ISSN 1725-2423

Official Journal of the European Union

C 220

English edition

Information and Notices

Volume 52

12 September 2009

Notice No | Contents | Page

IV *Notices*

NOTICES FROM EUROPEAN UNION INSTITUTIONS AND BODIES

Court of Justice

2009/C 220/01 Last publication of the Court of Justice in the *Official Journal of the European Union* OJ C 205, 29.8.2009 1

V *Announcements*

COURT PROCEEDINGS

Court of Justice

2009/C 220/02 Case C-208/07: Judgment of the Court (Third Chamber) of 16 July 2009 (reference for a preliminary ruling from the Bayerisches Landessozialgericht (Germany)) — Petra von Chamier Glisczinski v Deutsche Angestellten-Krankenkasse (Social security — Regulation (EEC) No 1408/71 — Title III, Chapter 1 — Articles 18 EC, 39 EC and 49 EC — Benefits in kind intended to cover the risk of reliance on care — Residence in a Member State other than the competent State — Social security system of the Member State of residence not including benefits in kind linked to the risk of reliance on care) 2

EN

(Continued overleaf)

2009/C 220/03 Case C-385/07 P: Judgment of the Court (Grand Chamber) of 16 July 2009 — Der Grüne Punkt — Duales System Deutschland GmbH v Commission of the European Communities, Interseroh Dienstleistungs GmbH, Vfw GmbH, Landbell AG für Rückhol-Systeme, BellandVision GmbH (Appeal — Competition — Article 82 EC — System for the collection and recovery of used packaging in Germany — 'Der Grüne Punkt' logo — Fee payable under a trade mark agreement — Abuse of dominant position — Exclusive right of the proprietor of a trade mark — Excessive duration of the proceedings before the Court of First Instance — Reasonable time — Principle of effective legal protection — Articles 58 and 61 of the Statute of the Court of Justice) 3

2009/C 220/04 Case C-427/07: Judgment of the Court (Second Chamber) of 16 July 2009 — Commission of the European Communities v Ireland (Failure of a Member State to fulfil obligations — Assessment of the effects of projects on the environment — Directive 85/337/EEC — Access to justice — Directive 2003/35/EC) 3

2009/C 220/05 Case C-428/07: Judgment of the Court (Grand Chamber) of 16 July 2009 (reference for a preliminary ruling from the High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court) (United Kingdom)) — Mark Horvath v Secretary of State for Environment, Food and Rural Affairs (Common agricultural policy — Direct support schemes — Regulation (EC) No 1782/2003 — Article 5 and Annex IV — Minimum requirements for good agricultural and environmental condition — Maintenance of rights of way — Implementation by a Member State — Transfer of powers to regional authorities of a Member State — Discrimination contrary to Community law) 4

2009/C 220/06 Case C-440/07 P: Judgment of the Court (Grand Chamber) of 16 July 2009 — Commission of the European Communities, Federal Republic of Germany v Schneider Electric SA, French Republic (Appeal — Concentrations — Regulation (EEC) No 4064/89 — Commission decision declaring a concentration incompatible with the common market — Annulment — Non-contractual liability of the Community on account of the illegality found — Conditions) 4

2009/C 220/07 Case C-481/07 P: Judgment of the Court (Sixth Chamber) of 16 July 2009 — SELEX Sistemi Integrati SpA v Commission of the European Communities (Appeal — Non-contractual liability of the Community — Commission Decision rejecting a complaint brought against Eurocontrol — Actual and certain damage) 5

2009/C 220/08 Case C-537/07: Judgment of the Court (Third Chamber) of 16 July 2009 (Reference for a preliminary ruling from the Juzgado de lo Social de Madrid — Spain) — Evangelina Gómez-Limón Sánchez-Camacho v Instituto Nacional de la Seguridad Social (INSS), Tesorería General de la Seguridad Social (TGSS), Alcampo SA (Directive 96/34/EC — Framework agreement on parental leave — Entitlements acquired or being acquired at the start of the leave — Continued receipt of social security benefits during the leave — Directive 79/7/EEC — Principle of equal treatment for men and women in matters of social security — Acquisition of entitlements to permanent invalidity pension acquired during parental leave) 6

2009/C 220/09 Case C-554/07: Judgment of the Court (Third Chamber) of 16 July 2009 — Commission of the European Communities v Ireland (Failure of a Member State to fulfil obligations — Value added tax — Directive 2006/112/EC — Articles 2, 9 and 13 — Economic activity in which the State, local authorities and other bodies governed by public law engage — Exemption) 6

EN

2009/C 220/10 Case C-5/08: Judgment of the Court (Fourth Chamber) of 16 July 2009 (Reference for a preliminary ruling from the Højesteret — Denmark) — Infopaq International A/S v Danske Dagblades Forening (Copyright — Information society — Directive 2001/29/EC — Articles 2 and 5 — Literary and artistic works — Concept of 'reproduction' — Reproduction 'in part' — Reproduction of short extracts of literary works — Newspaper articles — Temporary and transient reproductions — Technological process consisting in scanning of articles followed by conversion into text file, electronic processing of the reproduction, storage of part of that reproduction and printing out) 7

2009/C 220/11 Case C-12/08: Judgment of the Court (Fourth Chamber) of 16 July 2009 (Reference for a preliminary ruling from the Cour du travail de Liège — Belgium) — Mono Car Styling SA, in liquidation v Dervis Odemis and Others (Reference for a preliminary ruling — Directive 98/59/EC — Articles 2 and 6 — Procedure for informing and consulting employees in the case of collective redundancy — Employer's obligations — Workers' right of action — Obligation to interpret national law in conformity with Community law) 7

2009/C 220/12 Case C-56/08: Judgment of the Court (Fourth Chamber) of 16 July 2009 (reference for a preliminary ruling from the Tallinna Halduskohus (Estonia)) — Pärlitigu OÜ v Maksu- ja Tolliameti Põhja maksu- ja tollikeskus (Common Customs Tariff — Combined Nomenclature — Tariff classification — Subheading CN 05119110 — Subheading CN 03032200 — Frozen backbones of farmed Atlantic salmon — Regulation (EC) No 85/2006 — Anti-dumping duties) 8

2009/C 220/13 Case C-69/08: Judgment of the Court (Second Chamber) of 16 July 2009 (reference for a preliminary ruling from the Tribunale di Napoli — Sezione Lavoro (Italy)) — Raffaello Visciano v Istituto nazionale della previdenza sociale (INPS) (Social policy — Protection of workers — Insolvency of employer — Directive 80/987/EEC — Obligation to pay all outstanding claims up to a pre-established ceiling — Nature of an employee's claims against a guarantee institution — Limitation period) 9

2009/C 220/14 Joined Cases C-124/08 and C-125/08: Judgment of the Court (Second Chamber) of 16 July 2009 (references for a preliminary ruling from the Hof van Cassatie van België — Belgium) — Gilbert Snauwaert, Algemeen Expeditiebedrijf Zeebrugge BVBA, Coldstar NV, Dirk Vlaeminck, Jeroen Den Haerynck, Ann De Wintere (C-124/08), Géry Deschaumes (C-125/08) v Belgische Staat (Regulation (EEC) No 2913/92 — Community Customs Code — Customs debt — Amount of duty — Communication to the debtor — Act that could give rise to criminal court proceedings) 9

2009/C 220/15 Case C-126/08: Judgment of the Court (Second Chamber) of 16 July 2009 (reference for a preliminary ruling from the Hof van Cassatie van België -Belgium) — Distillerie Smeets Hasselt NV v Belgische Staat, Louis De Vos, Bollen, Mathay & Co BVBA, liquidator of Transterminal Logistics NV, Daniel Van den Langenbergh and Firma De Vos NV; Belgische Staat v Bollen, Mathay & Co. BVBA, liquidator of Transterminal Logistics NV; and Louis De Vos v Belgische Staat (Regulation (EEC) No 2913/92 — Community Customs Code — Post-clearance recovery of import or export duty — Entry in the accounts of the amount of duty — Entry in the accounting records or on any other equivalent medium — Act of recording equivalent to entry in the accounts — Delivery of a copy of the record equivalent to communication of the amount of duty legally owed) 10

2009/C 220/16 Case C-165/08: Judgment of the Court (Second Chamber) of 16 July 2009 — Commission of the European Communities v Republic of Poland (Genetically modified organisms — Seed — Prohibition on placing on the market — Prohibition on inclusion in the national catalogue of varieties — Directives 2001/18/EC and 2002/53/EC — Reliance on ethical and religious grounds — Burden of proof) 10

EN

(Continued overleaf)

2009/C 220/17 Case C–168/08: Judgment of the Court (Third Chamber) of 16 July 2009 (Reference for a preliminary ruling from the Cour de cassation — France) — Laszlo Hadadi (Hadady) v Csilla Marta Mesko, married name Hadadi (Hadady) (Judicial cooperation in civil matters — Regulation (EC) No 2201/2003 — Jurisdiction, recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility — Article 64 — Transitional provisions — Application to a judgment given in a Member States which acceded to the European Union in 2004 — Article 3(1) — Jurisdiction in matters relating to divorce — Relevant connecting factors — Habitual residence — Nationality — Spouses residing in France and each holding French and Hungarian nationality) 11

2009/C 220/18 Case C-189/08: Judgment of the Court (First Chamber) of 16 July 2009 (Reference for a preliminary ruling from the Hoge Raad der Nederlanden — Netherlands) — Zuid-Chemie BV v Philippo's Mineralenfabriek NV/SA (Judicial cooperation in civil and commercial matters — Jurisdiction and enforcement of judgments — Regulation (EC) No 44/2001 — Definition of the 'place where the harmful event occurred') 11

2009/C 220/19 Joined Cases C-202/08 P and C-208/08 P: Judgment of the Court (First Chamber) of 16 July 2009 — American Clothing Associates SA and Office for Harmonisation in the Internal Market (Trade Marks and Designs) (Appeal — Intellectual property — Regulation (EC) No 40/94 — Community trade mark — Paris Convention for the Protection of Industrial Property — Absolute grounds for refusal to register a trade mark — Trade marks identical with or similar to a State emblem — Representation of a maple leaf — Applicability to service marks) 12

2009/C 220/20 Case C-244/08: Judgment of the Court (Eighth Chamber) of 16 July 2009 — Commission of the European Communities v Italian Republic (Failure of Member State to fulfil obligations — Sixth VAT Directive — Article 17 — Eighth Directive 79/1072/EEC — Article 1 — Thirteenth Directive 86/560/EEC — Article 1 — Refund or deduction of VAT — Taxable person established in another Member State or in a non-Member State, but having a fixed establishment in the Member State concerned) 12

2009/C 220/21 Case C-254/08: Judgment of the Court (Second Chamber) of 16 July 2009 (reference for a preliminary ruling from the Tribunale Amministrativo Regionale della Campania (Italy)) — Futura Immobiliare srl Hotel Futura, Meeting Hotel, Hotel Blanc, Hotel Clyton, Business srl v Comune di Casoria (Reference for a preliminary ruling — Directive 2006/12/EC — Article 15(a) — Waste disposal costs not allocated on the basis of actual production of waste — Compatibility with the 'polluter pays' principle) 13

2009/C 220/22 Case C-344/08: Judgment of the Court (Second Chamber) of 16 July 2009 (reference for a preliminary ruling from the Sąd Rejonowy w Kościanie — Republic of Poland) — Criminal proceedings against Tomasz Rubach (Protection of species of wild fauna and flora — Species listed in Annex B to Regulation (EC) No 338/97 — Evidence of lawful acquisition of specimens of those species — Burden of proof — Presumption of innocence — Rights of the defence) 14

2009/C 220/23 Case C-574/08: Judgment of the Court (Seventh Chamber) of 16 July 2009 — Commission of the European Communities v Kingdom of Belgium (Internal market — Free movement of capital — Fight against fraud and money laundering) 14

2009/C 220/24 Opinion 1/09: Request for an opinion submitted by the Council of the European Union pursuant to Article 300(6) EC 15

EN

2009/C 220/25 Case C-483/07 P: Order of the Court of 17 February 2009 — Galileo Lebensmittel GmbH & Co. KG v Commission of the European Communities (Appeal — Action for annulment — Reservation by the Commission of the domain 'galileo.eu' — Fourth paragraph of Article 230 EC — Decision of individual concern to a natural or legal person — Appeal clearly unfounded) 15

2009/C 220/26 Case C-565/07 P: Order of the Court of 19 May 2009 — AMS Advanced Medical Services GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs), American Medical Systems, Inc. (Appeal — Community trade mark — Figurative trade mark AMS Advanced Medical Services — Partial refusal of registration — Opposition proceedings — Appeal which has become devoid of purpose — No need to adjudicate) 15

2009/C 220/27 Case C-136/08 P: Order of the Court of 30 April 2009 — Japan Tobacco, Inc. v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), Torrefacção Camelo L^{da} (Appeal — Community trade mark — Regulation (EC) No 40/94 — Article 8(5) — Detrimental to the distinctive character of the earlier mark — Unfair advantage taken of the distinctive character or the repute of the earlier mark — Likelihood — Application for registration of the figurative sign 'CAMELO' as a Community trade mark — Opposition by the proprietor of the national word and figurative marks CAMEL) 16

2009/C 220/28 Case C-300/08 P: Order of the Court (Fifth Chamber) of 11 June 2009 — Leche Celta, SL v Office for Harmonisation in the Internal Market (Trade Marks and Designs), Celia SA (Appeal — Community trade mark — Regulation (EC) No 40/94 — Article 8(1)(b) — Mixed word and figurative trade mark, Celia — Relative grounds for refusal of registration — Similarity of the mark for which registration is sought with an earlier mark — Mark concerning identical goods — Likelihood of confusion — Appeal manifestly inadmissible) 16

2009/C 220/29 Case C–394/08 P: Order of the Court (Fifth Chamber) of 3 June 2009 — Zipcar, Inc. v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (Appeal — Community trade mark — Article 8(1)(b) of Regulation (EC) No 40/94 — Word mark ZIPCAR — Opposition by the proprietor of the national word mark CICAR) 17

2009/C 220/30 Case C-454/08: Reference for a preliminary ruling from the Court of Appeal in Northern Ireland (United Kingdom) lodged on 16 October 2008 — Seaport Investments Ltd v Department of the Environment for Northern Ireland 17

2009/C 220/31 Case C-218/09: Reference for a preliminary ruling from the Hof van beroep te Brussel (Belgium) lodged on 15 May 2009 — I. SGS Belgium NV v Belgisch Interventie- en Restitutiebureau, Firme Derwa NV and Centraal Beheer Achmea NV and II. Firme Derwa NV and Centraal Beheer Achmea NV v SGS Belgium NV and Belgisch Interventie- en Restitutiebureau 17

2009/C 220/32 Case C-222/09: Reference for a preliminary ruling from the Naczelny Sąd Administracyjny (Republic of Poland), lodged on 18 June 2009 — Kronospan Mielec sp. z o. o. v Dyrektor Izby Skarbowej w Rzeszowie 18

2009/C 220/33 Case C-226/09: Action brought on 19 June 2009 — Commission of the European Communities v Ireland 18

2009/C 220/34 Case C-229/09: Reference for a preliminary ruling from the Bundespatentgericht (Germany), lodged on 24 June 2009 — Rechtsanwaltssozietät Lovells v Bayer CropScience AG 19

EN

(Continued overleaf)

2009/C 220/35 Case C-230/09: Reference for a preliminary ruling from the Bundesfinanzhof (Germany), lodged on 25 June 2009 — Hauptzollamt Koblenz v Kurt Etling und Thomas Etling, a civil law partnership; intervener: Bundesministerium der Finanzen 19

2009/C 220/36 Case C-231/09: Reference for a preliminary ruling from the Bundesfinanzhof (Germany), lodged on 25 June 2009 — Hauptzollamt Oldenburg v 1. Theodor Aissen, 2. Hermann Rohaan; intervener: Bundesministerium der Finanzen 19

2009/C 220/37 Case C-232/09: Reference for a preliminary ruling from the Latvijas Republikas Augstākās tiesas Senāts (Republic of Latvia) lodged on 25 June 2009 — Dita Danosa v LKB Līzings SIA 20

2009/C 220/38 Case C-233/09: Reference for a preliminary ruling from the Hof van beroep te Antwerpen — Belgium lodged on 26 June 2009 — G.A. Dijkman and M.A. Dijkman-Lavaleije v Belgische Staat 20

2009/C 220/39 Case C-237/09: Reference for a preliminary ruling from the Cour de cassation (Belgium) lodged on 1 July 2009 — État Belge v Nathalie De Fruytier 20

2009/C 220/40 Case C-239/09: Reference for a preliminary ruling from the Landgericht Berlin (Germany) lodged on 1 July 2009 — SEYDALAND Vereinigte Agrarbetriebe GmbH & Co. v BVVG Bodenverwertungs- und –verwaltungs GmbH. 21

2009/C 220/41 Case C-242/09: Reference for a preliminary ruling from the Gerechtshof te Amsterdam (Netherlands) lodged on 3 July 2009 — Albron Catering BV v FNV Bondgenoten and John Roest 21

2009/C 220/42 Case C-245/09: Reference for a preliminary ruling from the Arbeidshof te Brussel (Belgium), lodged on 6 July 2009 — Omalet NV v Rijksdienst voor Sociale Zekerheid 21

2009/C 220/43 Case C-248/09: Reference for a preliminary ruling from the Latvijas Republikas Augstākās tiesas Senāta Administratīvo lietu departaments (Latvian Republic) lodged on 7 July 2009 — SIA Pakora Pluss v Valsts ieņēmumu dienests 22

2009/C 220/44 Case C-249/09: Reference for a preliminary ruling from the Tartu Ringkonnakohus (Estonia) lodged on 7 July 2009 — Novo Nordisk A/S v Ravimiamet 22

2009/C 220/45 Case C-250/09: Reference for a preliminary ruling from the Plovdivski rayonen sad (Bulgaria) lodged on 8 June 2009 — Vasil Ivanov Georiev v Tehnicheski universitet — Sofia, Filial Plovdiv 23

2009/C 220/46 Case C-256/09: Reference for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 10 July 2009 — Bianca Purrucker v Guillermo Vallés Pérez 23

2009/C 220/47 Case C-258/09: Action brought on 10 July 2009 — Commission of the European Communities v Kingdom of Belgium 23

2009/C 220/48 Case C-259/09: Action brought on 10 July 2009 — Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland 24

2009/C 220/49 Case C-260/09 P: Appeal brought on 13 July 2009 by Activision Blizzard Germany GmbH (formerly CD-Contact Data GmbH) against the judgment of the Court of First Instance (Eighth Chamber) delivered on 30 April 2009 in Case T-18/03: CD-Contact Data GmbH v Commission of the European Communities 24

EN

Notice No	Contents (continued)	Page
2009/C 220/50	Case C-261/09: Reference for a preliminary ruling from the Oberlandesgericht Stuttgart (Germany), lodged on 14 July 2009 — Extradition proceedings concerning Gaetano Mantello	25
2009/C 220/51	Case C-263/09 P: Appeal brought on 14 July 2009 by Edwin Co. Ltd against the judgment of the Court of First Instance (Fifth Chamber) delivered on 14 May 2009 in Case T-165/06 Elio Fiorucci v Office for Harmonisation in the Internal Market (Trade Marks and Designs)	25
2009/C 220/52	Case C-267/09: Action brought on 15 July 2009 — Commission of the European Communities v Portuguese Republic	27
2009/C 220/53	Case C-268/09: Reference for a preliminary ruling from the Plovdivski rayonen (Bulgaria) sad lodged on 16 July 2009 — Vasil Ivanov Georgiev v Tehnicheski universitet — Sofia, Filial Plovdiv	28
2009/C 220/54	Case C-269/09: Action brought on 15 July 2009 — Commission of the European Communities v Kingdom of Spain	28
2009/C 220/55	Case C-272/09 P: Appeal brought on 16 July 2009 by KME Germany AG, formerly KM Europa Metal AG, KME France SAS, formerly Tréfimétaux SA, KME Italy SpA, formerly Europa Metalli SpA against the judgment of the Court of First Instance (Eighth Chamber) delivered on 6 May 2009 in Case T-127/04: KME Germany AG, formerly KM Europa Metal AG, KME France SAS, formerly Tréfimétaux SA, KME Italy SpA, formerly Europa Metalli SpA v Commission of the European Communities	29
2009/C 220/56	Case C-278/09: Reference for a preliminary ruling from the Tribunal de grande instance, Paris (France) lodged on 16 July 2009 — Olivier Martinez, Robert Martinez v Société MGN Limited	29
2009/C 220/57	Case C-294/09: Action brought on 27 July 2009 — Commission of the European Communities v Ireland	30
2009/C 220/58	Case C–213/08: Order of the President of the Court of 26 March 2009 — Commission of the European Communities v Kingdom of Spain	30
2009/C 220/59	Case C-435/08: Order of the President of the Court of 14 May 2009 — Commission of the European Communities v Republic of Poland	30
2009/C 220/60	Case C-459/08: Order of the President of the Court of 17 June 2009 — Commission of the European Communities v Portuguese Republic	31
2009/C 220/61	Case C-500/08: Order of the President of the Court of 5 June 2009 — Commission of the European Communities v Italian Republic	31
2009/C 220/62	Case C–503/08: Order of the President of the Court of 26 June 2009 — Commission of the European Communities v Kingdom of Spain	31
2009/C 220/63	Case C-534/08: Order of the President of the Court of 18 February 2009 (reference for a preliminary ruling from the Hoge Raad der Nederlanden Den Haag (Netherlands)) — KLG Europe Eersel BV v Reedereikontor Adolf Zeuner GmbH	31

