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(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS AND BODIES

COURT OF JUSTICE

(2009/C 256/01)

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

OJ C 244, 10.10.2009

Past publications

OJ C 233, 26.9.2009

OJ C 220, 12.9.2009

OJ C 205, 29.8.2009

OJ C 193, 15.8.2009

OJ C 180, 1.8.2009

OJ C 167, 18.7.2009

These texts are available on:

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Fourth Chamber) of 3 September 2009 — Moser Baer India Ltd v Council of the European Union, Commission of the European Communities, Committee of European CD-R and DVD+/-R Manufacturers (CECMA)

(Case C-535/06 P) [1]

(Appeal — Dumping — Imports of recordable compact discs originating in India — Regulation (EC) No 960/2003 — Calculation of the amount of countervailable subsidy — Determination of injury — Article 8(7) of Regulation (EC) No 2026/97)

(2009/C 256/02)

Language of the case: English

Parties

Appellant: Moser Baer India Ltd (represented by: K. Adamantopoulos, dikigoros, and R. MacLean, Solicitor)

Other parties to the proceedings: Council of the European Union (represented by: J.-P. Hix, Agent, and by G. Berrisch, Rechtsanwalt), Commission of the European Communities (represented by: H. van Vliet and T. Scharf, Agents), Committee of European CD-R and DVD+/-R Manufacturers (CECMA)

Re:

Appeal brought against the judgment of the Court of First Instance (Fourth Chamber) of 4 October 2006 in Case T-300/03 *Moser Baer India* v *Council*, which dismissed an action for annulment of Regulation (EC) No 960/2003 of 2 June 2003 imposing a definitive countervailing duty on imports of recordable compact discs originating in India (OJ 2003 L 138, p. 1), in so far as it concerns the appellant.

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Moser Baer India Ltd to pay the costs;*

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

[1] OJ C 69, 24.3.2007.

Judgment of the Court (Fourth Chamber) of 3 September 2009 — European Parliament v Council of the European Union

(Case C-166/07) [1]

(Action for annulment — Regulation (EC) No 1968/2006 — Community financial contributions to the International Fund for Ireland — Choice of legal basis)

(2009/C 256/03)

Language of the case: French

Parties

Applicant: European Parliament (represented by: I. Klavina, L. Visaggio and A. Troupiotis, Agents)

Defendants: Council of the European Union (represented by: A. Vitro and M. Moore, Agents)

Intervener in support of the defendant: Commission of the European Communities (represented by: L. Flynn and A. Steiblytė, Agents), Ireland (represented by: D. O'Hagen, Agent), United Kingdom of Great Britain and Northern Ireland (represented by: S. Behzadi-Spencer, Agent and D.W. Anderson QC, Barrister)

Re:

Action for annulment of Council Regulation (EC) No 1968/2006 of 21 December 2006 concerning Community financial contributions to the International Fund for Ireland (2007 to 2010) (OJ 2006 L 409, p. 86 and corrigendum in OJ 2007 L 36, p. 31) — Choice of legal basis — Article 308 EC (Consultation of the Parliament/Unanimity of the Council) — Strengthening of economic and social cohesion — Specific actions necessary in addition to those carried out in the context of the Structural Funds — Consolidation of the peace process in Northern Ireland — Article 159 EC (codecision procedure)

Operative part of the judgment

The Court:

1. *Annuls Council Regulation (EC) No 1968/2006 of 21 December 2006 concerning Community financial contributions to the International Fund for Ireland (2007 to 2010).*

2. *Maintains the effects of Regulation No 1968/2006 until the entry into force, within a reasonable period, of a new regulation adopted on an appropriate legal basis.*

3. *Orders that the annulment of Regulation No 1968/2006 shall not affect the validity of payments made or of undertakings given under that regulation.*

4. *Orders the European Parliament and the Council of the European Union to bear their own respective costs.*

5. *Orders Ireland, the United Kingdom of Great Britain and Northern Ireland and the Commission of the European Communities to bear their own respective costs.*

([1]) OJ C 155, 7.7.2007.

