraisal and promotion procedure concerning the applicant from being lawfully carried out, to pay the defendant an appropriate sum in surrogate damages of at least EUR 25 000;

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

Order of the Civil Service Tribunal of 18 June 2009 — Albert-Bousquet and Others and Johansson and Others v Commission

(Joined Cases F-14/05 and F-20/05) ([1])

(2009/C 193/62)

Language of the case: French

The President of the Second Chamber has ordered that the joined cases be removed from the register.

([1]) OJ C 132, 28.5.2005, p. 31 and C 171, 9.7.2005, p. 27.

Order of the Civil Service Tribunal of 18 June 2009 — De Geest v Council

(Case F-21/05) ([1])

(2009/C 193/63)

Language of the case: French

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

([1]) OJ C 171, 9.7.2005, p. 28.

Order of the Civil Service Tribunal of 18 June 2009 — Delplancke and Governatori v Commission

(Case F-38/05) ([1])

(2009/C 193/64)

Language of the case: French

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

([1]) OJ C 193, 6.8.2005, p. 37.

Order of the Civil Service Tribunal of 18 June 2009 — Bethuyne and Others v Commission

(Case F-49/05) ([1])

(2009/C 193/65)

Language of the case: French

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

([1]) OJ C 205, 20.8.2005, p. 31.

Order of the Civil Service Tribunal of 18 June 2009 — De Geest v Council

(Case F-80/05) ([1])

(2009/C 193/66)

Language of the case: French

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

([1]) OJ C 281, 12.11.2005, p. 25.

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