EN

(Continued overleaf)

2009/C 220/64 Case C–10/09: Order of the President of the Court of 18 June 2009 — Commission of the European Communities v Portuguese Republic 31

2009/C 220/65 Case C–11/09: Order of the President of the Court of 18 June 2009 — Commission of the European Communities v Portuguese Republic 31

Court of First Instance

2009/C 220/66 Case T-106/08 R: Order of the Court of First Instance of 18 April 2008 — CPEM v Commission (Application for interim measures — Application for suspension of operation — New application — New facts — Absence — Inadmissibility — Article 109 of the Rules of Procedure of the Court of First Instance) 32

2009/C 220/67 Case T-504/08: Order of the Court of First Instance of 8 July 2009 — Mologen v OHIM (dSLIM) (Community trade mark — Partial refusal to register — Withdrawal of the application for registration — No need to adjudicate) 32

2009/C 220/68 Case T-545/08: Order of the Court of First Instance of 8 July 2009 — Thoss v Court of Auditors (Action for annulment — Time-limit for bringing an action — Lateness — Absence of excusable error — Manifest inadmissibility) 32

2009/C 220/69 Case T-238/09 R: Order of the President of the Court of First Instance of 13 July 2009 — Sniace v Commission (Application for interim measures — State aid — Decision declaring an aid to be incompatible with the common market and ordering its recovery — Application for suspension of operation — Failure to have regard to formal requirements — Inadmissibility) 33

2009/C 220/70 Case T-235/09: Action brought on 17 June 2009 — Commission v Edificios Inteco 33

2009/C 220/71 Case T-256/09: Action brought on 2 July 2009 — AECOPS v Commission 33

2009/C 220/72 Case T-257/09: Action brought on 2 July 2009 — AECOPS v Commission 34

2009/C 220/73 Case T-259/09: Action brought on 7 July 2009 — Commission v Arci Nuova Associazione Comitato di Cagliari and Gessa 34

2009/C 220/74 Case T-260/09 P: Appeal brought on 6 July 2009 by the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) against the judgment of the Civil Service Tribunal delivered on 5 May 2009 in Case F-27/08, Simões Dos Santos v OHIM 35

2009/C 220/75 Case T-261/09 P: Appeal brought on 6 July 2009 by the Commission of the European Communities against the judgment of the Civil Service Tribunal delivered on 28 April 2009 in Joined Cases F-5/05, Violetti and Others v Commission, and F-7/05, Schmit v Commission 35

2009/C 220/76 Case T-264/09: Action brought on 2 July 2009 — Tecnoprocess v Commission and European Commission Delegation to Morocco 36

EN

(Continued on inside back cover)

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS AND BODIES

COURT OF JUSTICE

(2009/C 220/01)

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

OJ C 205, 29.8.2009

Past publications

OJ C 193, 15.8.2009

OJ C 180, 1.8.2009

OJ C 167, 18.7.2009

OJ C 153, 4.7.2009

OJ C 141, 20.6.2009

OJ C 129, 6.6.2009

These texts are available on:

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Third Chamber) of 16 July 2009 (reference for a preliminary ruling from the Bayerisches Landessozialgericht (Germany)) — Petra von Chamier Glisczinski v Deutsche Angestellten-Krankenkasse

(Case C-208/07) [1]

(Social security — Regulation (EEC) No 1408/71 — Title III, Chapter 1 — Articles 18 EC, 39 EC and 49 EC — Benefits in kind intended to cover the risk of reliance on care — Residence in a Member State other than the competent State — Social security system of the Member State of residence not including benefits in kind linked to the risk of reliance on care)

(2009/C 220/02)

Language of the case: German

Referring court

Bayerisches Landessozialgericht

Parties to the main proceedings

Applicant: Petra von Chamier Glisczinski

Defendant: Deutsche Angestellten-Krankenkasse

Re:

Reference for a preliminary ruling — Bayerisches Landessozialgericht — Interpretation of Article 19(1)(a) and 19(2) of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (OJ, English Special Edition 1971(II), p. 416) in the light of Articles 18 EC, 39 EC and 49 EC and in conjunction with Article 10 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition 1968(II), p. 475) — National legislation under which a member of the family of an employed person residing in a Member State other than the competent State and in receipt in the competent Member State of combined benefits (cash benefits and benefits in kind) is entitled only to be paid a care allowance ('Pflegegeld'), calculated in accordance with the law of the competent State, where the legislation of the State of residence does not provide for benefits in kind in respect of care received in that Member State — Export of benefits in kind to another Member State whose social security system provides only for cash benefits.

Operative part of the judgment

1. *Where, unlike the social security system of the competent State, that of the Member State of residence of a person reliant on care, insured as a member of the family of an employed or self-employed person within the meaning of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, as amended in turn by Regulation (EC) No 1386/2001 of the European Parliament and of the Council of 5 June 2001, does not provide for the provision of benefits in kind in situations of reliance on care such as those of that person, Articles 19 or 22(1)(b) of that regulation do not of themselves require the provision of such benefits outside the competent State by or on behalf of the competent institution.;*

2. *Where, unlike the social security system of the competent State, that of the Member State of residence of a person reliant on care, insured as a member of the family of an employed or self-employed person within the meaning of Regulation No 1408/71, as amended and updated by Council Regulation No 118/97, as amended in turn by Regulation No 1386/2001, does not provide for the provision of benefits in kind in given situations of reliance on care, Article 18 EC does not preclude, in circumstances such as those of the main proceedings, legislation such as that introduced by Paragraph 34 of Book XI of the Social Security Code (Sozialgesetzbuch), on the basis of which a competent institution refuses in such circumstances to pay, independently of the mechanisms introduced by Article 19 or, as the case may be, Article 22(1)(b) of that regulation and for an unlimited period, the costs linked to a stay in a care home situated in the Member State of residence up to an amount equal to the benefits to which that person would have been entitled if he had received the same care in a care home — party to a service agreement — situated in the competent State.*

[1] OJ C 155, 07.07.2007.

Judgment of the Court (Grand Chamber) of 16 July 2009 — Der Grüne Punkt — Duales System Deutschland GmbH v Commission of the European Communities, Interseroh Dienstleistungs GmbH, Vfw GmbH, Landbell AG für Rückhol-Systeme, BellandVision GmbH

(Case C-385/07 P) [1]

(Appeal — Competition — Article 82 EC — System for the collection and recovery of used packaging in Germany — 'Der Grüne Punkt' logo — Fee payable under a trade mark agreement — Abuse of dominant position — Exclusive right of the proprietor of a trade mark — Excessive duration of the proceedings before the Court of First Instance — Reasonable time — Principle of effective legal protection — Articles 58 and 61 of the Statute of the Court of Justice)

(2009/C 220/03)

Language of the case: German

Parties

Appellant: Der Grüne Punkt — Duales System Deutschland GmbH (represented by: W. Deselaers, E. Wagner and B. Meyring, Rechtsanwälte)

Other parties to the proceedings: Commission of the European Communities (represented by: W. Mölls and R. Sauer, acting as Agents), Vfw GmbH (represented by: H. Wissel, Rechtsanwalt), Landbell AG für Rückhol-Systeme (represented by: A. Rinne and M. Westrup, Rechtsanwälte), Belland Vision GmbH (represented by: A. Rinne and M. Westrup, Rechtsanwälte)

Intervener in support of the Commission: Interseroh Dienstleistungs GmbH (represented by: W. Pauly, A. Oexle and J. Kempkes, Rechtsanwälte)

Re:

Appeal against the judgment of the Court of First Instance (First Chamber) of 24 May 2007 in Case T-151/01 *Duales System Deutschland* v *Commission*, by which that Court dismissed the action seeking annulment of Commission Decision 2001/463/EC of 20 April 2001 relating to a proceeding pursuant to Article 82 EC (Case COMP D3/34493 — DSD) (OJ 2001 L 166, p. 1) — Abuse of a dominant position — Collection and recovery system for packaging put into circulation in Germany and carrying the Der Grüne Punkt logo

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Der Grüne Punkt — Duales System Deutschland GmbH to bear its own costs, together with the costs of these proceedings incurred by the Commission of the European Communities, Interseroh Dienstleistungs GmbH, Vfw GmbH, Landbell AG für Rückhol-Systeme and BellandVision GmbH.*

[1] OJ C 269, 10.11.2009.

Judgment of the Court (Second Chamber) of 16 July 2009 — Commission of the European Communities v Ireland

(Case C-427/07) [1]

(Failure of a Member State to fulfil obligations — Assessment of the effects of projects on the environment — Directive 85/337/EEC — Access to justice — Directive 2003/35/EC)

(2009/C 220/04)

Language of the case: English

Parties

Applicant: Commission of the European Communities (represented by: D. Recchia, P. Oliver and J.-B. Laignelot, Agents)

Defendant: Ireland (represented by: D. O'Hagan, Agent, M. Collins SC, and D. McGrath BL)

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 2(1) and Article 4(2), (3) and (4) of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40) — Failure to adopt the provisions necessary to comply with Articles 3 and 4 of Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC (OJ 2003 L 156, p. 17)

Operative part of the judgment

The Court:

1. *Declares that*

— *by failing to adopt, in conformity with Article 2(1) and Article 4(2) to (4) of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC of 3 March 1997, all measures to ensure that, before consent is given, projects likely to have significant effects on the environment in the road construction category, covered by point 10(e) of Annex II to Directive 85/337, as amended by Directive 97/11, are made subject to a requirement for development consent and to an assessment with regard to their effects in accordance with Articles 5 to 10 of that directive, and*

— *by failing to adopt the laws, regulations and administrative provisions necessary to comply with Article 3(3) to (7) and Article 4(2) to (4) of Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC, and by failing to adequately notify such provisions to the Commission of the European Communities,*

Ireland has failed to fulfil its obligations under Directive 85/337, as amended by Directive 97/11, and Article 6 of Directive 2003/35;

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

3. *Orders the Commission of the European Communities and Ireland to bear their own costs.*

([1]) OJ C 269, 10.11.2007.

Judgment of the Court (Grand Chamber) of 16 July 2009 (reference for a preliminary ruling from the High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court) (United Kingdom)) — Mark Horvath v Secretary of State for Environment, Food and Rural Affairs

(Case C-428/07) ([1])

(Common agricultural policy — Direct support schemes — Regulation (EC) No 1782/2003 — Article 5 and Annex IV — Minimum requirements for good agricultural and environmental condition — Maintenance of rights of way — Implementation by a Member State — Transfer of powers to regional authorities of a Member State — Discrimination contrary to Community law)

(2009/C 220/05)

Language of the case: English

Referring court

High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court)

Parties to the main proceedings

Applicant: Mark Horvath

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

Re:

Reference for a preliminary ruling — High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court) — Interpretation of Article 5 and of Annex IV to Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 (OJ 2003 L 270, p. 1) — Criteria for good agricultural and environmental condition defined in Article 5 of the regulation and in Annex IV thereto — Possibility of including requirements relating to the maintenance of visible public rights of way — Member State's internal arrangements which provide that devolved administrations are to have legislative competence in relation to the various constituent parts of that Member State with the consequence that those various parts have different standards of good agricultural and environmental condition

Operative part of the judgment

1. *A Member State may include requirements relating to the maintenance of visible public rights of way in its standards for good agricultural and environmental condition under Article 5 of and Annex IV to Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001, inasmuch as those requirements contribute to the retention of those rights of way as landscape features or, as the case may be, to the avoidance of the deterioration of habitats.*

2. *Where the constitutional system of a Member State provides that devolved administrations are to have legislative competence, the mere adoption by those administrations of different standards for good agricultural and environmental condition under Article 5 of and Annex IV to Regulation No 1782/2003 does not constitute discrimination contrary to Community law.*

([1]) OJ C 297, 8.12.2007.

Judgment of the Court (Grand Chamber) of 16 July 2009 — Commission of the European Communities, Federal Republic of Germany v Schneider Electric SA, French Republic

(Case C-440/07 P) ([1])

(Appeal — Concentrations — Regulation (EEC) No 4064/89 — Commission decision declaring a concentration incompatible with the common market — Annulment — Non-contractual liability of the Community on account of the illegality found — Conditions)

(2009/C 220/06)

Language of the case: French

Parties

Appellant: Commission of the European Communities (represented by: M. Petite, F. Arbault, T. Christoforou, R. Lyal and C.-F. Durand, Agents)

Other parties to the proceedings: Schneider Electric SA (represented by: M. Pittie and A. Winckler, avocats), Federal Republic of Germany, French Republic

Re:

Appeal against the judgment of the Court of First Instance (Fourth Chamber — Extended Composition) in Case T-351/03 *Schneider Electric SA* v *Commission*, by which the Court of First Instance ordered the European Community to make good, first, the expenses incurred by Schneider Electric in respect of its participation in the resumed merger control procedure which followed the delivery on 22 October 2002 of the judgments of the Court of First Instance in *Schneider Electric* v *Commission* (Case T-310/01 and Case T-77/02), and, second, two thirds of the loss sustained by Schneider Electric as a result of the reduction in the transfer price of Legrand SA, which Schneider Electric had to concede to the transferee in exchange for the postponement of the effective date of sale of Legrand until 10 December 2002 — Conditions for the Community to incur non-contractual liability — Concepts of wrongful act, damage and direct causal link between the wrongful act and the damage suffered — 'Sufficiently serious' breach of Community law vitiating the procedure for examination of the compatibility of a concentration with the common market.

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the Court of First Instance of 11 July 2007 in Case T-351/03 Schneider Electric v Commission in so far as it:*

   — *ordered the European Community to make good two thirds of the loss claimed by Schneider Electric SA as a result of the reduction in the transfer price of Legrand SA, which Schneider Electric conceded to the transferee in exchange for the postponement of the effective date of sale until 10 December 2002;*

   — *ordered the amount of that head of loss to be assessed by an expert;*

   — *awarded interest on the compensation corresponding to that head of loss;*

2. *Dismisses the remainder of the appeal;*

3. *Orders the parties to communicate to the Court of Justice of the European Communities, within the period of three months from delivery of this judgment, the assessment of the loss represented by the costs incurred by Schneider Electric SA as a result of its participation in the resumed merger control procedure which followed delivery of the judgments of the Court of First Instance of the European Communities of 22 October 2002 in Cases T-310/01 and T-77/02 Schneider Electric v Commission, the assessment to be jointly agreed in accordance with the procedure set out in paragraph 216 of this judgment;*

4. *Failing such agreement, orders the parties to submit to the Court of Justice of the European Communities, within the same period, their proposed figures;*

5. *Dismisses the remainder of the action brought by Schneider Electric SA;*

6. *Orders Schneider Electric SA to pay, in addition to its own costs relating to the proceedings at first instance and on appeal, two thirds of the costs incurred by the Commission of the European Communities in both sets of proceedings.*

([1]) OJ C 22, 26.1.2008.

Judgment of the Court (Sixth Chamber) of 16 July 2009 — SELEX Sistemi Integrati SpA v Commission of the European Communities

(Case C-481/07 P) ([1])

(Appeal — Non-contractual liability of the Community — Commission Decision rejecting a complaint brought against Eurocontrol — Actual and certain damage)

(2009/C 220/07)

Language of the case: Italian

Parties

Appellant: SELEX Sistemi Integrati SpA (represented by: F. Sciaudone, R. Sciandone and A. Neri, avvocati)

Other party to the proceedings: Commission of the European Communities (represented by: V. Di Bucci and F. Amato, agents.)

Re:

Appeal brought against the order of the Court of First Instance (Second Chamber) of 29 August 2007 in Case T-186/05 *SELEX Sistemi Integrati* v *Commission* dismissing as in part manifestly inadmissible and in part manifestly without foundation in law the action for compensation for the loss allegedly suffered by the applicant as a result of the Commission decision of 12 February 2004 rejecting the applicant's complaint of an alleged infringement by Eurocontrol of the provisions of the EC Treaty on competition

Operative part of the judgment

The Court:

1. *dismisses the appeal;*

2. *orders SELEX Sistemi Integrati SpA to pay the costs.*

([1]) OJ C 37, 09.02.2008.

Judgment of the Court (Third Chamber) of 16 July 2009 (Reference for a preliminary ruling from the Juzgado de lo Social de Madrid — Spain) — Evangelina Gómez-Limón Sánchez-Camacho v Instituto Nacional de la Seguridad Social (INSS), Tesorería General de la Seguridad Social (TGSS), Alcampo SA

(Case C-537/07) [1]

(Directive 96/34/EC — Framework agreement on parental leave — Entitlements acquired or being acquired at the start of the leave — Continued receipt of social security benefits during the leave — Directive 79/7/EEC — Principle of equal treatment for men and women in matters of social security — Acquisition of entitlements to permanent invalidity pension acquired during parental leave)

(2009/C 220/08)

Language of the case: Spanish

Referring court

Juzgado de lo Social de Madrid

Parties to the main proceedings

Applicant: Evangelina Gómez-Limón Sánchez-Camacho

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

Re:

Reference for a preliminary ruling — Juzgado de lo Social de Madrid (Spain) — Interpretation of Clause 2(6) and (8) of the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC annexed to Directive 96/34 of 3 June on (OJ 1996 L 145, p. 4) and of Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security (OJ 1979 L 6, p. 24) — Domestic legislation providing for the amount of invalidity pension to be calculated in relation to the salary received during a certain period before the occurrence of the event giving rise to the pension — Part-time parental leave during that period — Effects.

Operative part of the judgment

1. *Clause 2(6) of the framework agreement on parental leave concluded on 14 December 1995, annexed to Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC can be relied on by individuals before a national court;*

2. *Clause 2(6) and (8) of the framework agreement on parental leave does not preclude the taking into account, in the calculation of an employee's permanent invalidity pension, of the fact that he has taken a period of part-time parental leave during which he made contributions and acquired pension entitlements in proportion to the salary received;*

3. *Clause 2(8) of the framework agreement on parental leave does not impose obligations on the Member States, apart from that of examining and determining social security questions related to that framework agreement in accordance with national legislation. In particular, it does not require them to ensure that during parental leave employees continue to receive social security benefits. Clause 2(8) thereof cannot be relied on by individuals before a national court against public authorities;*

4. *The principle of equal treatment for men and women and, in particular, the principle of equal treatment for men and women in matters of social security, within the meaning of Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security, does not preclude an employee, during part-time parental leave, from acquiring entitlements to a permanent invalidity pension according to the time worked and the salary received and not as if he had worked on a full-time basis.*

---

[1] OJ C 64, 8.3.2008.