Judgment of the Court (Third Chamber) of 3 September 2009 — Papierfabrik August Koehler AG, Bolloré SA, Distribuidora Vizcaína de Papeles SL v Commission of the European Communities

(Joined Cases C-322/07 P, C-327/07 P and C-338/07 P) ([1])

(Appeals — Agreements, decisions and concerted practices — Carbonless paper — Inconsistency between the statement of objections and the contested decision — Infringement of the rights of the defence — Consequences — Distortion of the clear sense of the evidence — Participation in the infringement — Duration of the infringement — Regulation No 17 — Article 15(2) — Guidelines on the method of setting fines — Principle of equal treatment — Principle of proportionality — Obligation to state the reasons on which the decision is based — Reasonable period for duration of proceedings before the Court of First Instance)

(2009/C 256/04)

Languages of the case: German, French and Spanish

Parties

Appellants: Papierfabrik August Koehler AG (represented by: I. Brinker and S. Hirsbrunner, Rechtsanwälte, J. Schwarze, professeur), Bolloré SA (represented by: C. Momège and P. Gassenbach, avocats), Distribuidora Vizcaína de Papeles SL (represented by: E. Pérez Medrano and T. Díaz Utrilla, abogados)

Other party to the proceedings: Commission of the European Communities (represented by: W. Mölls and F. Castillo de la Torre, acting as Agents, H.-J. Freund, Rechtsanwalt, N. Coutrelis, avocat)

Re:

Appeal brought against the judgment of the Court of First Instance (Fifth Chamber) of 26 April 2007 in Joined Cases T-109/02, T-118/02, T-122/02, T-125/02, T-126/02, T-128/02, T-129/02, T-132/02 and T-136/02 *Bolloré and Others* v *Commission* — Price fixing agreement in the carbonless paper sector — Infringement of rights of defence in respect of the proof that the appellant participated in the infringement committed prior to October 1993 (erroneous, insufficient and contradictory proof) — Infringement of the principles of equal treatment and proportionality in respect of the setting of the amount of the fine (since the appellant is a family business which does not have access to capital markets)

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the Court of First Instance of the European Communities of 26 April 2007 in Joined Cases T-109/02, T-118/02, T-122/02, T-125/02, T-126/02, T-128/02, T-129/02, T-132/02 and T-136/02 Bolloré and Others v Commission in so far as it concerns Bolloré SA.*

2. *Annuls Commission Decision 2004/337/EC of 20 December 2001 relating to a proceeding pursuant to Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case COMP/E-1/36.212 — Carbonless paper) in so far as it relates to Bolloré SA.*

3. *Dismisses the appeals brought by Papierfabrik August Koehler AG and Distribuidora Vizcaína de Papeles SL.*

4. *Orders the Commission of the European Communities to pay the costs at first instance and on appeal in Case C-327/07 P.*

5. *Orders Papierfabrik August Koehler AG to pay the costs in Case C-322/07 P and Distribuidora Vizcaína de Papeles SL to pay the costs in Case C-338/07 P.*

([1]) OJ C 223, 22.9.2007.

Judgment of the Court (Third Chamber) of 3 September 2009 (Reference for a preliminary ruling from the Rechtbank te 's-Gravenhage (Netherlands)) — AHP Manufacturing BV v Bureau voor de Industriële Eigendom

(Case C-482/07) ([1])

(Patent law — Proprietary medicinal products — Regulations (EEC) No 1768/92 and (EC) No 1610/96 — Supplementary protection certificate for medicinal products — Conditions for granting certificates to two or more holders of basic patents for the same product — Clarification on the existence of pending applications)

(2009/C 256/05)

Language of the case: Dutch

Referring court

Rechtbank te 's-Gravenhage

Parties to the main proceedings

Applicant: AHP Manufacturing BV

Defendant: Bureau voor de Industriële Eigendom

Re:

Reference for a preliminary ruling — Rechtbank te 's-Gravenhage — Interpretation of Articles 3(1)(c), 7(1) and (2), 9 and 13 of Council Regulation (EEC) No 1768/92 of 18 June 1992 concerning the creation of a supplementary protection certificate for medicinal products (OJ 1992 L 182, p. 1) and of recital 17 and the second sentence of Article 3(2) 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 (OJ 1996 L 198, p. 30) — Issue of a certificate to the holder of a basic patent for a product which, at the time of submission of the application for a certificate, is the subject of one or more certificates issued to one or more holders of other basic patents

Operative part of the judgment

Article 3(c) of Council Regulation (EEC) No 1768/92 of 18 June 1992 concerning the creation of a supplementary protection certificate for medicinal products, considered in the light of the second sentence of Article 3(2) 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, must be interpreted as not precluding the grant of a supplementary protection certificate to the holder of a basic patent for a product for which, at the time the certificate application is submitted, one or more certificates have already been granted to one or more holders of one or more other basic patents.

([1]) OJ C 8, 12.1.2008.

Judgment of the Court (First Chamber) of 3 September 2009 (reference for a preliminary ruling from the Amtsgericht Lahr (Germany)) — Pia Messner v Firma Stefan Krüger

(Case C-489/07) ([1])

(Directive 97/7/EC — Consumer protection — Distance contracts — Exercise by the consumer of the right of withdrawal — Compensation for use to be paid to the seller)

(2009/C 256/06)

Language of the case: German

Referring court

Amtsgericht Lahr

Parties to the main proceedings

Applicant: Pia Messner

Defendant: Firma Stefan Krüger

Re:

Reference for a preliminary ruling — Amtsgericht Lahr — Interpretation of Article 6(1) and (2) of Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts (OJ 1997 L 144, p. 19) — Exercise of the right to revoke by the consumer — Compensation for use to be paid to the seller

Operative part of the judgment

The provisions of the second sentence of Article 6(1) and Article 6(2) of Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts must be interpreted as precluding a provision of national law which provides in general that, in the case of withdrawal by a consumer within the withdrawal period, a seller may claim compensation for the value of the use of the consumer goods acquired under a distance contract.

However, those provisions do not prevent the consumer from being required to pay compensation for the use of the goods in the case where he has made use of those goods in a manner incompatible with the principles of civil law, such as those of good faith or unjust enrichment, on condition that the purpose of that directive and, in particular, the functionality and efficacy of the right of withdrawal are not adversely affected, this being a matter for the national court to determine.

([1]) OJ C 22, 26.1.2008.

Judgment of the Court (First Chamber) of 3 September 2009 — Aceites del Sur-Coosur SA, formerly Aceites del Sur v Koipe Corporación, Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-498/07 P) ([1])

(Appeal — Community trade mark — Regulation (EC) No 40/94 — Article 8(1)(b) — Figurative mark La Española — Overall assessment of the likelihood of confusion — Decisive element)

(2009/C 256/07)

Language of the case: Spanish

Parties

Appellant: Aceites del Sur-Coosur SA, formerly Aceites del Sur SA (represented by: J.-M. Otero Lastres and R. Jimenez Diaz, abogados)

Other parties to the proceedings: Koipe Corporación SL (represented by: M. Fernández de Béthencourt, abogado), Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: J. García Murillo, Agent)

Re:

Appeal against the judgment of the Court of First Instance (First Chamber) of 12 September 2007 in Case T-363/04 *Koipe* v *OHIM and Aceites del Sur (La Española)*, by which the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 11 May 2004 (Case R 1109/2000-4) was altered so as to hold that the appeal brought by the applicant before the Board of Appeal is well founded and, consequently, that the opposition is to be upheld.

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*
2. *Orders Aceites del Sur-Coosur SA to pay, in addition to its own costs, those of Koipe Corporación SL;*
3. *Orders the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) to bear its own costs.*

([1]) OJ C 22, 26.1.2008.

Judgment of the Court (First Chamber) of 3 September 2009 — William Prym GmbH & Co. KG, Prym Consumer GmbH & Co. KG v Commission of the European Communities

(Case C-534/07 P) ([1])

(Appeal — Competition — Agreements, decisions and concerted practices — European haberdashery market (needles) — Market sharing agreements — Infringement of the rights of the defence — Obligation to state the reasons on which the decision is based — Fine — Guidelines — Gravity of the infringement — Actual impact on the market — Implementation of the cartel)

(2009/C 256/08)

Language of the case: German

Parties

Appellants: William Prym GmbH & Co. KG, Prym Consumer GmbH & Co. KG (represented by: H.-J. Niemeyer, C. Herrmann and M. Röhrig, Rechtsanwälte)

Other party to the proceedings: Commission of the European Communities (represented by: F. Castillo de la Torre and K. Mojzesowicz, acting as Agents)

Re:

Appeal brought against the judgment of the Court of First Instance (Second Chamber) of 12 September 2007 in Case T-30/05 *Prym and Prym Consumer* v *Commission*, in which the Court fixed the amount of the fine imposed on the applicants by Article 2 of Commission Decision C(2004) 4221 final of 26 October 2004 relating to a procedure for the application of Article 81 EC (Case COMP/F-1/38.338-PO/Needles) at EUR 27 million — Agreement, decision or concerted practice in the market for haberdashery (needles)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*
2. *Orders William Prym GmbH & Co. KG and Prym Consumer GmbH & Co. KG to pay the costs.*

([1]) OJ C 37, 9.2.2008.

Judgment of the Court (Second Chamber) of 3 September 2009 (Reference for a preliminary ruling from the Corte suprema di cassazione (Italy)) — Amministrazione dell'Economia e delle Finanze, Agenzia delle Entrate v Fallimento Olimpiclub Srl

(Case C-2/08) ([1])

(VAT — Primacy of Community law — Provision of national law laying down the principle of res judicata)

(2009/C 256/09)

Language of the case: Italian

Referring court

Corte suprema di cassazione

Parties to the main proceedings

Applicants: Amministrazione dell'Economia e delle Finanze, Agenzia delle Entrate

Defendant: Fallimento Olimpiclub Srl

Re:

Reference for a preliminary ruling — Corte suprema di cassazione — Interpretation of Directive 77/388/EEC: Sixth Council Directive 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) — Primacy of Community law — Provision of national law laying down the principle of *res judicata* leading to a result which is incompatible with Community VAT law

Operative part of the judgment

Community law precludes the application, in circumstances such as those of the case before the referring court, of a provision of national law, such as Article 2909 of the Italian Civil Code, in a dispute concerning value added tax and relating to a tax year for which

no final judicial decision has yet been delivered, to the extent that it would prevent the national court seised of that dispute from taking into consideration the rules of Community law concerning abusive practice in the field of value added tax.

(1) OJ C 79, 29.3.2008.

Judgment of the Court (Seventh Chamber) of 3 September 2009 — Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland

(Case C-457/08) (1)

(Failure of a Member State to fulfil obligations — Directive 2005/14/EC — Insurance against civil liability — Motor vehicles — Failure to transpose within the prescribed period)

(2009/C 256/10)

Language of the case: English

Parties

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

Defendant: United Kingdom of Great Britain and Northern Ireland (represented by: L. Seeboruth, acting as Agent)

Re:

Failure of a Member State to fulfil obligations — Failure to adopt, within the prescribed period, the provisions necessary to comply with Directive 2005/14/EC of the European Parliament and of the Council of 11 May 2005 amending Council Directives 72/166/EEC, 84/5/EEC, 88/357/EEC and 90/232/EEC and Directive 2000/26/EC of the European Parliament and of the Council relating to insurance against civil liability in respect of the use of motor vehicles (OJ 2005 L 149, p. 14)

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt, within the prescribed period, the laws, regulations and administrative provisions necessary to comply with Directive 2005/14/EC of the European Parliament and of the Council of 11 May 2005 amending Council Directives 72/166/EEC, 84/5/EEC, 88/357/EEC and 90/232/EEC and Directive 2000/26/EC of the European Parliament and of the Council relating to insurance against civil liability in respect of the use of motor vehicles, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under Directive 2005/14/EC;*

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

(1) OJ C 313, 6.12.2008.