Judgment of the Court (Third Chamber) of 16 July 2009 — Commission of the European Communities v Ireland

(Case C-554/07) [1]

(Failure of a Member State to fulfil obligations — Value added tax — Directive 2006/112/EC — Articles 2, 9 and 13 — Economic activity in which the State, local authorities and other bodies governed by public law engage — Exemption)

(2009/C 220/09)

Language of the case: English

Parties

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

Defendant: Ireland (represented by: D. O'Hagan, acting as Agent, and E. Fitzsimons SC and N. Travers BL)

Re:

Failure of a Member State to fulfil obligations — Incorrect transposition of Article 13 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) — Exemption of all economic activities carried on by the State, local authorities and other bodies governed by public law

Operative part of the judgment

The Court:

1. *Declares that, by failing to lay down, in its national legislation, a general requirement that economic activities in which bodies governed by public law engage otherwise than in their capacity as a public authority are to be subject to value added tax;*

   by failing to lay down, in its national legislation, either a general requirement that bodies governed by public law acting in their capacity as a public authority are to be subject to value added tax where their treatment as non-taxable persons gives rise to significant distortions of competition or any criterion providing a framework for the exercise, in that connection, of the Minister for Finance's discretion, and

   by failing to lay down, in its national legislation, a general requirement that bodies governed by public law engaged in activities listed in Annex I to Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax are to be subject to such tax, provided that those activities are not carried out on such a small scale as to be negligible,

   Ireland has failed to fulfil its obligations under Articles 2, 9 and 13 of the Directive.

2. *Orders Ireland to pay the costs.*

([1]) OJ C 51, 23.2.2008.

Judgment of the Court (Fourth Chamber) of 16 July 2009 (Reference for a preliminary ruling from the Højesteret — Denmark) — Infopaq International A/S v Danske Dagblades Forening

(Case C-5/08) ([1])

(Copyright — Information society — Directive 2001/29/EC — Articles 2 and 5 — Literary and artistic works — Concept of 'reproduction' — Reproduction 'in part' — Reproduction of short extracts of literary works — Newspaper articles — Temporary and transient reproductions — Technological process consisting in scanning of articles followed by conversion into text file, electronic processing of the reproduction, storage of part of that reproduction and printing out)

(2009/C 220/10)

Language of the case: Danish

Referring court

Højesteret

Parties to the main proceedings

Applicant: Infopaq International A/S

Defendant: Danske Dagblades Forening

Re:

Preliminary ruling — Højesteret — Interpretation of Articles 2 and 5(1) and (5) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ 2001 L 167, p. 10) — Company the principal activity of which consists in drawing up summaries of newspaper articles by means of scanning — Storage of an extract from an article consisting of a search word and the five words both preceding and following it — Temporary acts of reproduction

Operative part of the judgment

1. *An act occurring during a data capture process, which consists of storing an extract of a protected work comprising 11 words and printing out that extract, is such as to come within the concept of reproduction in part within the meaning of Article 2 of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, if the elements thus reproduced are the expression of the intellectual creation of their author; it is for the national court to make this determination;*

2. *The act of printing out an extract of 11 words, during a data capture process such as that at issue in the main proceedings, does not fulfil the condition of being transient in nature as required by Article 5(1) of Directive 2001/29 and, therefore, that process cannot be carried out without the consent of the relevant right-holders.*

([1]) OJ C 64, 8.3.2008.

Judgment of the Court (Fourth Chamber) of 16 July 2009 (Reference for a preliminary ruling from the Cour du travail de Liège — Belgium) — Mono Car Styling SA, in liquidation v Dervis Odemis and Others

(Case C-12/08) ([1])

(Reference for a preliminary ruling — Directive 98/59/EC — Articles 2 and 6 — Procedure for informing and consulting employees in the case of collective redundancy — Employer's obligations — Workers' right of action — Obligation to interpret national law in conformity with Community law)

(2009/C 220/11)

Language of the case: French

Referring court

Cour du travail de Liège

Parties to the main proceedings

Applicant: Mono Car Styling SA, in liquidation

Defendants: Dervis Odemis and Others

Re:

Reference for a preliminary ruling — Cour du travail de Liège (Belgium) — Interpretation of Articles 2, 3 and 6 of Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies (OJ 1998 L 225, p. 16) — Legality of the procedure for informing and consulting staff in the event of redundancy — Lack of written communication in relation to, inter alia, the reasons for the projected redundancies, the number and categories of workers to be made redundant and the criteria proposed for the selection of those workers — Effect of the failure, on the part of the workers' representatives, to complain, on the right of workers, individually, to bring proceedings to contest the legality of the redundancy procedure — Scope of the requirement to interpret consistently.

Operative part of the judgment

1. *Article 6 of Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies, read in conjunction with Article 2 thereof, is to be interpreted as not precluding national rules which introduce procedures intended to permit both workers' representatives and the workers themselves as individuals to ensure compliance with the obligations laid down in that directive, but which limit the individual right of action of workers in regard to the complaints which may be raised and makes that right subject to the requirement that workers' representatives should first have raised objections with the employer and that the worker concerned has informed the employer in advance of his intention to query whether the information and consultation procedure has been complied with;*

2. *The fact that national rules, establishing procedures which permit workers' representatives to ensure that the employer has complied with all the information and consultation obligations set out in Directive 98/59, impose limits and conditions on the individual right of action which it also grants to every worker affected by collective redundancy is not of such a nature as to infringe the principle of effective judicial protection;*

3. *Article 2 of Directive 98/59 must be interpreted as precluding national rules which reduce the obligations of an employer who intends to proceed with collective redundancies below those laid down in Article 2 of that directive. In applying domestic law, the national court is required, applying the principle of interpreting national law in conformity with Community law, to consider all the rules of national law and to interpret them, so far as possible, in the light of the wording and purpose of Directive 98/59 in order to achieve an outcome consistent with the objective pursued by the directive. Consequently, it must ensure, within the limits of its jurisdiction, that the obligations binding such an employer are not reduced below those laid down in Article 2 of that directive.*

(1) OJ C 79, 29.3.2008.

Judgment of the Court (Fourth Chamber) of 16 July 2009 (reference for a preliminary ruling from the Tallinna Halduskohus (Estonia)) — Pärlitigu OÜ v Maksu- ja Tolliameti Põhja maksu- ja tollikeskus

(Case C-56/08) (1)

(Common Customs Tariff — Combined Nomenclature — Tariff classification — Subheading CN 05119110 — Subheading CN 03032200 — Frozen backbones of farmed Atlantic salmon — Regulation (EC) No 85/2006 — Anti-dumping duties)

(2009/C 220/12)

Language of the case: Estonian

Referring court

Tallinna Halduskohus

Parties to the main proceedings

Applicant: Pärlitigu OÜ

Defendant: Maksu- ja Tolliameti Põhja maksu- ja tollikeskus

Re:

Reference for a preliminary ruling — Tallinna Halduskohus — Interpretation of Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1987 L 256, p. 1) in the version applicable at the material time — Validity of Article 1(5) of Council Regulation (EC) No 85/2006 of 17 January 2006 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of farmed salmon originating in Norway (OJ 2006 L 15, p. 1) — Classification under heading 0303 22 00 15 (farmed salmon, frozen, other) or 0511 91 10 00 (fish waste) for the purpose of levying anti-dumping duty — Frozen backbones of farmed Atlantic salmon obtained after filleting the fish

Operative part of the judgment

The Combined Nomenclature, which constitutes Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended by Commission Regulation (EC) No 1719/2005 of 27 October 2005, must be interpreted as meaning that frozen backbones of farmed Atlantic salmon (Salmo salar), obtained after filleting the fish, must be classified under CN heading 0303 22 00 if the goods are fit for human consumption at the time that they are cleared through customs, which it is for the national court to ascertain.

(1) OJ C 92, 12.4.2008.

Judgment of the Court (Second Chamber) of 16 July 2009 (reference for a preliminary ruling from the Tribunale di Napoli — Sezione Lavoro (Italy)) — Raffaello Visciano v Istituto nazionale della previdenza sociale (INPS)

(Case C-69/08) [1]

(Social policy — Protection of workers — Insolvency of employer — Directive 80/987/EEC — Obligation to pay all outstanding claims up to a pre-established ceiling — Nature of an employee's claims against a guarantee institution — Limitation period)

(2009/C 220/13)

Language of the case: Italian

Referring court

Tribunale di Napoli — Sezione Lavoro

Parties to the main proceedings

Applicant: Raffaello Visciano

Defendant: Istituto nazionale della previdenza sociale (INPS)

Re:

Reference for a preliminary ruling — Tribunale di Napoli Sezione Lavoro –Interpretation of Articles 3 and 4 of Council Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer (OJ 1980 L 283, p. 23) — Guarantee corresponding to the last three months' salary under the employment contract, subject to a maximum amount fixed in advance — Deduction from the compensation paid of advances on salary received from the employer — National legislation permitting the same benefit to be given a different legal classification according to the party required to pay that benefit and also permitting a change in the limitation period for bringing an action

Operative part of the judgment

1. *Articles 3 and 4 of Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer do not preclude national legislation which allows employees' outstanding claims to be classified as 'social security benefits' where they are paid by a guarantee institution.*

2. *Directive 80/987 does not preclude national legislation which uses the employee's initial claim relating to pay merely as a basis of comparison for the determination of the benefit to be guaranteed by the intervention of a guarantee fund.*

3. *In the context of an application by an employee for payment by a guarantee fund of outstanding claims relating to pay, Directive 80/987 does not preclude the application of a limitation period of one year (principle of equivalence). However, it is for the national court to examine whether it is framed in such a way as to render impossible in practice or excessively difficult the exercise of the rights recognised by Community law (principle of effectiveness).*

[1] OJ C 107, 26.4.2008.

Judgment of the Court (Second Chamber) of 16 July 2009 (references for a preliminary ruling from the Hof van Cassatie van België — Belgium) — Gilbert Snauwaert, Algemeen Expeditiebedrijf Zeebrugge BVBA, Coldstar NV, Dirk Vlaeminck, Jeroen Den Haerynck, Ann De Wintere (C-124/08), Géry Deschaumes (C-125/08) v Belgische Staat

(Joined Cases C-124/08 and C-125/08) [1]

(Regulation (EEC) No 2913/92 — Community Customs Code — Customs debt — Amount of duty — Communication to the debtor — Act that could give rise to criminal court proceedings)

(2009/C 220/14)

Language of the cases: Dutch

Referring court

Hof van Cassatie van België

Parties to the main proceedings

Appellants: Gilbert Snauwaert, Algemeen Expeditiebedrijf Zeebrugge BVBA, Coldstar NV, Dirk Vlaeminck, Jeroen Den Haerynck, Ann De Wintere (C124/08), Géry Deschaumes (C-125/08)

Respondent: Belgische Staat

Re:

Reference for a preliminary ruling — Hof van Cassatie van België — Interpretation of Article 221(1) and (3) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (version in force in 1992) (OJ 1992 L 302, p. 1) — Post-clearance recovery of import or export duties — Whether or not the amount of the duty owed must be entered in the accounts before being communicated to the debtor — Limitation period — Customs fraud — Finding of joint and several liability

Operative part of the judgment

1. *Article 221(1) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code must be interpreted as meaning that the amount of import or export duty due may be validly communicated to the debtor by the customs authorities, in accordance with appropriate procedures, only if the amount of that duty has been entered in the accounts beforehand by those authorities.*

2. *Article 221(3) of Regulation No 2913/92 must be interpreted as meaning that the customs authorities may, after the expiry of the period of three years from the date on which the customs debt was incurred, validly communicate to the debtor the amount of duty legally due, where the exact amount of that duty could not be determined by those authorities as a result of an act that could give rise to criminal court proceedings. That includes cases where the debtor has not committed that act.*

([1]) OJ C 142, 07.06.2008.

Judgment of the Court (Second Chamber) of 16 July 2009 (reference for a preliminary ruling from the Hof van Cassatie van België -Belgium) — Distillerie Smeets Hasselt NV v Belgische Staat, Louis De Vos, Bollen, Mathay & Co BVBA, liquidator of Transterminal Logistics NV, Daniel Van den Langenbergh and Firma De Vos NV; Belgische Staat v Bollen, Mathay & Co. BVBA, liquidator of Transterminal Logistics NV; and Louis De Vos v Belgische Staat

(Case C-126/08) ([1])

(Regulation (EEC) No 2913/92 — Community Customs Code — Post-clearance recovery of import or export duty — Entry in the accounts of the amount of duty — Entry in the accounting records or on any other equivalent medium — Act of recording equivalent to entry in the accounts — Delivery of a copy of the record equivalent to communication of the amount of duty legally owed)

(2009/C 220/15)

Language of the case: Dutch

Referring court

Hof van Cassatie van België

Parties to the main proceedings

Appellants: Distillerie Smeets Hasselt NV, Belgische Staat, Louis De Vos

Respondents: Belgische Staat, Louis De Vos, Bollen, Mathay & Co. BVBA, liquidator of Transterminal Logistics NV, Daniel Van den Langenbergh, Firma De Vos NV

Re:

Reference for a preliminary ruling — Hof van Cassatie van België — Interpretation of Articles 217(1) and 221(1) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (version in force in 1992) (OJ 1992 L 302, p. 1) — Post-clearance recovery of import or export duties — Whether or not the amount of the duty owed must be entered in the accounts before being communicated to the person liable for payment — '[Entry] in the accounting records or on any other equivalent medium'

Operative part of the judgment

Article 217 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code must be interpreted as meaning that Member States can provide that the entry in the accounts of the amount of duty resulting from a customs debt may be effected by the entry of that amount on a record which is drawn up by the competent customs authorities and establishes an infringement of the applicable customs legislation.

([1]) OJ C 142, 07.06.2008.

Judgment of the Court (Second Chamber) of 16 July 2009 — Commission of the European Communities v Republic of Poland

(Case C-165/08) ([1])

(Genetically modified organisms — Seed — Prohibition on placing on the market — Prohibition on inclusion in the national catalogue of varieties — Directives 2001/18/EC and 2002/53/EC — Reliance on ethical and religious grounds — Burden of proof)

(2009/C 220/16)

Language of the case: Polish

Parties

Applicant: Commission of the European Communities (represented by: B. Doherty and A. Szmytkowska, acting as Agents)

Defendant: Republic of Poland (represented by: M. Dowgielewicz, acting as Agent)

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 22 and 23 of Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC (OJ 2001 L 106, p. 1) and of Articles 4(4) and 16 of Council Directive 2002/53/EC of 13 June 2002 on the common catalogue of varieties of agricultural plant species (OJ 2002 L 193, p. 1) — National legislation prohibiting the marketing of seed derived from genetically modified varieties and the registration of such varieties in the national catalogue of varieties

Operative part of the judgment

The Court:

1. *Declares that, by prohibiting the free circulation of genetically modified seed varieties and the inclusion of genetically modified varieties in the national catalogue of varieties, the Republic of Poland has failed to fulfil its obligations under Articles 22 and 23 of Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the*

environment of genetically modified organisms and repealing Council Directive 90/220/EEC, and under Articles 4(4) and 16 of Council Directive 2002/53/EC of 13 June 2002 on the common catalogue of varieties of agricultural plant species.

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

3. *Orders the Republic of Poland to bear its own costs and to pay two-thirds of the costs incurred by the Commission.*

4. *Orders the Commission to bear one-third of its own costs.*

([1]) OJ C 183, 19.7.2008.

Judgment of the Court (Third Chamber) of 16 July 2009 (Reference for a preliminary ruling from the Cour de cassation — France) — Laszlo Hadadi (Hadady) v Csilla Marta Mesko, married name Hadadi (Hadady)

(Case C–168/08) ([1])

(Judicial cooperation in civil matters — Regulation (EC) No 2201/2003 — Jurisdiction, recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility — Article 64 — Transitional provisions — Application to a judgment given in a Member States which acceded to the European Union in 2004 — Article 3(1) — Jurisdiction in matters relating to divorce — Relevant connecting factors — Habitual residence — Nationality — Spouses residing in France and each holding French and Hungarian nationality)

(2009/C 220/17)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Applicant: Laszlo Hadadi (Hadady)

Defendant: Csilla Marta Mesko, married name Hadadi (Hadady)

Re:

Reference for a preliminary ruling — Cour de Cassation (France) — Interpretation of Article 2 of Council Regulation (EC) No 1347/2000 of 29 May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses (OJ 2000 L 160, p. 19) and of Articles 3 and 64 of Council Regulation (EC) 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (OJ 2003 L 338, p. 1) — Conditions for the recognition of a divorce judgment — Relevant connecting factors: residence or nationality of the parties

Operative part of the judgment

1. *Where the court of the Member State addressed must verify, pursuant to Article 64(4) of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Council Regulation (EC) No 1347/2000, whether the court of the Member State of origin of a judgment would have had jurisdiction under Article 3(1)(b) of that regulation, the latter provision precludes the court of the Member State addressed from regarding spouses who each hold the nationality both of that State and of the Member State of origin as nationals only of the Member State addressed. That court must, on the contrary, take into account the fact that the spouses also hold the nationality of the Member State of origin and that, therefore, the courts of the latter could have had jurisdiction to hear the case.*

2. *Where spouses each hold the nationality of the same two Member States, Article 3(1)(b) of Regulation No 2201/2003 precludes the jurisdiction of the courts of one of those Member States from being rejected on the ground that the applicant does not put forward other links with that State. On the contrary, the courts of those Member States of which the spouses hold the nationality have jurisdiction under that provision and the spouses may seise the court of the Member State of their choice.*

([1]) OJ C 158, 21.6.2008.

Judgment of the Court (First Chamber) of 16 July 2009 (Reference for a preliminary ruling from the Hoge Raad der Nederlanden — Netherlands) — Zuid-Chemie BV v Philippo's Mineralenfabriek NV/SA

(Case C-189/08) ([1])

(Judicial cooperation in civil and commercial matters — Jurisdiction and enforcement of judgments — Regulation (EC) No 44/2001 — Definition of the 'place where the harmful event occurred')

(2009/C 220/18)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: Zuid-Chemie BV

Defendant: Philippo's Mineralenfabriek NV/SA

Re:

Reference for a preliminary ruling — Hoge Raad der Nederlanden Den Haag — Interpretation of Article 5(3) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ('Brussels I') (OJ 2001 L 12, p. 1) — Interpretation of the concept of 'the place where the harmful event occurred or may occur' — Place where the harmful event occurred — Place where the event which gave rise to the harm occurred ('Handlungsort') and place where the harm arose ('Erfolgsort') — Connecting criteria.

Operative part of the judgment

Article 5(3) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that, in the context of a dispute such as that in the main proceedings, the words 'place where the harmful event occurred' designate the place where the initial damage occurred as a result of the normal use of the product for the purpose for which it was intended.

([1]) OJ C 183, 19.7.2008.

Judgment of the Court (First Chamber) of 16 July 2009 — American Clothing Associates SA and Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Joined Cases C-202/08 P and C-208/08 P) ([1])

(Appeal — Intellectual property — Regulation (EC) No 40/94 — Community trade mark — Paris Convention for the Protection of Industrial Property — Absolute grounds for refusal to register a trade mark — Trade marks identical with or similar to a State emblem — Representation of a maple leaf — Applicability to service marks)

(2009/C 220/19)

Language of the case: French

Parties

Appellant: American Clothing Associates NV (represented by: P. Maeyaert, advocaat, N. Clarembeaux and C. De Keersmaeker, avocats) (C-202/08 P), Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: A. Folliard-Monguiral, Agent) (C-208/08)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: A. Folliard-Monguiral, Agent) (202/08), American Clothing Asociates NV (represented by: P. Maeyaert, advocaat, N. Clarembeaux and C. De Keersmaeker, avocats (C-208/08 P)

Re:

Appeal against the judgment of the Court of First Instance (Fifth Chamber) of 28 February 2008 in Case T-215/06 *American Clothing Associates SA* v *OHIM* by which the Court dismissed the action brought by the applicant against the decision of the First Board of Appeal of OHIM of 4 May 2006 refusing registration as a Community trade mark of a sign representing a maple leaf in respect of goods in Classes 18 and 25 of the Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks — Infringement of Articles 7(1)(h) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1) and 6*ter*(1)(a) of the Paris Convention for the Protection of Industrial Property of 20 March 1883, as revised and amended — Absolute grounds for refusal of registration — Trademarks identical or similar to a State emblem — Representation of a maple leaf

Operative part of the judgment

The Court:

1. *Dismisses the appeal brought by American Clothing Associates NV in Case C-202/08 P;*

2. *Sets aside the judgment of the Court of First Instance of the European Communities of 28 February 2008 in Case T-215/06 American Clothing Associates v OHIM, in so far as it annulled the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 4 May 2006 (Case R 1463/2005-1) rejecting the application for registration of a sign representing a maple leaf as a Community trade mark;*

3. *Dismisses the action brought by American Clothing Associates NV in Case T-215/06;*

4. *Orders American Clothing Associates NV to pay the costs in Cases C-202/08 P and C-208/08 P.*

([1]) OJ C 209, 15.8.2008.