Judgment of the Court (Eighth Chamber) of 3 September 2009 — Commission of the European Communities v Republic of Estonia

(Case C-464/08) (1)

(Failure of a Member State to fulfil obligations — Directive 2005/65/EC — Transport policy — Security of ports — Failure to transpose within the prescribed period)

(2009/C 256/11)

Language of the case: Estonian

Parties

Applicant: Commission of the European Communities (represented by K. Simonsson and K. Saaremäel-Stoilov, acting as Agents)

Defendant: Republic of Estonia (represented by L. Uibo, acting as Agent)

Re:

Failure of a Member State to fulfil obligations — Failure to take within the prescribed period the necessary measures to comply with Directive 2005/65/EC of the European Parliament and of the Council of 26 October 2005 on enhancing port security (OJ 2005 L 310, p. 28)

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt within the prescribed period all the laws, regulations and administrative provisions necessary to comply with Directive 2005/65/EC of the European Parliament and of the Council of 26 October 2005 on enhancing port security, the Republic of Estonia has failed to fulfil its obligations under that directive;*

2. *Orders the Republic of Estonia to pay the costs.*

(1) OJ C 327 of 20.12.2008.

Judgment of the Court (Eighth Chamber) of 3 September 2009 — Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland

(Case C-527/08) [1]

(Failure of a Member State to fulfil obligations — Directive 2005/65/EC — Transport policy — Port facility security — Failure to transpose within the prescribed period)

(2009/C 256/12)

Language of the case: English

Parties

Applicant: Commission of the European Communities (represented by: K. Simonsson and A.-A. Gilly, Agents)

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

Re:

Failure of a Member to fulfil obligations — Failure to adopt, within the prescribed period, the measures necessary to comply with Directive 2005/65/EC of the European Parliament and of the Council of 26 October 2005 on enhancing port security (OJ 2005 L 310, p. 28)

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt, within the period prescribed the laws, regulations and administrative provisions necessary to comply with Directive 2005/65/EC of the European Parliament and of the Council of 26 October 2005 on enhancing port security, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under Article 18 of that directive;*
2. *Orders the United Kingdom of Great Britain and Northern Ireland to pay the costs.m*

[1] OJ C 19, 24.1.2009.

Action brought on 22 July 2009 — Commission of the European Communities v Portuguese Republic

(Case C-280/09)

(2009/C 256/13)

Language of the case: Portuguese

Parties

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

Defendant: Portuguese Republic

Form of order sought

— a declaration that, by failing to adopt the national measures required for the application of Articles 10 and 12 of Regulation (EC) No 273/2004 [1] of the European Parliament and of the Council of 11 February 2004 on drug precursors, by failing to communicate them in accordance with Article 16 of that act and by failing to adopt the national measures required for the application of Articles 26(3) and 31 of Council Regulation (EC) No 111/2005 [2] of 22 December 2004 laying down rules for the monitoring of trade between the Community and third countries in drug precursors, the Portuguese Republic has failed to fulfil its obligations under Regulations (EC) No 273/2004 and (EC) No 111/2005;

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

Pleas in law and main arguments

Regulation No 273/2004 entered into force on 18 August 2005 and Regulation No 111/2005 entered into force on 15 February 2005, being applicable from 18 August 2005.

Not having received any communication at all of any measures taken by the Portuguese Republic to give effect to the abovementioned provisions of those two regulations, and not being in possession of any other information that might allow it to conclude that the necessary measures have been adopted, the Commission supposes that the Portuguese Republic has not yet adopted those measures and so has not fulfilled its obligations under those regulations.

[1] OJ 2004 L 47, p. 1
[2] OJ 2005 L 22, p. 1

Action brought on 22 July 2009 — Commission of the European Communities v Kingdom of Spain

(Case C-281/09)

(2009/C 256/14)

Language of the case: Spanish

Parties

Applicant: Commission of the European Communities (represented by: L. Lozano Palacios and C. Vrignon, Agents)

Defendant: Kingdom of Spain

Form of order sought

— Declare that, by allowing flagrant, repeated and serious infringements of the rules laid down in Article 18(2) of Council Directive of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of

television broadcasting activities (89/552/EEC [1]), the Kingdom of Spain has failed to fulfil its obligations under Article 3(2) of that directive, read in conjunction with Article 10 of the EC Treaty;

— Order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

The Commission submits that the restrictive interpretation which the Kingdom of Spain gives to the concept of advertising spots — which results in certain advertising practices (in particular, infomercials, telepromotion spots, sponsorship spots and micro-advertising spots) not being regarded as advertising spots, and therefore not being subject to the hourly limits imposed by Directive 89/552/EEC — infringes that directive.

[1] OJ 1989 L 298, p. 23.

Action brought on 23 July 2009 — Commission of the European Communities v Federal Republic of Germany

(Case C-284/09)

(2009/C 256/15)

Language of the case: German

Parties

Applicant: Commission of the European Communities (represented by: R. Lyal and B.-R. Killmann, acting as Agents)

Defendant: Federal Republic of Germany

Form of order sought

— Declare that, by taxing dividends paid to a company with its registered office in another Member State or in the European Economic Area at a higher rate than dividends paid to a company with its registered office in the Federal Republic of Germany, the Federal Republic of Germany has failed to fulfil its obligations under Article 56 EC where the minimum threshold for the parent company's shareholdings in the share capital of the subsidiary set out in Directive 90/435 [1] is not reached, and, with regard to the Republic of Iceland and the Kingdom of Norway, under Article 40 of the Agreement on the European Economic Area.

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

Pleas in law and main arguments

The subject-matter of the present action is the German law on the taxation of dividends. The provisions of the German income tax law lay down that parent companies with unlimited tax liability in Germany can offset the withholding tax paid during the tax assessment procedure against their liability to corporation tax. Consequently, German parent companies were exempted from the withholding tax. Parent companies with limited tax liability in Germany, on the other hand, have the possibility of being fully exempted from the withholding tax only where the applicable minimum threshold for the relevant parent company's shareholdings in the share capital of the subsidiary as set out in Directive 90/435 is reached. Below that minimum threshold it is not possible, under German law, for parent companies with limited tax liability to be exempted in the same way as companies with unlimited tax liability. As a result of that law, therefore, German dividend payments of parent companies from other Member States were treated for tax purposes differently from those of parent companies with unlimited tax liability in Germany.

The Commission regards that discrimination as incompatible with the principle of the free movement of capital as tax payers resident in other Member States or in the EEA could, as a result, be dissuaded from making investments in Germany.

It follows from the free movement of capital, which is guaranteed by the EC Treaty and the EEA Agreement, that, if a Member State grants advantages with regard to the taxation of dividends, those advantages cannot be restricted to domestic recipients of dividends. Fiscal discrimination between domestic recipients of dividends and those of other Member States or EEA States is prohibited; domestically granted tax advantages are to be extended also to shareholders from other Member States or EEA States. Where the relevant Member State has also, as in the present case, concluded a double taxation convention with the other Member States, that Member State may rely on that convention only if its rules concerning offsetting fully compensate the possible economic multiple taxation of shareholders from other Member States or EEA States, and in the same way as is guaranteed to domestic shareholders by its own tax system.

That is not, however, the case with respect to the conventions concluded by Germany with the other Member States; in order to prevent double taxation, those conventions provide, indeed, for rules concerning offsetting the German withholding tax against the tax burden in the Member State of the parent company, however, the amount to be taken into account may not exceed the part of the tax assessed prior to the offset, which is imposed on income from Germany. The offset is consequently restricted, a refund of possible funds from the difference between the tax burden in the relevant Member State and the German withholding tax is not provided for in that convention and is therefore excluded.