Judgment of the Court (Eighth Chamber) of 16 July 2009 — Commission of the European Communities v Italian Republic

(Case C-244/08) ([1])

(Failure of Member State to fulfil obligations — Sixth VAT Directive — Article 17 — Eighth Directive 79/1072/EEC — Article 1 — Thirteenth Directive 86/560/EEC — Article 1 — Refund or deduction of VAT — Taxable person established in another Member State or in a non-Member State, but having a fixed establishment in the Member State concerned)

(2009/C 220/20)

Language of the case: Italian

Parties

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

Defendant: Italian Republic (represented by: I. Bruni, G. De Bellis and G. Palmieri, acting as Agents)

Re:

Failure of Member State to fulfil obligations — Infringement of Article 1 of the Eighth Council Directive 79/1072/EEC of 6 December 1979 on the harmonization of the laws of the Member States relating to turnover taxes — Arrangements for the refund of value added tax to taxable persons not established in the territory of the country (OJ 1979 L 331, p. 11) and Article 1 of the Thirteenth Council Directive 86/560/EEC of 17 November 1986 on the harmonization of the laws of the Member States relating to turnover taxes — Arrangements for the refund of value added tax to taxable persons not established in Community territory — Refund of VAT to a taxable person established in another Member State or in a non-Member State but having a fixed establishment in Italy

Operative part of the judgment

The Court:

1. *Declares that the Italian Republic has failed, in relation to the refund of value added tax to a taxable person residing in another Member State or in a non-Member State, but having a fixed establishment in the Member State concerned, to fulfil its obligations under Article 1 of the Eighth Council Directive 79/1072/EEC of 6 December 1979 on the harmonization of the laws of the Member States relating to turnover taxes — Arrangements for the refund of value added tax to taxable persons not established in the territory of the country, and Article 1 of the Thirteenth Council Directive 86/560/EEC of 17 November 1986 on the harmonization of the laws of the Member States relating to turnover taxes — Arrangements for the refund of value added tax to taxable persons not established in Community territory, by requiring a taxable person established in another Member State or in a non-Member State, but having a fixed establishment in Italy and who, during the period at issue, supplied goods and services in Italy, to apply for a refund of input value added tax according to the mechanism provided by those directives rather than deduct it where the purchase in respect of which repayment of that tax is sought is made not through that fixed establishment, but directly by the principal establishment of that taxable person;*

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

(1) OJ C 209, 15.08.2008.

Judgment of the Court (Second Chamber) of 16 July 2009 (reference for a preliminary ruling from the Tribunale Amministrativo Regionale della Campania (Italy)) — Futura Immobiliare srl Hotel Futura, Meeting Hotel, Hotel Blanc, Hotel Clyton, Business srl v Comune di Casoria

(Case C-254/08) (1)

(Reference for a preliminary ruling — Directive 2006/12/EC — Article 15(a) — Waste disposal costs not allocated on the basis of actual production of waste — Compatibility with the 'polluter pays' principle)

(2009/C 220/21)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale della Campania

Parties to the main proceedings

Applicants: Futura Immobiliare srl Hotel Futura, Meeting Hotel, Hotel Blanc, Hotel Clyton, Business srl

Defendant: Comune di Casoria

Intervener: Azienda Speciale Igiene Ambientale (ASIA) SpA

Re:

Reference for a preliminary ruling — Tribunale Amministrativo Regionale della Campania — Interpretation of Article 15 of Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39) — National system not allocating the costs of waste disposal on the basis of the production of waste or its possession with a view to handling by a waste collector or an undertaking responsible for its disposal — Compatibility with the 'polluter pays' principle

Operative part of the judgment

Article 15(a) of Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste must, as Community law currently stands, be interpreted as not precluding national legislation which, for the purposes of financing an urban waste management and disposal service, provides for a tax or charge calculated on the basis of an estimate of the volume of waste generated by users of that service and not on the basis of the quantity of waste which they have actually produced and presented for collection.

It is, however, incumbent upon the national court to review, on the basis of the matters of fact and law placed before it, whether the tax for the disposal of private solid urban waste at issue in the main

proceedings results in the allocation to certain 'holders', in the case in point hotel establishments, of costs which are manifestly disproportionate to the volumes or nature of the waste that they are liable to produce.

(1) OJ C 209, 15.8.2008.

Judgment of the Court (Second Chamber) of 16 July 2009 (reference for a preliminary ruling from the Sąd Rejonowy w Kościanie — Republic of Poland) — Criminal proceedings against Tomasz Rubach

(Case C-344/08) (1)

(Protection of species of wild fauna and flora — Species listed in Annex B to Regulation (EC) No 338/97 — Evidence of lawful acquisition of specimens of those species — Burden of proof — Presumption of innocence — Rights of the defence)

(2009/C 220/22)

Language of the case: Polish

Referring court

Sąd Rejonowy w Kościanie

Party involved in the criminal prosecution in the main proceedings

Tomasz Rubach

Re:

Reference for a preliminary ruling — Sąd Rejonowy w Kościanie — Interpretation of Article 8(5) of Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein (OJ 1997 L 61, p. 1) — Notion of 'proof' that specimens of the species listed in Annex B were lawfully acquired

Operative part of the judgment

Article 8(5) of Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein must be interpreted as meaning that, in the context of criminal proceedings brought against a person accused of having infringed that provision, any type of evidence accepted under the procedural law of the Member State concerned in similar proceedings is in principle admissible for the purpose of establishing whether specimens of animal species listed in Annex B to that regulation were lawfully acquired. In the light also of the principle of the presumption of innocence, such a person may adduce any such evidence to prove that those specimens came lawfully into his possession in accordance with the conditions laid down in that provision.

(1) OJ C 272, 25.10.2008.

Judgment of the Court (Seventh Chamber) of 16 July 2009 — Commission of the European Communities v Kingdom of Belgium

(Case C-574/08) (1)

(Internal market — Free movement of capital — Fight against fraud and money laundering)

(2009/C 220/23)

Language of the case: French

Parties

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

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

Re:

Failure of a Member State to fulfil obligations — Failure to adopt or to communicate, within the prescribed period, the measures necessary to comply with Commission Directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of politically exposed person and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis (OJ 2006 L 214, p. 29)

Operative part of the judgment

The Court:

1) *Declares that, by not adopting within the prescribed period all the laws, regulations and administrative provisions necessary to comply with Commission Directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of politically exposed person and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis, the Kingdom of Belgium has failed to fulfil its obligations under that directive;*

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

(1) OJ C 44, 21.2.2009.

Request for an opinion submitted by the Council of the European Union pursuant to Article 300(6) EC

(Opinion 1/09)

(2009/C 220/24)

Language of the case: all the official languages

Applicant

Council of the European Union (represented by: J.-C. Piris, F. Florindo Gijón and G. Kimberley, acting as Agents)

Questions submitted to the Court

Is the proposed agreement creating a unified patent litigation system (currently called the 'European and Community Patents Court') [1] compatible with the provisions of the Treaty establishing the European Community?

[1] Council Working Document on a revised Presidency text of the Draft Agreement on the European and Community Patents Court and Draft Statute (document 7928/09 of 23 March 2009).

Order of the Court of 17 February 2009 — Galileo Lebensmittel GmbH & Co. KG v Commission of the European Communities

(Case C-483/07 P) [1]

(Appeal — Action for annulment — Reservation by the Commission of the domain 'galileo.eu' — Fourth paragraph of Article 230 EC — Decision of individual concern to a natural or legal person — Appeal clearly unfounded)

(2009/C 220/25)

Language of the case: German

Parties

Appellant: Galileo Lebensmittel GmbH & Co. KG (represented by: K. Bott, Rechtsanwalt)

Other party to the proceedings: Commission of the European Communities (represented by: G. Braun and E. Montaguti, Agents)

Re:

Appeal against the Order of the Court of First Instance (Second Chamber) of 28 August 2007 in Case T–46/06 *Galileo Lebensmittel* v *Commission*, by which the Court of First Instance dismissed as inadmissible the action seeking annulment of the Commission's decision to register 'galileo.eu' as a.eu Top Level Domain reserved for use by the Community institutions and bodies, pursuant to Article 9 of Commission Regulation (EC) No 874/2004 of 28 April 2004 laying down public policy rules concerning the implementation and functions of the 'eu' Top Level Domain and the principles governing registration (OJ 2004 L 162, p. 40) — Requirement that applicant should be individually concerned by the contested decision — Infringement of the fourth paragraph of Article 230 EC

Operative part of the order

1. *The appeal is dismissed.*

2. *Galileo Lebensmittel GmbH & Co. KG is ordered to pay the costs.*

[1] OJ C 8, 12.1.2008.

Order of the Court of 19 May 2009 — AMS Advanced Medical Services GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs), American Medical Systems, Inc.

(Case C-565/07 P) [1]

(Appeal — Community trade mark — Figurative trade mark AMS Advanced Medical Services — Partial refusal of registration — Opposition proceedings — Appeal which has become devoid of purpose — No need to adjudicate)

(2009/C 220/26)

Language of the case: German

Parties

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

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: G. Schneider, Agent), American Medical Systems, Inc. (represented by: H. Kunz-Hallstein and R. Kunz-Hallstein, Rechtsanwälte)

Re:

Appeal brought against the judgment of the Court of First Instance (Fifth Chamber) of 18 October 2007 in Case T-425/03 *AMS* v *OHIM — American Medical Systems (AMS Advanced Medical Services)*, by which the Court of First Instance dismissed an action for annulment brought by the applicant for the figurative mark 'AMS Advanced Medical Services' for goods and services in Classes 5, 10 and 42 against the decision of the Fourth Board of Appeal of OHIM of 12 September 2003 annulling the decision of the Opposition Division and granting in part the opposition by the proprietor of the national word mark 'AMS' — Opposition proceedings — Admissibility of a request to prove the genuine use of the earlier mark made by the applicant for the first time before the Board of Appeal

Operative part of the order

The Court:

1. *Declares that there is no need to adjudicate on the appeal brought by AMS Advanced Medical Services GmbH;*

2. *Orders AMS Advanced Medical Services GmbH to pay the costs of the present proceedings.*

(1) OJ C 64, 08.03.2008.

Order of the Court of 30 April 2009 — Japan Tobacco, Inc. v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), Torrefacção Camelo L[da]

(Case C-136/08 P) (1)

(Appeal — Community trade mark — Regulation (EC) No 40/94 — Article 8(5) — Detrimental to the distinctive character of the earlier mark — Unfair advantage taken of the distinctive character or the repute of the earlier mark — Likelihood — Application for registration of the figurative sign 'CAMELO' as a Community trade mark — Opposition by the proprietor of the national word and figurative marks CAMEL)

(2009/C 220/27)

Language of the case: French

Parties

Appellant: Japan Tobacco, Inc. (represented by: A. Ortiz López, S. Ferrandis González and E. Ochoa Santamaría, abogados)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (represented by: A. Folliard-Monguiral, Agent), Torrefacçao Camelo L[da]

Re:

Appeal against the judgment in Case T-128/06 *Japan Tobacco* v *OHIM and Torrefacçao Camelo* by which the Court of First Instance (Fifth Chamber) dismissed the action brought by Japan Tobacco for annulment of the decision of the Second Board of Appeal of OHIM of 22 February 2006 in opposition proceedings between Japan Tobacco and Torrefacçao Camelo — Infringement of Article 8(5) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1) — Relative grounds for refusal to register a trade mark — Unfair advantage taken of the distinctive character of an earlier trade mark, or detrimental to that distinctive character

Operative part of the order

1. *Dismisses the appeal.*

2. *Orders Japan Tobacco, Inc. to pay the costs.*

(1) OJ C 209, 15.8.2008.

Order of the Court (Fifth Chamber) of 11 June 2009 — Leche Celta, SL v Office for Harmonisation in the Internal Market (Trade Marks and Designs), Celia SA

(Case C-300/08 P) (1)

(Appeal — Community trade mark — Regulation (EC) No 40/94 — Article 8(1)(b) — Mixed word and figurative trade mark, Celia — Relative grounds for refusal of registration — Similarity of the mark for which registration is sought with an earlier mark — Mark concerning identical goods — Likelihood of confusion — Appeal manifestly inadmissible)

(2009/C 220/28)

Language of the case: French

Parties

Appellant: Leche Celta, SL (represented by: J. Calderón Chavero, abogado)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: A. Folliard-Monguiral, Agent), Celia SA (represented by: D. Masson and F. de Castelnau, avocats)

Re:

Appeal brought against the judgment of the Court of First Instance (Third Chamber) of 23 April 2008 in Case T-35/07 *Leche Celta* v *OHIM*, by which the Court of First Instance dismissed the action brought by the appellant against the decision of the Fourth Board of Appeal of OHIM of 5 December 2006 concerning opposition proceedings between Leche Celta SL and Celia SA — Infringement of Article 8(1)(b) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1) — Relative grounds for refusal of registration of a trade mark — Likelihood of confusion linked to an application for registration of a trade mark similar to an earlier mark relating to identical goods — Visual, phonetic and conceptual comparison of the signs

Operative part of the order

The Court:

1. *Dismisses the appeal;*

2. *Orders Leche Celta SL to pay the costs.*

(1) OJ C 223 of 30.8.2008.

Order of the Court (Fifth Chamber) of 3 June 2009 — Zipcar, Inc. v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C–394/08 P) [1]

(Appeal — Community trade mark — Article 8(1)(b) of Regulation (EC) No 40/94 — Word mark ZIPCAR — Opposition by the proprietor of the national word mark CICAR)

(2009/C 220/29)

Language of the case: English

Parties

Appellant: Zipcar, Inc. (represented by: M. Elmslie, Solicitor)

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

Re:

Appeal against the judgment of the Court of First Instance (Eighth Chamber) of 25 June 2008 in Case T-36/07 *Zipcar* v *OHIM* dismissing an action for annulment brought by the applicant for registration of the word mark 'ZIPCAR' for goods in Classes 9, 39 and 42 against decision R 122/2006-2 of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (OHIM) of 30 November 2006 rejecting the action against the decision of the Opposition Division partially refusing registration of that mark in opposition proceedings brought by the holder of the national word mark 'CICAR' for services in Class 39

Operative part of the order

1. *The appeal is dismissed.*

2. *Zipcar Inc. is ordered to pay the costs.*

[1] OJ C 285, 8.11.2008.

Reference for a preliminary ruling from the Court of Appeal in Northern Ireland (United Kingdom) lodged on 16 October 2008 — Seaport Investments Ltd v Department of the Environment for Northern Ireland

(Case C-454/08)

(2009/C 220/30)

Language of the case: English

Referring court

Court of Appeal in Northern Ireland

Parties to the main proceedings

Applicant: Seaport Investments Ltd

Defendant: Department of the Environment for Northern Ireland

By order of 20 May 2009, the Court of Justice (Sixth Chamber) declared the reference for a preliminary ruling inadmissible.

Reference for a preliminary ruling from the Hof van beroep te Brussel (Belgium) lodged on 15 May 2009 — I. SGS Belgium NV v Belgisch Interventie- en Restitutiebureau, Firme Derwa NV and Centraal Beheer Achmea NV and II. Firme Derwa NV and Centraal Beheer Achmea NV v SGS Belgium NV and Belgisch Interventie- en Restitutiebureau

(Case C-218/09)

(2009/C 220/31)

Language of the case: Dutch

Referring court

Hof van beroep te Brussel

Parties to the main proceedings

I. SGS Belgium NV

v

Belgisch Interventie- en Restitutiebureau

Firme Derwa NV

Centraal Beheer Achmea NV

II. Firme Derwa NV

Centraal Beheer Achmea NV

v

SGS Belgium NV

Belgisch Interventie- en Restitutiebureau

Question referred

Must the term 'force majeure' in Article 5(3) of Commission Regulation (EEC) No 3665/87 [1] of 27 November 1987 laying down common detailed rules for the application of the system of export refunds on agricultural products be interpreted as meaning that damage to beef while being transported in the correct packaging and in a refrigerated container continuously maintained at the prescribed temperature, in principle constitutes force majeure?

[1] OJ 1987 L 351, p. 1.

Reference for a preliminary ruling from the Naczelny Sąd Administracyjny (Republic of Poland), lodged on 18 June 2009 — Kronospan Mielec sp. z o. o. v Dyrektor Izby Skarbowej w Rzeszowie

(Case C-222/09)

(2009/C 220/32)

Language of the case: Polish

Referring court

Naczelny Sąd Administracyjny

Parties to the main proceedings

Appellant: Kronospan Mielec sp. z o. o.

Respondent: Dyrektor Izby Skarbowej w Rzeszowie

Question referred

(a) Is the third indent of Article 9(2)(e) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1, as amended; 'the Sixth Directive') — now corresponding to Article 56(1)(c) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1, as amended; 'Directive 2006/112') — to be interpreted as meaning that the services of engineers referred to therein, when provided to a person subject to value added tax who is carrying out commissioned work encompassing those services for a recipient of services established in another Member State of the Community, are to be taxed at the place where the recipient of the services (the customer) has established its business or has a fixed establishment;

(b) or should it be concluded that such services, being services relating to scientific activities pursuant to the first indent of Article 9(2)(c) of the Sixth Directive (now corresponding to Article 52(a) of Directive 2006/112), must be taxed at the place where they are physically carried out — on the basis that those services take the form of work that encompasses the investigation and measurement of emissions under legislation on environmental protection, including the conduct of investigations in connection with carbon dioxide (CO_2) emissions and trading in CO_2 emissions, the preparation and checking of documentation relating to that work and the analysis of potential sources of pollution, and that is carried out with the objective of acquiring new knowledge and new technological know-how directed at the production of new substances, products and systems and the application of new technological procedures within the production process?

Action brought on 19 June 2009 — Commission of the European Communities v Ireland

(Case C-226/09)

(2009/C 220/33)

Language of the case: English

Parties

Applicant: Commission of the European Communities (represented by: M. Konstantinidis, A.-A. Gilly, Agents)

Defendant: Ireland

The applicant claims that the Court should:

— Declare that, by attributing weightings to the award criteria following the closing date for the submission of the bids and by modifying them subsequent to an initial review of the submitted bids, Ireland has failed to fulfil its obligations under the principles of equal treatment and transparency as interpreted by the European court of Justice.

— order Ireland to pay the costs.

Pleas in law and main arguments

In the case of the award procedure in question the contracting authority produced a tender document where it was reasonably assumed that the award criteria would be applied in descending order of importance. Following the closing date for the submission of the bids it then decided to attribute relative weightings to the award criteria. Subsequent to an initial review of the submitted bids the evaluation team of the contracting authority discussed the possibility of varying these weightings and eventually modified them.

The relative weightings given to the award criteria after submission of the bids and the initial review modified the emphasis among the award criteria and attributed a materially different relative importance to that which a tenderer would have reasonably understood from the contract documents.

The award procedure in question being for the provision of services which are not enumerated in Annex II A to directive 2004/18/EC [1], the detailed procedural rules of that directive are not applicable. Accordingly, article 40 of the directive, pursuant to which contracting authorities have to specify in the invitation to tender, at the latest, the relative weightings of the award criteria, or the descending order of their importance, was also not applicable. Nevertheless, on the basis of the case law of the European Court of Justice, the contracting authority is bound to comply with the fundamental principles of the Treaty, including the principles of equal treatment and transparency.

The Commission submits that by modifying the award criteria during the award procedure the contracting authority, which was under the obligation to respect the fundamental rules and principles of the EC Treaty, infringed the principles of equal treatment and transparency as interpreted by the European Court of Justice.

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

Reference for a preliminary ruling from the Bundespatentgericht (Germany), lodged on 24 June 2009 — Rechtsanwaltssozietät Lovells v Bayer CropScience AG

(Case C-229/09)

(2009/C 220/34)

Language of the case: German

Referring court

Bundespatentgericht

Parties to the main proceedings

Claimant: Rechtsanwaltssozietät Lovells

Defendant: Bayer CropScience AG

Question referred

For the purpose of the application of Article 3(1)(b) of Regulation (EC) No 1610/96 of the European Parliament and of the Council of 23 July 1996 concerning the creation of a supplementary protection certificate for plant protection products, (1) must account be taken exclusively of a marketing authorisation under Article 4 of Directive 91/414/EEC, (2) or can a certificate also be issued pursuant to a marketing authorisation which has been granted on the basis of Article 8(1) of Directive 91/414/EEC?

(1) OJ 1996 L 198, p. 30.
(2) OJ 1991 L 230, p. 1.

Reference for a preliminary ruling from the Bundesfinanzhof (Germany), lodged on 25 June 2009 — Hauptzollamt Koblenz v Kurt Etling und Thomas Etling, a civil law partnership; intervener: Bundesministerium der Finanzen

(Case C-230/09)

(2009/C 220/35)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Appellant: Hauptzollamt Koblenz

Respondents: Kurt Etling und Thomas Etling, a civil law partnership

Intervener: Bundesministerium der Finanzen

Question referred

Must Community law, in particular Article 5(k) of Council Regulation (EC) No 1788/2003 of 29 September 2003 establishing a levy in the milk and milk products sector, (1) be interpreted to mean that the reference quantity of a producer, in the twelve-month period in which a reference quantity was transferred to that producer from another producer, does not include the quantity in respect of which, during the twelve-month period in question, milk was already delivered by that other producer?

(1) OJ 2003 L 270, p. 123.

Reference for a preliminary ruling from the Bundesfinanzhof (Germany), lodged on 25 June 2009 — Hauptzollamt Oldenburg v 1. Theodor Aissen, 2. Hermann Rohaan; intervener: Bundesministerium der Finanzen

(Case C-231/09)

(2009/C 220/36)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Appellant: Hauptzollamt Oldenburg

Respondents: 1. Theodor Aissen, 2. Hermann Rohaan

Intervener: Bundesministerium der Finanzen

Questions referred

1. Must Community law, in particular Article 5(k) of Council Regulation (EC) No 1788/2003 of 29 September 2003 establishing a levy in the milk and milk products sector, (1) be interpreted to mean that the reference quantity of a producer who, in the course of an ongoing twelve-month period, took over an agricultural holding from

another producer does not include the quantity in respect of which, during the twelve-month period concerned, milk was delivered by that other producer prior to the transfer of the holding?

2. Do provisions of Community law or general principles governing the common organisation of the market in milk and milk products preclude a rule of national law which, in the framework of the balancing of the unused part of the national reference quantity against deliveries of excess quantities envisaged in Article 10(3) of Regulation No 1788/2003 in the situation at issue in the first question, allows the producer who has taken over the agricultural holding in the course of the twelve-month period to include the portion of the reference quantity already delivered by the other producer for the purpose of participating in the allocation of that unused part?

(1) OJ 2003 L 270, p. 123.

Reference for a preliminary ruling from the Latvijas Republikas Augstākās tiesas Senāts (Republic of Latvia) lodged on 25 June 2009 — Dita Danosa v LKB Līzings SIA

(Case C-232/09)

(2009/C 220/37)

Language of the case: Latvian

Referring court

Augstākās tiesas Senāts

Parties to the main proceedings

Applicant: Dita Danosa

Defendant: LKB Līzings SIA

Questions referred

1. Are the members of the managerial body of a capital company to be regarded as being covered by the concept of worker laid down in Community law?

2. Do Article 10 of Directive 92/85/EEC (1) and the case-law of the Court of Justice of the European Communities preclude Article 224(4) of the Komerclikums, which provides that the members of the board of directors of a capital company may be removed without any restrictions, in particular, in the case of a woman, irrespective of the fact that she is pregnant?

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

Reference for a preliminary ruling from the Hof van beroep te Antwerpen — Belgium lodged on 26 June 2009 — G.A. Dijkman and M.A. Dijkman-Lavaleije v Belgische Staat

(Case C-233/09)

(2009/C 220/38)

Language of the case: Dutch

Referring court

Hof van beroep te Antwerpen

Parties to the main proceedings

Applicants: G.A. Dijkman and M.A. Dijkman-Lavaleije

Defendant: Belgische Staat

Question referred

Is it an infringement of Article 56(1) of the EC Treaty for residents of Belgium who invest in other countries, such as the Netherlands, with a view to avoiding the supplementary municipal tax due under Article 465 WIB92 to be obliged to use a Belgian intermediary for the payment out of income from moveable assets, whereas residents of Belgium who invest in Belgium always benefit from the system of withholding tax relief under Article 313 WIB92 and are thus able to avoid the supplementary municipal tax provided for in Article 465 WIB92, since withholding tax on movable assets has already been withheld at source?

Reference for a preliminary ruling from the Cour de cassation (Belgium) lodged on 1 July 2009 — État Belge v Nathalie De Fruytier

(Case C-237/09)

(2009/C 220/39)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Applicant: État Belge

Defendant: Nathalie De Fruytier

Question referred

Does the activity of transporting, in a self-employed capacity, human organs and samples for hospitals and laboratories constitute the supply of human organs, blood and milk, which is exempt from value added tax under Article 13(A)(1)(d) 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? ([1])

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

Reference for a preliminary ruling from the Landgericht Berlin (Germany) lodged on 1 July 2009 — SEYDALAND Vereinigte Agrarbetriebe GmbH & Co. v BVVG Bodenverwertungs- und –verwaltungs GmbH.

(Case C-239/09)

(2009/C 220/40)

Language of the case: German

Referring court

Landgericht Berlin

Parties to the main proceedings

Applicant: SEYDALAND Vereinigte Agrarbetriebe GmbH & Co

Defendant: BVVG Bodenverwertungs- und –verwaltungs GmbH

Question referred

Does Paragraph 5(1) points 2 and 3 of the FlächenerwerbsVO (Land Purchase Order), which was passed in application of Paragraph 4(3) point 1 of the AusglLeistG (Compensation Act) — 'Where there are regional valuations of arable and pasture land, the value should be determined according to them. The regional valuations are published by the Bundesminister der Finanzen (Federal Finance Minister) in the Bundesanzeiger (Federal Gazette)' — infringe Article 87 EC Treaty?

Reference for a preliminary ruling from the Gerechtshof te Amsterdam (Netherlands) lodged on 3 July 2009 — Albron Catering BV v FNV Bondgenoten and John Roest

(Case C-242/09)

(2009/C 220/41)

Language of the case: Dutch

Referring court

Gerechtshof te Amsterdam

Parties to the main proceedings

Applicant: Albron Catering BV

Defendants: FNV Bondgenoten, John Roest

Questions referred

1. Should Directive 2001/23/EC ([1]) be interpreted as meaning that there is a transfer of rights and obligations to the transferee referred to in the first sentence of Article 3(1) only if the transferor of the undertaking to be transferred is also the formal employer of the employees concerned, or does the protection of employees envisaged by the Directive imply that, upon transfer of an undertaking from an operating company belonging to a group, the rights and obligations pertaining to the employees working for that undertaking are transferred to the transferee if all the personnel working in the group are in the employ of a personnel company (which also belongs to that group) which functions as the central employer?

2. What would be the answer to the second part of the first question if the employees referred to there who work for an undertaking belonging to a group are in the employ of another company which also belongs to that group, *which is not* a personnel company as described in the first question?

([1]) Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (OJ 2001 L 82, p. 16).

Reference for a preliminary ruling from the Arbeidshof te Brussel (Belgium), lodged on 6 July 2009 — Omalet NV v Rijksdienst voor Sociale Zekerheid

(Case C-245/09)

(2009/C 220/42)

Language of the case: Dutch

Referring court

Arbeidshof te Brussel

Parties to the main proceedings

Appellant: Omalet NV

Respondent: Rijksdienst voor Sociale Zekerheid

Questions referred

1. Must a national court apply Article 49 EC to a dispute between the Rijksdienst voor Soziale Zekerheid and a principal contractor established in Belgium, where judgment is sought against that principal contractor pursuant to Article 30a(3) of the Law of 27 June 1969 amending the Decree-Law of 28 December 1944 on social security for employed persons (in the version applicable prior to the amendment of that article by

Article 55 of the Programme Law of 27 April 2007) as being jointly and severally liable for a portion of the debts of a subcontractor who is unregistered and established in Belgium, or where judgment is sought against that principal contractor because he has not complied with the withholding obligation laid down by Article 30[a](4) of the Law?

2. (In the alternative):

Is Article 49 EC incompatible with a rule such as that laid down by Article 30a(3) and (4) of the Belgian Law of 27 June 1969 amending the Decree-Law of 28 December 1944 on social security for employed persons (in the version applicable prior to the amendment [of] that article by Article 55 of the Programme Law of 27 April 2007)?

Reference for a preliminary ruling from the Latvijas Republikas Augstākās tiesas Senāta Administratīvo lietu departaments (Latvian Republic) lodged on 7 July 2009 — SIA Pakora Pluss v Valsts ieņēmumu dienests

(Case C-248/09)

(2009/C 220/43)

Language of the case: Latvian

Referring court

Latvijas Republikas Augstākās tiesas Senāta Administratīvo lietu departaments

Parties to the main proceedings

Applicant: SIA Pakora Pluss

Defendant: Valsts ieņēmumu dienests

Questions referred

1. Can export formalities be regarded as completed for the purpose of [Annex IV, Chapter 5,] paragraph 1 of the Act of Accession, if a cargo manifest has been filled in but the actions required by Article 448 of Regulation No 2454/93 ([1]) have not been performed (the German customs authorities had not given the Latvian customs authorities proper notification of the shipping company's request)?

2. If they cannot, then in circumstances such as those in question can the rules governing the customs procedure (Regulations Nos 2913/92 ([2]) and 2454/93) be regarded as quite inapplicable?

3. If the answer to the first question is affirmative, must Annex IV, Chapter 5, paragraph 1, of the Act of Accession to the European Union be interpreted as meaning that, when goods moving in the enlarged Community after being the subject of export formalities are not put into free circulation, they are not free of customs duties or other customs measures, even though it is beyond doubt that those goods have the status of Community goods? In other words, is it in the circumstances of the case decisive that the customs procedure of release for free circulation has been completed?

4. Is value added tax to be included in the definition of import duties laid down in Article 4(10) of Regulation No 2913/92?

5. If it is, is the obligation to pay value added tax, which is charged as a customs duty on the import of goods, imposed on the principal or on the final consumer of the goods? Are there any circumstances that might permit that obligation to be shared?

([1]) Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ 1993 L 253, p. 1).

([2]) Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1).

Reference for a preliminary ruling from the Tartu Ringkonnakohus (Estonia) lodged on 7 July 2009 — Novo Nordisk A/S v Ravimiamet

(Case C-249/09)

(2009/C 220/44)

Language of the case: Estonian

Referring court

Tartu Ringkonnakohus

Parties to the main proceedings

Applicant: Novo Nordisk AS

Defendant: Ravimiamet

Questions referred

1. Must Article 87(2) of Directive 2001/83/EC ([1]) of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (as amended and supplemented) be interpreted as extending also to quotations taken from medical journals or other scientific works which are included in advertisements for medicinal products directed to persons qualified to prescribe medicines?

2. Must Article 87(2) of Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human

use (as amended and supplemented) be interpreted as prohibiting the publication in advertisements for medicinal products of claims which conflict with the summary of product characteristics, but not requiring that all the claims in advertisements for medicinal products must be included in the summary of product characteristics or be derivable from information in the summary?

([1]) OJ 2001 L 311, p. 67.

Reference for a preliminary ruling from the Plovdivski rayonen sad (Bulgaria) lodged on 8 June 2009 — Vasil Ivanov Georiev v Tehnicheski universitet — Sofia, Filial Plovdiv

(Case C-250/09)

(2009/C 220/45)

Language of the case: Bulgarian

Referring court

Plovdivski rayonen sad

Parties to the main proceedings

Applicant: Vasil Ivanov Georiev

Defendant: Tehnicheski universitet — Sofia, Filial Plovdiv

Questions referred

1. Do the provisions of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation preclude the application of a national Law which does not permit the conclusion of employment contracts of indefinite duration with professors who have reached the age of 65? In this context and, more precisely, taking Article 6(1) of the directive into consideration, are the measures in Article 7(1)(6) of the Law on Protection against Discrimination, which introduce age-limits for employment in specific posts, objectively and reasonably, justified by a legitimate aim and proportionate, bearing in mind that the directive has been fully transposed into Bulgarian law?

2. Do the provisions of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation preclude the application of a national Law under which professors who have reached the age of 68 are compulsorily retired? In view of the foregoing facts and circumstances of the present case and if it is found that a conflict exists between the provisions of the directive and the relevant national legislation which transposed the directive, is it possible that the interpretation of the provisions of Community law results in the national legislation not being applied?

Reference for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 10 July 2009 — Bianca Purrucker v Guillermo Vallés Pérez

(Case C-256/09)

(2009/C 220/46)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Bianca Purrucker

Defendant: Guillermo Vallés Pérez

Question referred

Do the provisions of Article 21 et seq. of Council Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility, repealing Regulation (EC) No 1347/2000 ([1]) (the Brussels IIa Regulation) concerning the recognition and enforcement of decisions of other Member States, in accordance with Article 2(4) of that regulation, also apply to enforceable provisional measures, within the meaning of Article 20 of that regulation, concerning the right to child custody?

([1]) OJ 2003 L 338, p. 1.

Action brought on 10 July 2009 — Commission of the European Communities v Kingdom of Belgium

(Case C-258/09)

(2009/C 220/47)

Language of the case: French

Parties

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

Defendant: Kingdom of Belgium

Form of order sought

— Declare that, by authorising, in the Walloon Region, the functioning of existing installations which do not comply with the requirements provided for in Articles 3, 7, 9, 10, 13, 14(a) and (b) and 15(2), and that despite the expiry of the 30 October 2007 time-limit, as is provided for in Article 5(1) of Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control [1], the Kingdom of Belgium has failed to fulfil its obligations under that directive;

— order the Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

The period for ensuring compliance of existing installations, the operation of which is liable to have an effect on emissions into the air, water and soil and on pollution, expired on 30 October 2007, in accordance with Article 5(1) of Directive 2008/1/EC. However, on the date the present action was brought, the defendant had still not taken all the measures necessary to comply with that requirement in the Walloon Region or, in any event, it had failed to inform the Commission thereof.

[1] OJ 2007 L 24, p. 8.

Action brought on 10 July 2009 — Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland

(Case C-259/09)

(2009/C 220/48)

Language of the case: English

Parties

Applicant: Commission of the European Communities (represented by: A. Marghelis, P. Van den Wyngaert, Agents)

Defendant: United Kingdom of Great Britain and Northern Ireland

The applicant claims that the Court should:

— Declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2006/21/EC [1] of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industries, or in any event, by failing to communicate them to the Commission, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under the Directive;

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

Pleas in law and main arguments

The period within which the directive had to be transposed expired on 1 May 2008.

[1] OJ L 102, p. 15

Appeal brought on 13 July 2009 by Activision Blizzard Germany GmbH (formerly CD-Contact Data GmbH) against the judgment of the Court of First Instance (Eighth Chamber) delivered on 30 April 2009 in Case T-18/03: CD-Contact Data GmbH v Commission of the European Communities

(Case C-260/09 P)

(2009/C 220/49)

Language of the case: English

Parties

Appellant: Activision Blizzard Germany GmbH (formerly CD-Contact Data GmbH) (represented by: J. K. de Pree, advocaat, E.N.M. Raedts, Advocate)

Other party to the proceedings: Commission of the European Communities

Form of order sought

The appellant claims that the Court should:

— set aside the Judgment under appeal insofar as the Court of First Instance dismissed the action of Contact Data for annulment of the Decision;

— annul the Decision at least as far as it concerns CD Contact;

— in the alternative, set aside the Judgment under appeal insofar as it concerns dismissal of the action of Contact Data for annulment of the Decision and refer the case back to the CFI;

— order the Commission to pay the costs of both sets of proceedings

Pleas in law and main arguments

The appellant submits that the CFI has made a wrong legal categorisation of the facts by concluding that an illegal agreement existed within the meaning of Article 81 (1) EC between Nintendo of Europe GmbH ('Nintendo') and Contact Data, without beforehand considering whether this agreement was aimed at limiting active parallel trade or passive parallel trade.

The distribution agreement, which was perfectly legal, prohibited active parallel trade while allowing for passive parallel trade. Nevertheless, the CFI concluded that it derived from several faxes from Contact Data that it participated in the information exchange system of Nintendo to denounce parallel import in violation of Article 81 (1) EC. This conclusion must be regarded a wrong legal categorisation of the facts, or

at least a breach of the obligation to state reasons, as the CFI failed to establish whether the conduct related to passive or to active parallel imports.

The CFI has distorted evidence by considering that the documents discussed in paragraphs 56 to 68 of the Judgment under appeal had an illegal object. In these documents Contact Data complained about exports to Belgium in violation of its exclusivity, it used price information of import as a bargaining tool to obtain a better price from Nintendo and made reference to 'grey imports'. To conclude that they related to something other than a restriction on active sales into the exclusive territory of Contact Data or the manner in which Contact Data put pressure on its supplier to lower its own purchase price would be at odds with the wording of these documents.

The CFI made a manifest error of assessment by concluding that the documents discussed constituted sufficient evidence of the existence of an agreement within the meaning of Article 81 (1) EC. In the absence of direct documentary evidence of an agreement, the CFI should have established the existence of concurrence of wills to limit parallel trade, which required a unilateral policy adopted by Nintendo to achieve an anti-competitive goal, constituted as an implied or express invitation to Contact Data to fulfil this goal jointly, and at least tacit acquiescence by Contact Data. The fulfilment of these criteria has not been sufficiently demonstrated by the CFI.

Moreover, the CFI did not correctly establish that Contact Data acquiesced in the policy adopted unilaterally by Nintendo. In particular in the CFI wrongfully declined to consider the relevance of the actual exports of goods by Contact Data by referring to case law relating to horizontal agreements, whereas such actual exports can, according to settled case law, in the case of vertical agreements, call into question the acquiescence by the distributor in an illegal policy to hinder parallel trade.

Reference for a preliminary ruling from the Oberlandesgericht Stuttgart (Germany), lodged on 14 July 2009 — Extradition proceedings concerning Gaetano Mantello

(Case C-261/09)

(2009/C 220/50)

Language of the case: German

Referring court

Oberlandesgericht Stuttgart

Party to the main proceedings

Gaetano Mantello

Questions referred

1. Is the existence of 'the same acts' within the meaning of Article 3(2) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States [1] to be determined:

   a) according to the law of the issuing Member State,

   b) according to the law of the executing Member State, or

   c) according to an autonomous interpretation, based on the law of the European Union, of the phrase 'the same acts'?

2. Are acts consisting of the illicit importation of drugs 'the same acts', within the meaning of Article 3(2) of the Framework Decision, as membership of an organisation the purpose of which is illicit drugs trafficking, in so far as the investigating authorities had information and evidence, at the time at which sentence was passed in respect of such importation, which supported a strong suspicion of membership of such an organisation, but omitted for tactical reasons relating to their investigation to provide the relevant information and evidence to the court and to initiate criminal proceedings on that basis?

---

[1] OJ 2002 L 190, p. 1

Appeal brought on 14 July 2009 by Edwin Co. Ltd against the judgment of the Court of First Instance (Fifth Chamber) delivered on 14 May 2009 in Case T-165/06 Elio Fiorucci v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-263/09 P)

(2009/C 220/51)

Language of the case: Italian

Parties

Appellant: Edwin Co. Ltd (represented by: D. Rigattti, M. Bertani, S. Verea, K.P. Muraro, M. Balestriero, avvocati)

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

Form of order sought

— Set aside the judgment under appeal;

— order Mr Fiorucci to reimburse the appellant for the costs of the proceedings at first instance and the appeal proceedings or, on the contested basis that the appeal is not upheld, order that such costs be shared.

Pleas in law and main arguments

1. First, the judgment under appeal infringes or misapplies Article 52(2)(a) of the RCTM. ([1]) The relative ground for refusal which, on the basis of that provision, results in the invalidity of the registration of a trade mark consisting of the name of a person other than that of the registrant, is to be found in the fact that the applicant for such a declaration of invalidity is the owner under national law of an exclusive right of use of that name. However, under Article 8(3) of the CPI, ([2]) relied on by the other party to the proceedings, Mr Fiorucci does not hold any such right. Rather, Article 8(3) of the CPI confers upon him simply a contingent right to register the sign 'Elio Fiorucci', which, however, he could never avail himself of, since a mark thus registered would conflict with the rights of Edwin in the word 'Fiorucci'. It is against this background that the Court of First Instance declared invalid Edwin's trade mark 'Elio Fiorucci', on the basis of a ground for refusal which does not exist and which could never come into existence. That amounts to infringement or misapplication of Article 52(2)(a) of the RCTM, which, if correctly interpreted, can be applied only where the applicant for a declaration of invalidity is already the owner of (or at the very least has the possibility of obtaining) an exclusive right of use of his own name as a trade mark.

2. The judgment under appeal infringes or misapplies Article 8(3) of the RCTM. Contrary to the finding of the Court of First Instance, that provision is in fact applicable only to the names of persons that have become well-known in the non-commercial sector: it cannot therefore be applied to the patronymic 'Elio Fiorucci', which, on the basis of an appraisal of the facts which cannot be challenged in these proceedings, first became well-known in the commercial sector.

   That interpretation of Article 8(3) of the CPI is suggested primarily by the literal wording of the provision, which expressly states that it is intended to restrict the protection which it affords to the names of persons which have become well-known 'in the artistic, literary, scientific, political or sporting fields'. That conclusion is confirmed by a systematic analysis of Italian trade mark law, from which it is apparent that, where a name has become well-known in the commercial sector, it is protected under Article 12(1)(b) and (f) of the CPI, whereas Article 8(3) of the CPI relates only to names which have first become well-known in the non-commercial sector. It is not possible for both of those provisions to be applied concurrently to the same sign, since that would give rise to two exclusive trade mark rights which are mutually incompatible. By registering his own surname as a trade mark (subsequently assigned to Edwin), Mr Fiorucci therefore relinquished all claim to exploiting the renown attached to his name for commercial purposes. He cannot therefore rely on Article 8(3) of the CPI to bring an action for a declaration that Edwin's trade mark 'Elio Fiorucci' is invalid.

   Furthermore, the interpretation of Article 8(3) of the CPI proposed by Edwin, the consequence of which is that it does not apply to the present dispute, is consistent with the *ratio* of that provision, which is intended to prevent parasitical exploitation by a person who registers a sign which has gained a prestigious reputation through the merits of another person. No parasitical conduct can be imputed to Edwin since, in acquiring the 'Fiorucci' trade marks for a considerable sum, the appellant paid dearly for the right to benefit from the renown attached to the name of the famous Milanese fashion designer.

   The argument of the Court of First Instance that the protection given by Article 8(3) of the CPI is more extensive and does not duplicate the protection given to the reputation acquired by distinctive signs in the commercial sector is not convincing. According to the most authoritative Italian academic writing, the contingent right to register signs that are well-known in the non-commercial sector under Article 8(3) of the CPI is not an absolute right. However, the principal argument must be that the protection is not more extensive than that conferred in Article 12(1)(b) and (f) of the CPI for signs that are well-known or have acquired renown in the commercial sector. The fact that the fields in which those provisions operate overlap confirms once again that they cannot be applied concurrently.

   Contrary to the superficial conclusion of the Court of First Instance, it is apparent from a careful, detailed analysis of Italian academic writings commenting on Article 8(3) of the CPI (formerly Article 21(3)(m)) that the prevailing opinion is that that provision is applicable only to signs which have acquired renown in the non-commercial sector. That is confirmed by the small number of judgments delivered to date by the Italian courts on Article 8(3) of the CPI.

   No more convincing is the argument of the Court of First Instance that, having also become well-known in the non-commercial sector (specifically, in the artistic, cultural and ecological fields and in the field of child-protection), Mr Fiorucci could in any event rely on the protection afforded by Article 8(3) of the CPI. Rather, according to the most authoritative Italian academic writing, when a patronymic that is already registered by another person and has become widely known acquires renown in the non-commercial sector, its owner (in this case: Elio Fiorucci) cannot rely on Article 8(3) of the CPI, since the need to protect the owner (in this case: Edwin) of the well-known trade mark (in this case: the sign 'Fiorucci') which has previously been registered takes precedence.

3. The judgment under appeal is unlawful in so far as it fails to state adequate grounds since the Court of First Instance omitted to examine the arguments and evidence supporting Edwin's submission that it had obtained Elio Fiorucci's consent to register his patronymic as a trade mark. In the alternative, Edwin submits that, should the Court of Justice find that neither it nor the Court of First Instance has jurisdiction to examine the argument in question, it must expressly refer the matter to the Board of Appeal (or other office or division) of OHIM (which the Court of First Instance failed to do) for it to do so, pursuant to Article 63(6) of the RCTM and Article 1d of Regulation No 216/96. ([3])

4. The judgment under appeal is also unlawful on the basis that it infringes or misapplies Article 63 of the RCTM and constitutes a denial of justice, in so far as the Court of First Instance incorrectly refused to consider Edwin's argument based on the fact that the appellant acquired from Fiorucci SpA a de facto trade mark relating to (or, in any event, any other right to exploit the renown attached to) the patronymic 'Elio Fiorucci'. In the alternative, Edwin submits that, should the Court of Justice find that neither it nor the Court of First Instance has jurisdiction to examine the argument in question, it must expressly refer the matter to the Board of Appeal (or other office or division) of OHIM (which the Court of First Instance failed to do) for it to do so, pursuant to Article 63(6) of the RCTM and Article 1d of Regulation No 216/96.

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

([2]) Codice della Proprietà industriale italiano (Italian Industrial Property Code).

([3]) Commission Regulation (EC) No 216/96 of 5 February 1996 laying down the rules of procedure of the Boards of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OJ 1996 L 28, p. 11).

Action brought on 15 July 2009 — Commission of the European Communities v Portuguese Republic

(Case C-267/09)

(2009/C 220/52)

Language of the case: Portuguese

Parties

Applicant: Commission of the European Communities (represented by R. Lyal and G. Braga da Cruz, Agents)

Defendant: Portuguese Republic

Form of order sought

— a declaration that, by approving and maintaining in force statutory provisions contained in Article 130 of the Code of Personal Income Tax (Código do Imposto sobre o Rendimento das Pessoas Singulares, 'the CIRS'), that require taxpayers not resident in Portugal to appoint a tax representative, the Portuguese Republic has failed to fulfil its obligations under Articles 18 and 56 of the EC Treaty and the corresponding articles of the EEA Agreement:

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

Pleas in law and main arguments

The Commission considers that Article 130 of the Code of Personal Income Tax lays down a general obligation imposed on persons not resident in Portuguese territory to appoint a tax representative resident in Portugal, an obligation incompatible with Articles 18 EC and 56 EC and with the corresponding articles of the EEA Agreement:

(a) on the one hand, an obligation imposed on persons not resident in Portuguese territory who receive only income definitively taxed at source to appoint a tax representative resident in Portugal;

(b) on the other hand, an obligation imposed on persons not resident in Portuguese territory who receive income requiring the submission of a tax return to appoint a tax representative resident in Portugal.

According to the Commission, a general obligation such as that laid down in Article 130 of the CIRS is contrary to the principle of free movement of persons and capital enshrined in Articles 18 and 56 EC and in the corresponding articles of the EEA Agreement, for it is discriminatory (in relation to persons not resident in Portuguese territory) and at the same time it is disproportionate to the aim pursued.

It is discriminatory in that, in practice, that obligation represents a financial charge imposed on non-residents, given that in most cases such representatives will not offer their services free of charge. Moreover, even if the services of a tax representative are offered free of charge, the mere fact that it is mandatory to appoint one is, in itself, an impediment to the free movement of persons and capital, for it must –if that impediment is not to exist — be for the taxpayer himself to decide whether he wishes to appoint a tax representative.

In addition, even if the tax representative has no obligation or responsibility whatsoever to pay the tax, but must do no more than perform duties of a formal nature, the mere fact that it is compulsory to appoint a representative is, per se, an impediment to the free movement of persons and capital, for it must –if that impediment is not to exist — be for the taxpayer himself to decide whether he wishes to appoint a tax representative.

Nor is that obligation proportionate, for the objective pursued, that of ensuring effective fiscal control and of combating tax avoidance, while legitimate, might be attained by less restrictive methods.

On the one hand, Council Directive 2008/55/EC ([1]) of 26 May 2008 on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures, codifying Council Directive 76/308/EEC of 15 March 1976, provides for mutual assistance in the recovery of claims relating to taxes, and so for income taxes (compare Article 2(g)), as is the case with the IRS (personal income tax). On the other hand, as provided in Council Directive 77/799/EEC ([2]) of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation, the competent authority of one Member State may always request the competent authority of another Member State to forward to it the information necessary to combat tax avoidance.

([1]) OJ 2008 L 150, p. 28.

([2]) OJ 1977 L 336, p. 15.

Reference for a preliminary ruling from the Plovdivski rayonen (Bulgaria) sad lodged on 16 July 2009 — Vasil Ivanov Georgiev v Tehnicheski universitet — Sofia, Filial Plovdiv

(Case C-268/09)

(2009/C 220/53)

Language of the case: Bulgarian

Referring court

Plovdivski rayonen sad

Parties to the main proceedings

Applicant: Vasil Ivanov Georgiev

Defendant: Tehnicheski universitet — Sofia, Filial Plovdiv

Questions referred

1. Do the provisions of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation preclude the application of a national Law which does not permit the conclusion of employment contracts of indefinite duration with professors who have reached the age of 65? In this context and, more precisely, taking Article 6(1) of the directive into consideration, are the measures in Article 7(1)(6) of the Law on Protection against Discrimination, which introduce age-limits for employment in specific posts, objectively and reasonably justified by a legitimate aim and proportionate, bearing in mind that the directive has been fully transposed into Bulgarian law?

2. Do the provisions of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation preclude the application of a national Law under which professors who have reached the age of 68 are compulsorily retired? In view of the foregoing facts and circumstances of the present case and if it is found that a conflict exists between the provisions of the directive and the relevant national legislation which transposed the directive, is it possible that the interpretation of the provisions of Community law results in the national legislation not being applied?

3. Does national law establish the reaching of the specified age as the sole condition for the termination of the employment relationship of indefinite duration and for the possibility that the relationship can be continued as a fixed-term employment relationship between the same worker and employer for the same post? Does national law establish a maximum duration and a maximum number of extensions of the fixed-term employment relationship with the same employer after the contract of indefinite duration has been converted into a fixed-term contract, beyond which a continuation of the employment relationship between the parties is not possible?

Action brought on 15 July 2009 — Commission of the European Communities v Kingdom of Spain

(Case C-269/09)

(2009/C 220/54)

Language of the case: Spanish

Parties

Applicant: Commission of the European Communities (represented by: R. Lyal and F. Jimeno Fernández, acting as Agents)

Defendant: Kingdom of Spain

Form of order sought

— declare that by adopting and maintaining in force, in Article 14 of Law No 35/2006 of 28 November 2006 on personal income tax and partially amending the laws on the taxation of corporations, non-residents' income and wealth, a provision under which taxpayers who transfer their residence abroad are required to include any income not yet charged to tax in the tax base for the last tax year in which they were considered to be resident taxpayers, the Kingdom of Spain has failed to fulfil its obligations under Articles 19 EC, 38 EC and 43 EC and Articles 28 and 31 of the EEA Agreement;

— order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

1. Under Article 14 of the Spanish Law on personal income tax and partially amending the laws on the taxation of corporations, non-residents' income and wealth, revenue is subject to tax in the year in which it is received. Nevertheless, Article 14(2) contains special rules which make it possible to impute certain types of income to different tax periods. In cases in which a taxpayer transfers his residence abroad, however, Article 14(3) provides that all income not yet charged to tax is to be included in the tax base for the last tax year in which the taxpayer concerned was considered to be resident.

2. The Commission submits that the Spanish legislation allows discriminatory treatment in cases in which an individual transfers his residence outside Spain and that Spanish law should apply the same rule irrespective of whether the individual maintains his residence on Spanish territory.

3. The provision concerned infringes the principle of free movement of persons laid down in Articles 18 EC, 39 EC and 43 EC and Articles 28 and 31 of the EEA Agreement.

Appeal brought on 16 July 2009 by KME Germany AG, formerly KM Europa Metal AG, KME France SAS, formerly Tréfimétaux SA, KME Italy SpA, formerly Europa Metalli SpA against the judgment of the Court of First Instance (Eighth Chamber) delivered on 6 May 2009 in Case T-127/04: KME Germany AG, formerly KM Europa Metal AG, KME France SAS, formerly Tréfimétaux SA, KME Italy SpA, formerly Europa Metalli SpA v Commission of the European Communities

(Case C-272/09 P)

(2009/C 220/55)

Language of the case: English

Parties

Appellants: KME Germany AG, formerly KM Europa Metal AG, KME France SAS, formerly Tréfimétaux SA, KME Italy SpA, formerly Europa Metalli SpA (represented by: M. Siragusa, G. Rizza, M. Piergiovanni, avvocati, A. Winckler, avocat, T. Graf, Rechtsanwalt)

Other party to the proceedings: Commission of the European Communities

Form of order sought

The appellants claim that the Court should:

— set aside the Judgment,

— to the extent that it is possible, based on the facts before the Court, partially annul the Decision and reduce the amount of KME's Fine, and

— order the Commission to pay the costs of these proceedings and of the proceedings before the Court of First Instance.

or, in alternative, where the state of the proceedings does not so permit,

— set aside the Judgment (including with respect to the CFI's order to KME to pay the costs) and refer the case back to the CFI.

Pleas in law and main arguments

By their first plea, the Appellants criticize the CFI for holding that the Commission demonstrated to a sufficient legal standard that the Level Wound Coils Arrangements had an impact on the relevant market and that, therefore, the Starting Amount of KME's Fine had to take such factor into account. In so reasoning and deciding to reject the first plea of KME's Application, the CFI infringed Community law and provided an illogical and inadequate statement of reasons. Furthermore, the CFI manifestly distorted the facts and evidence put before it by upholding the Commission's conclusion that the economic evidence provided by KME did not show that the infringement as a whole did not have any market impact.

By their second plea, the Appellants criticize the CFI for approving the Commission's reference — in order to determine the size of the market affected by the infringement, for the purpose of establishing the gravity element of KME's Fine — to a market value that wrongly included the revenues from sales made in a separate upstream market from the 'cartelized' one, despite the fact that the cartel members were not vertically integrated in that upstream market. In so reasoning and deciding to reject the second plea of KME's Application, the CFI violated Community law and provided an inadequate statement of reasons.

By their third plea, the Appellants criticize the CFI for rejecting the third plea of the Application, according to which the Commission misapplied the 1998 Fining Guidelines and infringed the principles of proportionality and equal treatment by imposing the maximum percentage increase in the starting amount of KME's Fine on account of duration. In the Appellants' view, the CFI infringed Community law and provided an obscure, illogical and inadequate statement of reasons by upholding the relevant part of the Decision.

By their fourth plea, the Appellants claim that the CFI violated Community law by rejecting the fourth limb of the Application's fourth plea and upholding the relevant part of the Decision, in which the Commission denied KME the benefit of a fine reduction on account of its cooperation outside the scope of the 1996 Leniency Notice, in violation of the 1998 Fining Guidelines as well as the principles of fairness and equal treatment.

By their fifth and last plea, the Appellants claim that the CFI violated Community law and the Appellants' fundamental right to full and effective judicial review by failing to examine thoroughly and closely KME's arguments and showing a biased deference to the Commission's discretion.

Reference for a preliminary ruling from the Tribunal de grande instance, Paris (France) lodged on 16 July 2009 — Olivier Martinez, Robert Martinez v Société MGN Limited

(Case C-278/09)

(2009/C 220/56)

Language of the case: French

Referring court

Tribunal de grande Instance, Paris

Parties to the main proceedings

Applicants: Olivier Martinez, Robert Martinez

Defendants: Société MGN Limited

Question referred

Must Article 2 and Article 5(3) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [1] be interpreted to mean that a court or tribunal of a Member State has jurisdiction to hear an action brought in respect on an infringement of personal rights allegedly committed by the placing on-line of information and/or photographs on an Internet site published in another Member State by a company domiciled in that second State — or in a third Member State, but in any event in a State other than the first Member State —:

— On the sole condition that that Internet site can be accessed from the first Member State,

— On the sole condition that there is between the harmful act and the territory of the first Member State a link which is sufficient, substantial or significant and, in that case, whether that link can be created by:

  — the number of hits on the page at issue made from the first Member State, as an absolute figure or as a proportion of all hits on that page,

  — the residence, or nationality, of the person who complains of the infringement of his personal rights or more generally of the persons concerned,

  — the language in which the information at issue is broadcast or any other factor which may demonstrate the site publisher's intention to address specifically the public of the first Member State,

  — the place where the events described occurred and/or where the photographic images put on-line were taken,

  — other criteria?

[1] OJ 2001, L 12, p. 1.

Action brought on 27 July 2009 — Commission of the European Communities v Ireland

(Case C-294/09)

(2009/C 220/57)

Language of the case: English

Parties

Applicant: Commission of the European Communities (represented by: G. Braun, A.-A. Gilly, Agents)

Defendant: Ireland

The applicant claims that the Court should:

— declare that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Directive 2006/43/EC [1] of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EC and repealing Council Directive 84/253/EEC or, in any event, by failing to communicate them to the Commission, Ireland has failed to fulfil its obligations under the Directive;

— order Ireland to pay the costs.

Pleas in law and main arguments

The period within which the directive had to be transposed expired on 29 June 2008.

[1] OJ L 157, p. 87

Order of the President of the Court of 26 March 2009 — Commission of the European Communities v Kingdom of Spain

(Case C–213/08) [1]

(2009/C 220/58)

Language of the case: Spanish

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

[1] OJ C 197, 2.8.2008.

Order of the President of the Court of 14 May 2009 — Commission of the European Communities v Republic of Poland

(Case C-435/08) [1]

(2009/C 220/59)

Language of the case: Polish

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

[1] OJ C 301, 22.11.2008.

Order of the President of the Court of 17 June 2009 — Commission of the European Communities v Portuguese Republic

(Case C-459/08) [1]

(2009/C 220/60)

Language of the case: Portuguese

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

[1] OJ C 313, 12.2.2008.

Order of the President of the Court of 5 June 2009 — Commission of the European Communities v Italian Republic

(Case C-500/08) [1]

(2009/C 220/61)

Language of the case: Italian

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

[1] OJ C 6, 10.1.2009.

Order of the President of the Court of 26 June 2009 — Commission of the European Communities v Kingdom of Spain

(Case C–503/08) [1]

(2009/C 220/62)

Language of the case: Spanish

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

[1] OJ C 6, 10.1.2009.

Order of the President of the Court of 18 February 2009 (reference for a preliminary ruling from the Hoge Raad der Nederlanden Den Haag (Netherlands)) — KLG Europe Eersel BV v Reedereikontor Adolf Zeuner GmbH

(Case C-534/08) [1]

(2009/C 220/63)

Language of the case: Dutch

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

[1] OJ C 44, 21.2.2009.

Order of the President of the Court of 18 June 2009 — Commission of the European Communities v Portuguese Republic

(Case C–10/09) [1]

(2009/C 220/64)

Language of the case: Portuguese

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

[1] OJ C 55, 7.3.2009.

Order of the President of the Court of 18 June 2009 — Commission of the European Communities v Portuguese Republic

(Case C–11/09) [1]

(2009/C 220/65)

Language of the case: Portuguese

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

[1] OJ C 55, 7.3.2009.

COURT OF FIRST INSTANCE

Order of the Court of First Instance of 18 April 2008 — CPEM v Commission

(Case T-106/08 R) [1]

(Application for interim measures — Application for suspension of operation — New application — New facts — Absence — Inadmissibility — Article 109 of the Rules of Procedure of the Court of First Instance)

(2009/C 220/66)

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 suspension of the operation of debit note No 3240912189 of 17 December 2007 relating to Commission Decision C(2007) 4645 of 4 October 2007, cancelling the assistance granted to CPEM by the European Social Fund (ESF) by Decision C(1999) 2645 of 17 August 1999

Operative part of the order

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

2. *Costs are reserved.*

[1] OJ C 107, 26.4.2008.

Order of the Court of First Instance of 8 July 2009 — Mologen v OHIM (dSLIM)

(Case T-504/08) [1]

(Community trade mark — Partial refusal to register — Withdrawal of the application for registration — No need to adjudicate)

(2009/C 220/67)

Language of the case: German

Parties

Applicant: Mologen AG (Berlin, Germany) (represented by: C. Klages, lawyer)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 17 September 2008 (Case R 1077/2007-4) concerning an application for the registration of the word mark 'dSLIM' as a Community trade mark

Operative part of the judgment

The Court:

1. *Declares that there is no further need to adjudicate on the action;*

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

[1] OJ C 44, 21.2.2009.

Order of the Court of First Instance of 8 July 2009 — Thoss v Court of Auditors

(Case T-545/08) [1]

(Action for annulment — Time-limit for bringing an action — Lateness — Absence of excusable error — Manifest inadmissibility)

(2009/C 220/68)

Language of the case: French

Parties

Applicant: Thérèse Nicole Thoss (Dommeldange, Luxembourg) (represented by: P. Goergen, lawyer)

Defendant: Court of Auditors of the European Communities (represented by: T. Kennedy and J.-M. Stenier, acting as Agents)

Re:

Application for annulment of the decision of the Court of Auditors of 20 March 2006 refusing to allocate to the applicant, the widow of a former Member of the Court of Auditors, a survivor's pension on the ground that the condition that the couple had to have been married for five years at the time of death has not been satisfied (case registered as F-46/08 and referred by the Civil Service Tribunal).

Operative part of the order

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

2. *Mrs Thérèse Nicole Thoss is ordered to pay the costs.*

([1]) OJ C 171, 5.7.2008 (formerly Case F-46/08).

Order of the President of the Court of First Instance of 13 July 2009 — Sniace v Commission

(Case T-238/09 R)

(Application for interim measures — State aid — Decision declaring an aid to be incompatible with the common market and ordering its recovery — Application for suspension of operation — Failure to have regard to formal requirements — Inadmissibility)

(2009/C 220/69)

Language of the case: Spanish

Parties

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

Defendant: Commission of the European Communities (represented by: C. Urraca Caviedes, acting as Agent)

Re:

Application for suspension of the operation of Commission Decision C(2009) 1479 final of 10 March 2009 relating to measure C 5/2000 (ex NN 118/1997) implemented by Spain in favour of Sniace, SA, Torrelavega, Cantabria, and amending Decision 1999/395/EC of 28 October 1998

Operative part of the order

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

2. *Costs are reserved.*

Action brought on 17 June 2009 — Commission v Edificios Inteco

(Case T-235/09)

(2009/C 220/70)

Language of the case: Spanish

Parties

Applicant: Commission of the European Communities (represented by: G. Valero Jordana, acting as Agent)

Defendant: Edificios Inteco, SL (Valladolid, Spain)

Form of order sought

— Order the defendant to repay the applicant EUR 157 238,07, plus the sum of EUR 81 686,22 of interest due until 1 June 2009 and daily interest for late payment at the rate of EUR 21,73796 per day accrued from 2 June 2009 until the full amount of the debt has been repayed;

— order the defendant to pay the costs.

Pleas in law and main arguments

The European Commission requests the partial repayment of the payments made to Edificios Inteco, S.L. within the framework of a contract concerning the project 'Energy — Comfort 2000 Phase I' relating to the construction of a commercial and business centre in the city of Valladolid (Spain) which was annulled by the Commission.

In support of its claims the Commission submits that the defendant failed to meet its contractual obligations.

Action brought on 2 July 2009 — AECOPS v Commission

(Case T-256/09)

(2009/C 220/71)

Language of the case: Portuguese

Parties

Applicant: Associação de Empresas de Construção, Obras Públicas e Serviços (Aecops) (Lisbon, Portugal) (represented by: J.L. da Cruz Vilaça and L. Pinto Monteiro, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Annul the decision of the Commission of the European Communities of 21 June 2005 in respect of File 89 0771 P1, reducing the aid granted by Decision C(89) 0570 of

22 March 1989 to PTE 48 504 201 and requiring reimbursement of the amount of PTE 53 310 198;

— Order the Commission to pay the costs.

Pleas in law and main arguments

Infringement of the right to a prior hearing: the applicant was not given the opportunity to comment before a definitive decision to reduce the financial assistance was adopted, which constitutes a breach of an essential procedural requirement the disregard of which renders such a decision void.

Infringement of the principal of legal certainty through limitation and excessive delay in adopting a decision.

Breach of the duty to state reasons: the contested decision fails to set out, even summarily, the reasons for reducing the assistance.

Action brought on 2 July 2009 — AECOPS v Commission

(Case T-257/09)

(2009/C 220/72)

Language of the case: Portuguese

Parties

Applicant: Associação de Empresas de Construção, Obras Públicas e Serviços (Aecops) (Lisbon, Portugal) (represented by: J.L. da Cruz Vilaça and L. Pinto Monteiro, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Annul the decision of the Commission of the European Communities of 22 June 2005 in respect of File 89 0979 P3, reducing the aid granted by Decision C(89) 0570 of 22 March 1989 to PTE 426 070 and requiring the reimbursement of the amount of PTE 1 591 128;

— Order the Commission to pay the costs.

Pleas in law and main arguments

Infringement of the right to a prior hearing: the applicant was not given the opportunity to comment before a definitive decision to reduce the financial assistance was adopted, which constitutes the breach of an essential procedural requirement the disregard of which renders such a decision void.

Infringement of the principal of legal certainty through limitation and excessive delay in adopting a decision.

Breach of the duty to state reasons: the contested decision fails to set out, even summarily, the reasons for reducing the assistance.

Action brought on 7 July 2009 — Commission v Arci Nuova Associazione Comitato di Cagliari and Gessa

(Case T-259/09)

(2009/C 220/73)

Language of the case: Italian

Parties

Applicant: Commission of the European Communities (represented by M. Moretto, lawyer, and A.M. Rouchaud-Joët and N. Bambara, Agents)

Defendant: Arci Nuova Associazione Comitato di Cagliari (Cagliari, Italy), Alberto Gessa (Cagliari, Italy)

Form of order sought

— An order that Arci Nuova Associazione Comitato di Cagliari and Alberto Gessa should, in their personal capacities and jointly and severally, repay the principal sum of EUR 15 675,00 owing, together with default interest at the rate of 7,32 %, running from 20 May 2007 until full and final payment of the sum owed;

— an order that Arci Nuova Associazione Comitato di Cagliari and Alberto Gessa should, in their personal capacities and jointly and severally, pay the costs.

Pleas in law and main arguments

By this action the applicant seeks an order that the abovementioned association and, jointly, its chairman, should pay a sum equivalent to the advance paid by the applicant for performance of the action 'ONG-2003-204-Cagliari-ARCI-l'Europa dei Migranti'. That action consists of a series of IT and documentation activities in the languages of the various countries of provenance, relating to the European institutions, the decision-making process, the stages in building and enlarging Europe, for the purpose of making the integration of migrants easier.

The agreement imposed an obligation to send, within a certain period, the final report regarding the performance of the action, the final financial accounts of the eligible costs actually incurred, and the full statement of the income and expenditure relating to the action.

That obligation not having been fulfilled, the Commission has decided to bring this action.

Appeal brought on 6 July 2009 by the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) against the judgment of the Civil Service Tribunal delivered on 5 May 2009 in Case F-27/08, Simões Dos Santos v OHIM

(Case T-260/09 P)

(2009/C 220/74)

Language of the case: French

Parties

Appellant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (represented by I. de Medrano Caballero, Agent, and D. Waelbroeck, lawyer)

Other party to the proceedings: Manuel Simões Dos Santos (Madrid, Spain)

Form of order sought by the appellant

The appellant claims that the Court of First Instance should:

— set aside the judgment of the Civil Service Tribunal in Case F-27/08, including the ruling as to costs;

— uphold the form of order contended for by OHIM at first instance, that is to say, dismiss the action as unfounded;

— order the respondent to pay the costs of the present proceedings, together with those incurred in the proceedings before the Civil Service Tribunal.

Pleas in law and main arguments

By the present appeal, OHIM is seeking to have set aside the judgment of 5 May 2009 in Case F-27/08 *Simões Dos Santos* v *OHIM*, by which the Civil Service Tribunal annulled Decision PERS-01-07 and OHIM's letter of 7 June 2007 in so far as they entail the elimination of the balance of the merit points held by Manuel Simões Dos Santos following his promotion.

In support of its appeal, OHIM relies on three pleas in law:

— error of law in that, contrary to the case-law concerning the conditions relating to the retroactive application of an act and in breach of the principle of the protection of legitimate expectations, the Civil Service Tribunal held that OHIM was in breach of the principles of legal certainty and non-retroactivity;

— error of law, in that the Civil Service Tribunal held that OHIM had infringed Article 233 EC and disregarded the authority of *res iudicata* of the judgment in Case T-435/04 *Simões Dos Santos* v *OHIM*, whereas in fact the measures taken by OHIM for the purposes of complying with that judgment are the only measures permissible if the principle of non-discrimination is not to be infringed;

— unlawfulness of the award by the Civil Service Tribunal of costs for the reparation of purported non-physical damage, since OHIM is in no way at fault and the ruling of the Civil Service Tribunal in that respect is *ultra petita*.

Appeal brought on 6 July 2009 by the Commission of the European Communities against the judgment of the Civil Service Tribunal delivered on 28 April 2009 in Joined Cases F-5/05, Violetti and Others v Commission, and F-7/05, Schmit v Commission

(Case T-261/09 P)

(2009/C 220/75)

Language of the case: French

Parties

Appellant: Commission of the European Communities (represented by J. Currall and J.-P. Keppenne, Agents)

Other parties to the proceedings: Antonello Violetti (Cittiglio, Italy), Nadine Schmit (Ispra, Italy), Council of the European Union, Anna Bassi Perucchini (Reno di Leggiuno, Italy), Marco Basso (Varano Borghi, Italy), Ernesto Brognieri (Barasso, Italy), Sergio Brusorio (Sesto Calende, Italy), Natale Cao (Ispra), Renato Cazzaniga (Ispra), Elvidio Flammini (Varese, Italy), Luigi Magistri (Ispra), Reginella Molinari Canale (Ispra), Giuseppe Morelli (Besozzo, Italy), Nadia Valentini (Varese) and Giuseppe Zara (Ispra)

Form of order sought by the appellant

The appellant claims that the Court of First Instance should:

— set aside the judgment of 28 April 2009 in Joined Cases F-5/05 and F-7/05 *Violetti and Others* v *Commission*, in so far as it declared admissible the actions for annulment of the decision of the European Anti-Fraud Office (OLAF) to communicate certain information to the Italian authorities;

— adjudicate the present cases itself, declaring the actions brought before the Civil Service Tribunal to be inadmissible;

— order the respondents to pay the costs of the proceedings, including those incurred in the proceedings before the Civil Service Tribunal.

Pleas in law and main arguments

By the present appeal, the Commission seeks to have set aside the judgment of 28 April 2009 in Joined Cases F-5/05 and F-7/05 *Violetti and Others* v *Commission*, by which the Civil Service Tribunal annulled OLAF's decision to communicate information concerning the respondents to the Italian judicial authorities and ordered the Commission to pay each of the respondents the sum of EUR 3 000 by way of damages.

In support of its appeal, the Commission relies on a single plea in law, alleging infringement of Article 90a of the Staff Regulations of Officials of the European Communities, in so far as the Civil Service Tribunal was in breach of Community law and proceeded on the basis of unsound grounds in disregarding the established case-law to the effect that *actes préparatoires* — such as the opening of an OLAF investigation, OLAF's final report and the commencement of disciplinary proceedings — are not acts which have adverse effects for the purposes of providing grounds of complaint. The Commission argues that this case-law can be transposed to Article 90a of the Staff Regulations as regards the possibility of submitting a complaint against acts of OLAF.

Action brought on 2 July 2009 — Tecnoprocess v Commission and European Commission Delegation to Morocco

(Case T-264/09)

(2009/C 220/76)

Language of the case: Italian

Parties

Applicant: Tecnoprocess Srl (Rome, Italy) (represented by: A. Majoli, lawyer)

Defendants: Commission of the European Communities and European Commission Delegation to Morocco

Form of order sought

— Declare, pursuant to Article 232 EC, that the EU Delegation to Rabat and the European Commission failed to act;

— declare, pursuant to Article 288 EC, that the Delegation and the Commission have incurred non-contractual liability as regards the applicant and order them, jointly and severally, to pay to the applicant compensation for the damage suffered by it in the sum of EUR 1 000 000,00 (one million).

Pleas in law and main arguments

The applicant in the present case operates in various sectors of the industrial market. Since 2002, Tecnoprocess has operated in the market relating to procedures managed by EuropeAid on behalf of the Commission for the allocation of projects for the grant of external aid to developing countries financed by the EU budget or the European Development Fund. With the present action, the applicant seeks to submit for review by the Court the conduct of the defendants in connection with the implementation of the following contracts:

— EuropeAid Contract 1144205/D/S/MA (marché 14/2003/meda/b7 — 4100/ib/96/0587) — RISTORAZIONE;

— EuropeAid Contract 114194/D/S/MA (marché 15/2003/meda/b7 — 4100/ib/96/0587) — FREDDO;

— EuropeAid Contract 114194/D/S/MA (marché 16/2003/meda/b7 — 4100/ib/96/0587) — FREDDO; and

— EuropeAid Contract 12088/D/S/MA — Centre Assistance Technique des Industriels des Equipements pour véchicules (Cetiev) Lots 3 and 6.

The purpose of the first three contracts, which were concluded as part of the MEDA 1 programme, was the provision of equipment and accessories for the restauration and canteen services of the *Office de la Formation professionnelle et de la Promotion du Travail* (OFPPT) in Rabat.

In implementing those contracts, the OFPPT refused to countersign acknowledgments of receipt for goods, even though it used the products at issue, which were properly supplied by the applicant.

Similar difficulties were encountered in relation to the fourth contract, which was concluded as part of the MEDA 2 programme and related to the provision of highly specialised machinery which was intended for the purpose of carrying out tests on filters for motor vehicles.

According to the applicant, the failure to act on the part of the defendants, which consists in their failure to find a solution that could satisfy the applicant's interests in response to the serious shortcomings in the performance of the contracts in question, is such as to give rise to non-contractual liability on the part of the Community.

The applicant also alleges in this connection infringement of Article 56 of the Finance Regulation, the principles of the protection of legitimate expectation and proportionality and the right to confidentiality.

Action brought on 13 July 2009 — PVS v OHIM — MeDiTA Medizinischer Kurierdienst (medidata)

(Case T-270/09)

(2009/C 220/77)

Language in which the application was lodged: German

Parties

Applicant: PVS — Privatärztliche Verrechnungsstelle Rhein-Ruhr GmbH (Mühlheim an der Ruhr, Germany) (represented by: F. Lindenberg, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: MeDiTA Medizinische Kurierdienst- u. Handelsg. mbH (Düsseldorf, Germany)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of 14 May 2009 in Appeal R 1724/2007-4 and reject the opposition;

— Order the defendant to bear the costs of the action and of the appeal proceedings;

— Enter judgment against the defendant without an oral hearing in its absence, in so far as it does not enter a defence in the appropriate form and in accordance within the prescribed time-limit.

Pleas in law and main arguments

Applicant for a Community trade mark: PVS

Community trade mark concerned: the figurative mark 'medidata' in the colours blue, grey and white for services in Classes 35, 36, 41, 42 and 44 (Application No 4 495 842)

Proprietor of the mark or sign cited in the opposition proceedings: MeDiTA Medizinische Kurierdienst- u. Handelsg. mbH

Mark or sign cited in opposition: the German word mark 'MeDiTA' for services in Classes 35 and 39, whereas the opposition is directed against registration in Class 35

Decision of the Opposition Division: Grant of the opposition

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 8(1)(b) of Regulation (EC) No 207/2009, [1] since there is no likelihood of confusion between the trade marks at issue

[1] Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1).

Action brought on 14 July 2009 — Sobieski zu Schwarzenberg v OHIM — British-American Tobacco Polska (Romuald Prinz Sobieski zu Schwarzenberg)

(Case T-271/09)

(2009/C 220/78)

Language in which the application was lodged: German

Parties

Applicant: Romuald Prinz Sobieski zu Schwarzenberg (Dortmund, Germany) (represented by: U. Fitzner and U. Fitzner, 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: British-American Tobacco Polska S.A. (Augustów, 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 — OHIM) of 13 May 2009 (Appeal case R 771/2008-4);

— annul the decision of the Opposition Division of 14 March 2008; and

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

Pleas in law and main arguments

Applicant for a Community trade mark: the applicant

Community trade mark concerned: the word mark 'Romuald Prinz Sobieski zu Schwarzenberg' for goods in Classes 33 and 34 (application No 4 583 761)

Proprietor of the mark or sign cited in the opposition proceedings: British-American Tobacco Polska S.A.

Mark or sign cited in opposition: the Polish word mark 'JAN III SOBIESKI' for goods in Classes 34 (No 110 327) and the Polish word and figurative mark 'JAN III SOBIESKI' for goods in Classes 3, 30, 32 and 33 (No 160 417). The opposition concerns registration in Classes 33 and 34

Decision of the Opposition Division: acceptance of the opposition

Decision of the Board of Appeal: dismissal of the appeal

Pleas in law: infringement of Article 60 of Regulation (EC) No 207/2009 [1] in conjunction with Article 8 of Regulation (EC) No 2869/95 [2] and of Article 60 in conjunction with Article 81 of Regulation No 207/2009.

[1] Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1)

[2] Commission Regulation (EC) No 2869/95 of 13 December 1995 on the fees payable to the Office for Harmonization in the Internal Market (Trade Marks and Designs) (OJ 1995 L 303, p. 33)

Action brought on 10 July 2009 — Pineapple Trademarks v OHIM — Dalmau Salmons (KUSTOM)

(Case T-272/09)

(2009/C 220/79)

Language in which the application was lodged: English

Parties

Applicants: Pineapple Trademarks Pty Ltd (Burleigh Heads, Australia) (represented by: N. Saunders, Barrister)

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

Other party to the proceedings before the Board of Appeal: Angel Custodio Dalmau Salmons (Barcelona, Spain)

Form of order sought

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 5 March 2009 in case R 383/2008-1 and remit the application for the Community trade mark to OHIM in order to allow it to proceed; and

— Order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The word mark 'KUSTOM', for goods in classes 18, 25 and 28

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

Mark or sign cited: Community trade mark registration of the word mark 'CUSTO' for goods in classes 18 and 25

Decision of the Opposition Division: Upheld the opposition for all the contested goods

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 a likelihood of confusion between the trade marks concerned; Infringement of the rights of defence of the applicant as the Board of Appeal made findings in relation to the aural and conceptual similarity of the trade marks concerned on which the applicant was not given the opportunity to comment and which were unsupported by relevant evidence.

Action brought on 14 July 2009 — Deutsche Bahn v OHIM — DSB (IC4)

(Case T-274/09)

(2009/C 220/80)

Language in which the application was lodged: German

Parties

Applicant: Deutsche Bahn AG (Berlin, Germany) (represented by: E. Haag, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: DSB (Copenhagen, Denmark)

Form of order sought

— Annul the contested decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (OHIM) of 30 April 2009 and the decision of the Opposition Division of 26 July 2007;

— order OHIM to pay all the costs of the proceedings, including those incurred during the appeal and opposition proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: DSB

Community trade mark concerned: the word mark 'IC4' for goods in Class 39 (application No 4 255 411)

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

Mark or sign cited in opposition: the word mark 'ICE' for goods and services in Classes 6, 7, 9, 11, 12, 19, 37, 38, 39, 41 and 42 (Community trade mark No 170 605) and the German figurative mark 'IC' for services in Classes 39 and 42 (No 1 009 258)

Decision of the Opposition Division: rejection of the opposition

Decision of the Board of Appeal: dismissal of the appeal

Pleas in law: infringement of Article 8(1)(b) of Regulation (EC) No 207/2009 [1] since there is a likelihood of confusion between the opposing marks.

---

[1] Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1)

Action brought on 16 July 2009 — Sepracor Pharmaceuticals (Ireland) v Commission

(Case T-275/09)

(2009/C 220/81)

Language of the case: English

Parties

Applicant: Sepracor Pharmaceuticals (Ireland) Ltd (Dublin, Ireland) (represented by: I. Dodds-Smith, Solicitor, D. Anderson, QC and J. Stratford, Barrister)

Defendant: Commission of the European Communities

Form of order sought

— annul the contested decision;

— order that the applicant's costs of these proceedings are paid by the Commission.

Pleas in law and main arguments

By means of this application, the applicant seeks the annulment, pursuant to Article 230 EC, of the Commission decision by which the Commission, confirming the opinion issued by the Committee for Medicinal Products for Human Use of the European Medicines Agency (EMEA), granted the marketing authorisation for the applicant's product 'Lunivia' but considered that the 'eszopiclone' contained in it was not a new active substance under Article 3(2) (a) of Regulation N° 726/2004 [1].

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

First, the applicant claims that the defendant failed to apply the correct legal criteria for a new active substance in violation of the legislation, in particular of Article 10(2)(b) of Directive 2001/83 ([2]) and annex I, part II, section III of the same directive, as well as the applicable guidance such as Notice to Applicants, in particular its volume 2A and volume 3. The applicant further submits that the approach adopted by the defendant in the contested decision regarding the condition for qualifying as new active substance infringes the object and purpose of the legislative scheme which is predicted not upon concepts of 'added value' or comparative efficacy, but upon absolute standards of quality, safety and efficacy.

Second, the applicant claims that the defendant infringed its essential procedural rights since the EMEA received and took account of representations made by a third party without informing the applicant of their existence or giving it an opportunity to comment.

([1]) Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency (OJ 2004 L 136, p. 1)

([2]) Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ 2001 L 311, p. 67)

Action brought on 17 July 2009 — Verband Deutscher Prädikats- und Qualitätsweingüter v OHIM (GG)

(Case T-278/09)

(2009/C 220/82)

Language in which the application was lodged: German

Parties

Applicant: Verband Deutscher Prädikats- und Qualitätsweingüter eV (Gau-Algesheim, Germany) (represented by N. Schindler, lawyer)

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

Form of order sought

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 30 April 2009 (Case R 1568/2008-1);

— order OHIM to pay its own costs and those of the applicant.

Pleas in law and main arguments

Community trade mark concerned: the word mark 'GG' for goods in Class 33 (registration application No 6 388 284)

Decision of the Examiner: Refusal to register

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 75 due to a lack of reasons on which the decision was based and of Article 7(1)(b) and (c) of Regulation (EC) No 207/2009 ([1]), since the trade mark applied for has the requisite distinctive character and there is no need for it to be allowed to remain available.

([1]) Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1)

Action brought on 9 July 2009 — Aiello v OHIM — Cantoni ITC (100 % Capri)

(Case T - 279/09)

(2009/C 220/83)

Language in which the application was lodged: Italian

Parties

Applicant: Antonio Aiello (Vico Equense, Italy) (represented by: M. Coccia and L. Pardo, 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: Cantoni ITC SpA (Milan, Italy)

Form of order sought

— Annul the decision of the First Board of Appeal of OHIM of 2 April 2009, notified by fax on 14 May 2009, in case R 1148/2008-1 between Antonio Aiello and Cantoni ITC SpA and, by way of correction, reject opposition B 856 163 to the registration of the trade mark '100 % CAPRI' for goods in Classes 3, 18 and 25 (No 003563848).

— Order the defendant to pay all the costs of the proceedings before the Court of First Instance of the European Communities.

Pleas in law and main arguments

Applicant for a Community trade mark: Antonio Aiello

Community trade mark concerned: Figurative mark composed of the word and number elements '100 % Capri' (registration application No 3 563 848) for goods in Classes 3, 18 and 25.

Proprietor of the mark or sign cited in the opposition proceedings: CANTONI L.T.C. S.p.A.

Mark or sign cited in opposition: Community figurative mark (registration application No 2 689 891) and national figurative mark composed of the word element 'CAPRI' for goods in Classes 3, 18 and 25.

Decision of the Opposition Division: Upheld the opposition and rejected the application for registration for all the contested goods.

Decision of the Board of Appeal: Dismissed the appeal.

Pleas in law: Infringement of Article 8(1)(b) of Regulation (EC) No 207/2009 on the Community trade mark and Articles 50(1) and 20(2) of Regulation (EC) No 2868/95 implementing Regulation (EC) No 40/94 on the Community trade mark (replaced by Regulation No 207/2009).

Action brought on 17 July 2009 — Fédération Internationale des Logis v OHIM

(Case T-282/09)

(2009/C 220/84)

Language in which the application was lodged: French

Parties

Applicant: Fédération Internationale des Logis (Paris, France) (represented by B. Brisset, lawyer)

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

Form of order sought

— Annul the decision of the First Board of Appeal of OHIM of 22 April 2009 in Case R 1511/2008-1 and allow registration of the trade mark applied for;

— order OHIM to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: Figurative mark representing a green square for goods and services in Classes 3, 18, 24, 43 and 44 — Application No 6 468 789

Decision of the Examiner: Rejection of the application for registration

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 7(1)(b) of Regulation No 207/2009, as the representation of a square with convex edges in a particular and specific green colour is distinctive with regard to the goods and services for which the registration was sought, in so far as those elements give the mark a particular appearance for those goods and services.

Action brought on 17 July 2009 — CEVA v Commission

(Case T-285/09)

(2009/C 220/85)

Language of the case: French

Parties

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

Defendant: Commission of the European Communities

Form of order sought

The applicant claims that the Court of First Instance should:

— declare that no statement of reasons has been provided for the enforcement orders for four debit notes of the European Commission, dated 11 May 2009: No 3230901933, No 3230901935, No 3230901936 and No 3230901937;

— declare that there is a likelihood of unjust enrichment on the part of the Commission in the event that CEVA refunds the amount of EUR 173 435 together with default interest;

— in consequence, annul the enforcement orders for the four debit notes dated 11 May 2009, namely, No 3230901933, No 3230901935, No 3230901936 and No 3230901937;

— lastly, declare that the Commission has failed to comply with the terms and conditions of the 'SEAPURA' contract, namely Contract No Q5RS-2000-31334;

— declare that the Commission has failed, in particular, to comply with Article 22(5)(3) and Article 3.5 of Annex II to Contract No Q5RS-2000-31334;

— in consequence, annul the enforcement orders for the four debit notes dated 11 May 2009, namely, No 3230901933, No 3230901935, No 3230901936 and No 3230901937.

Pleas in law and main arguments

By the present action, CEVA is seeking annulment of the enforcement orders by which the Commission demanded full reimbursement of the advance payments made to CEVA in the context of the SEAPURA Contract (No Q5RS-2000-31334) concerning a research and technological development project.

In support of its action, CEVA relies on three pleas in law:

— failure to provide an adequate statement of reasons, in so far as the Commission based its position on the allegation that CEVA was in breach of its contractual obligations but did not set out the factual and legal grounds for that allegation;

— breach of the principle that there should be no unjust enrichment since, if the sum claimed by the Commission were to be refunded in full, the Commission would be unjustly enriched in that the work and research carried out by CEVA would be available to the Commission without it having to pay for it;

— failure on the part of the Commission to make proper use of its powers of control during the performance of the contract.

Action brought on 22 July 2009 — Intel v Commission

(Case T-286/09)

(2009/C 220/86)

Language of the case: English

Parties

Applicant: Intel Corp. (Wilmington, United States of America) (represented by: N. Green, I. Forrester, QC, M. Hoskins, K. Bacon, S. Singla, Barristers, A. Parr and R. MacKenzie, Solicitors)

Defendant: Commission of the European communities

Form of order sought

— Annul in whole or in part Commission Decision C(2009) 3726 final of 13 May 2009 in Case COMP/C-3/37.990 — Intel;

— Alternatively, annul or reduce substantially the level of the fine imposed;

— Order the Commission to pay Intel's costs.

Pleas in law and main arguments

By means of this application, the applicant seeks annulment, pursuant to Article 230 EC, of Commission Decision C(2009) 3726 final of 13 May 2009 in Case COMP/C-3/37.990 — Intel finding that it committed a single and continuous infringement of Article 82 EC and Article 54 of EEA Agreement from October 2002 until December 2007 by implementing a strategy aimed at foreclosing competitors form the market of x86 central processing units ('CPUs'). Further, the applicant seeks the annulment or the reduction of the fine imposed on it.

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

First, it contends that the Commission errs in law by:

(a) finding that the conditional discounts granted by Intel to its customers were abusive *per se* by virtue of them being conditional without establishing that they had an actual capability to foreclose competition;

(b) relying on a form of exclusionary abuse, termed 'naked restrictions', and failing to conduct any analysis of foreclosure (even a capability or likelihood to foreclose) in respect thereof;

(c) failing to analyse whether Intel's rebate arrangements with its customers were implemented in the territory of the European Community and/or had immediate, substantial, direct and foreseeable effects within the European Community.

Secondly, the applicant claims that the Commission fails to meet the required standard of proof in its analysis of the evidence. Thus, the Commission fails to prove that Intel's rebate arrangements were conditional upon its customers purchasing all or almost all of their x86 CPU requirements from Intel. In addition, the Commission uses an 'as efficient competitor' ('AEC') test to determine whether Intel's rebates were capable of restricting competition but it commits numerous errors in the analysis and assessment of the evidence relating to the application of that test. The Commission also fails to address other categories of evidence relevant to the effects of Intel's discounts. In particular, the Commission fails:

(a) to address the evidence which shows that during the period of the alleged infringement, one of Intel's competitors substantially increased its market share and its profitability but that its lack of success in certain market segments and/or with certain original equipment manufacturers ('OEMs') was the result of its own shortcomings;

(b) to establish a causal link between what it finds to be conditional discounts and the decisions of Intel's customers not to purchase from that competitor;

(c) to analyse the evidence of the impact of Intel's discounts upon consumers.

Thirdly, the applicant argues that the Commission fails to prove that Intel engaged in a long-term strategy to foreclose the competitors. Such a finding is not supported by the evidence and is impossible to reconcile with the fragmented nature of the Commission's allegations (in relation to both products covered and time period) in respect of each Intel customer.

The applicant also submits that all or part of the Decision should be annulled on the basis that the Commission infringed essential procedural requirements during the administrative procedure, which materially infringed Intel's rights of defence. In particular, the Commission failed:

(a) to grant Intel an oral hearing in relation to the Supplementary Statement of Objections and Letter of Facts, even though they raised entirely new allegations and referred to new evidence which feature prominently in the contested decision;

(b) to procure certain internal documents from the competitor for the case file, when requested to do so by the applicant notwithstanding that, in the applicant's opinion, the documents:

(i) were directly relevant to the Commission's allegations against Intel,

(ii) were potentially exculpatory of Intel and

(iii) had been identified by Intel with precision;

(c) to make a proper note of its meeting with a key witness from one of Intel's customers, who was highly likely to have given exculpatory evidence.

Pursuant to Article 229 EC, the applicant also challenges the level of the fine imposed upon it on three main grounds.

First, it claims that the fine of EUR 1 060 000 000 (the largest ever fine imposed upon a single firm by the Commission) is manifestly disproportionate given that the Commission fails to establish any consumer harm or foreclosure of the comeptitors.

Secondly, the applicant submits that it did not intentionally or negligently infringe Article 82 EC: the Commission's AEC analysis is based on information that it could not know at the time it was granting discounts to its customers.

Thirdly, the applicant contends that in setting the fine the Commission fails to apply its 2006 fining guidelines correctly, and takes into account irrelevant or inappropriate considerations.

Action brought on 27 July 2009 — Carrols v OHIM — Gambettola (Pollo Tropical CHICKEN ON THE GRILL)

(Case T-291/09)

(2009/C 220/87)

Language in which the application was lodged: Spanish

Parties

Applicant: Carrols Corp. (New York, United States) (represented by: I. Temiño Ceniceros, lawyer)

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

Other party to the proceedings before the Board of Appeal: Giulio Gambettola (Los Realejos, Spain)

Form of order sought

— declare the present action and its annexes admissible;

— annul the decision of the Board of Appeal in so far as it relates to the grounds for invalidity under Article 52(1)(b) of Council Regulation (EC) No 207/2009 of 26 February 2009;

— order OHIM to pay the costs.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: Figurative mark containing the word element 'Pollo Tropical CHICKEN ON THE GRILL' (Application No. 002938801) for goods and services in Classes 25, 41 and 43.

Proprietor of the Community trade mark: Giulio Gambettola.

Applicant for the declaration of invalidity: The applicant.

Trade mark right of applicant for the declaration: National figurative mark (No 2 201 552) containing the word element 'Pollo Tropical CHICKEN ON THE GRILL' and the national word mark 'POLLO TROPICAL' (No 2 201 543) for services in Class 43 ('restaurant services').

Decision of the Cancellation Division: Application for a declaration of invalidity dismissed.

Decision of the Board of Appeal: Appeal dismissed.

Pleas in law: Misinterpretation of Articles 52(1)(b) and 53(1)(a) of Regulation (EC) No 207/2009 on the Community trade mark.

Order of the Court of First Instance of 14 July 2009 — Mepos Electronics v OHIM (MEPOS)

(Case T-297/08) [1]

(2009/C 220/88)

Language of the case: English

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

---

[1] OJ C 247, 27.9.2008.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Action brought on 2 July 2009 — Marcuccio v Commission

(Case F-65/09)

(2009/C 220/89)

Language of the case: Italian

Parties

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

Defendant: Commission of the European Communities

Subject-matter and description of the proceedings

Annulment of the decision rejecting the applicant's claim for 100 % reimbursement of certain medical expenses.

Form of order sought

— Annul the decision rejecting the claim of 25 November 2002, if necessary and appropriate by not applying to this dispute, pursuant to Article 241 EC, Article 72 of the Staff Regulations, the rules [on sickness insurance] and, lastly, the alleged opinion of the Medical Council;

— annul the memorandum of 5 August 2008;

— in so far as necessary, annul the measure rejecting the complaint of 1 November 2008;

— in so far as necessary, annul the memorandum of 4 March 2009;

— order the Commission to pay to the applicant, by way of compensation for the damage resulting from the measures annulment of which is sought in this application, the sum of EUR 25 000 or such greater or lesser sum the Tribunal may consider fair and just in that regard.

— order the Commission to pay the costs.

Action brought on 10 July 2009 — Angulo Sanchez v Council

(Case F-67/09)

(2009/C 220/90)

Language of the case: French

Parties

Applicant: Nicolas Angulo Sanchez (Brussels, Belgium) (represented by: S. Orlandi, A. Coolen, J.-N. Louis and E. Marchal, lawyers)

Defendant: Council of the European Union

Subject-matter and description of the proceedings

Annulment of the defendant's decisions refusing applications for special leave made by the applicant because of the serious illness of his parents.

Form of order sought

— annul the Council's decisions of 8 October and 8 December 2008 refusing the applications for special leave made by the applicant because of the very serious illness of his parents;

— order the Council of the European Union to pay the costs.

Action brought on 24 July 2009 — Barbin v Parliament

(Case F-68/09)

(2009/C 220/91)

Language of the case: French

Parties

Applicant: Florence Barbin (Luxembourg, Luxembourg) (represented by: S. Orlandi, A. Coolen, J.-N. Louis and E. Marchal, lawyers)

Defendant: European Parliament

Subject-matter and description of the proceedings

Annulment of the appointing authority's decision of 10 November 2008 not to promote the applicant to grade AD 12 for the 2006 promotion exercise.

Form of order sought

— annul the European Parliament's decision not to promote the applicant to grade AD 12 for the 2006 promotion exercise;

— order the European Parliament to pay the costs.

Notice No | Contents (continued) | Page

2009/C 220/77 Case T-270/09: Action brought on 13 July 2009 — PVS v OHIM — MeDiTA Medizinischer Kurierdienst (medidata) 36

2009/C 220/78 Case T-271/09: Action brought on 14 July 2009 — Sobieski zu Schwarzenberg v OHIM — British-American Tobacco Polska (Romuald Prinz Sobieski zu Schwarzenberg) 37

2009/C 220/79 Case T-272/09: Action brought on 10 July 2009 — Pineapple Trademarks v OHIM — Dalmau Salmons (KUSTOM) 37

2009/C 220/80 Case T-274/09: Action brought on 14 July 2009 — Deutsche Bahn v OHIM — DSB (IC4) 38

2009/C 220/81 Case T-275/09: Action brought on 16 July 2009 — Sepracor Pharmaceuticals (Ireland) v Commission 38

2009/C 220/82 Case T-278/09: Action brought on 17 July 2009 — Verband Deutscher Prädikats- und Qualitätsweingüter v OHIM (GG) 39

2009/C 220/83 Case T - 279/09: Action brought on 9 July 2009 — Aiello v OHIM — Cantoni ITC (100 % Capri) 39

2009/C 220/84 Case T-282/09: Action brought on 17 July 2009 — Fédération Internationale des Logis v OHIM ... 40

2009/C 220/85 Case T-285/09: Action brought on 17 July 2009 — CEVA v Commission 40

2009/C 220/86 Case T-286/09: Action brought on 22 July 2009 — Intel v Commission 41

2009/C 220/87 Case T-291/09: Action brought on 27 July 2009 — Carrols v OHIM — Gambettola (Pollo Tropical CHICKEN ON THE GRILL) 42

2009/C 220/88 Case T-297/08: Order of the Court of First Instance of 14 July 2009 — Mepos Electronics v OHIM (MEPOS) 42

European Union Civil Service Tribunal

2009/C 220/89 Case F-65/09: Action brought on 2 July 2009 — Marcuccio v Commission 43

2009/C 220/90 Case F-67/09: Action brought on 10 July 2009 — Angulo Sanchez v Council 43

2009/C 220/91 Case F-68/09: Action brought on 24 July 2009 — Barbin v Parliament 43

EN

2009 SUBSCRIPTION PRICES (excluding VAT, including normal transport charges)

EU Official Journal, L + C series, paper edition only	22 official EU languages	EUR 1 000 per year (*)
EU Official Journal, L + C series, paper edition only	22 official EU languages	EUR 100 per month (*)
EU Official Journal, L + C series, paper + annual CD-ROM	22 official EU languages	EUR 1 200 per year
EU Official Journal, L series, paper edition only	22 official EU languages	EUR 700 per year
EU Official Journal, L series, paper edition only	22 official EU languages	EUR 70 per month
EU Official Journal, C series, paper edition only	22 official EU languages	EUR 400 per year
EU Official Journal, C series, paper edition only	22 official EU languages	EUR 40 per month
EU Official Journal, L + C series, monthly CD-ROM (cumulative)	22 official EU languages	EUR 500 per year
Supplement to the Official Journal (S series), tendering procedures for public contracts, CD-ROM, two editions per week	multilingual: 23 official EU languages	EUR 360 per year (= EUR 30 per month)
EU Official Journal, C series — recruitment competitions	Language(s) according to competition(s)	EUR 50 per year

(*) Sold in single issues: up to 32 pages: EUR 6
from 33 to 64 pages: EUR 12
over 64 pages: Priced individually.

Subscriptions to the *Official Journal of the European Union*, which is published in the official languages of the European Union, are available for 22 language versions. The Official Journal comprises two series, L (Legislation) and C (Information and Notices).

A separate subscription must be taken out for each language version.

In accordance with Council Regulation (EC) No 920/2005, published in Official Journal L 156 of 18 June 2005, the institutions of the European Union are temporarily not bound by the obligation to draft all acts in Irish and publish them in that language. Irish editions of the Official Journal are therefore sold separately.

Subscriptions to the Supplement to the Official Journal (S Series — tendering procedures for public contracts) cover all 23 official language versions on a single multilingual CD-ROM.

On request, subscribers to the *Official Journal of the European Union* can receive the various Annexes to the Official Journal. Subscribers are informed of the publication of Annexes by notices inserted in the *Official Journal of the European Union*.

Sales and subscriptions

Priced publications issued by the Publications Office are available from our commercial distributors. The list of commercial distributors is available at:

http://publications.europa.eu/others/agents/index_en.htm

EUR-Lex (http://eur-lex.europa.eu) offers direct access to European Union legislation free of charge. The *Official Journal of the European Union* can be consulted on this website, as can the Treaties, legislation, case-law and preparatory acts.

For further information on the European Union, see: http://europa.eu

Publications Office
Publications.europa.eu

OFFICE FOR OFFICIAL PUBLICATIONS OF THE EUROPEAN COMMUNITIES
L-2985 LUXEMBOURG

EN