With regard to a possible justification of the present infringement, it should be noted that Germany has presented no overriding reason in the public interest in the course of the pre-litigation procedure which would be capable of justifying the contested tax system.

(1) Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (OJ 1990 L 225, p. 6).

Reference for a preliminary ruling from First-tier Tribunal (Tax Chamber) (United Kingdom) made on 24 July 2009 — British Sky Broadcasting Group plc v The Commissioners for Her Majesty's Revenue & Customs

(Case C-288/09)

(2009/C 256/16)

Language of the case: English

Referring court

First-tier Tribunal (Tax Chamber)

Parties to the main proceedings

Applicant: British Sky Broadcasting Group plc

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

Questions referred

1. Is a set-top box with the specifications of the Sky+ set-top box model DRX 280 to be classified under subheading 8528 71 13, as set out in Commission Regulation 1214/2007 (1) amending Annex I to Council Regulation 2658/87, despite the Explanatory Notes to the CN adopted by the Commission on 7 May 2008 (2008/C 112/03) concerning subheading 8521 90 00 and subheading 8528 71 13?

2. Does Article 12(5)(a) of Council Regulation (EEC) No 2913 (2) of 12 October 1992 establishing the Community Customs Code, as amended, oblige a national customs authority to issue binding tariff informations that accord with the explanatory notes to the CN, unless and until those explanatory notes have been declared to be in conflict with the wording of the relevant provisions of the CN, including the General Rules for the Interpretation of the CN, or may the national customs authorities form their own individual view of the matter and disregard the explanatory note in the event they consider there to be such a conflict?

3. In the event that a set-top box with the specifications of the Sky+ set-top box model DRX 280 were to be classified under CN subheading 8521 90 00, would the application of a positive rate of customs duty be unlawful as a matter of Community law, as a consequence of violating the Community's obligations under the Information Technology Agreement ('ITA') and Article II: l(b) of the General Agreement on Tariffs and Trade 1994 or does classification under heading 8521 entail a conclusion that the product in question falls outside the scope of the relevant part of the ITA?

(1) Commission Regulation (EC) No 1214/2007 of 20 September 2007 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff
OJ L 286, p. 1
(2) OJ L 302, p. 1

Reference for a preliminary ruling from First-tier Tribunal (Tax Chamber) (United Kingdom) made on 24 July 2009 — Pace plc v The Commissioners for Her Majesty's Revenue & Customs

(Case C-289/09)

(2009/C 256/17)

Language of the case: English

Referring court

First-tier Tribunal (Tax Chamber)

Parties to the main proceedings

Applicant: Pace plc

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

Questions referred

1. Is a set top box with a communication function ('STB') and a hard disk drive ('HDD') to be classified under Combined Nomenclature ('CN') subheading 8528 71 13, as set out in Commission Regulation 1549/2006 (1) and Commission Regulation 1214/2007 (2) amending Annex 1 to Council Regulation 2658/87, despite the Explanatory Notes to the CN ('CNEN') adopted by the European Commission on 7 May 2008 (2008/C113/02) concerning CN subheading 8521 90 00 and subheading 8528 71 13?

2. In the event that a STB with a HDD with the specifications of a STB-HDD were to be classified under CN subheading 8521 90 00, would the application of a positive rate of customs duty be unlawful as a matter of Community law, as a consequence of violating the Community's obligations under the Information Technology Agreement and Article II:1 (b) of the General Agreement on Tariffs and Trade 1994 or does classification under heading 8521 entail a conclusion that the product in question falls outside the scope of the relevant part of the ITA?

3. Are the provisions of Article 12(5)(a)(i) to be understood to mean that the BTI dated 8 April 2005 relied upon by Pace plc automatically ceased to be valid after 31 December 2006 on the basis that it no longer conformed to the law laid down in Commission Regulation 1549/2006. In particular, is Article 12(5)(a)(i) to be interpreted in such a way that Commission Regulation 1549/2006 does not fall within the concept of a 'regulation' for the purposes of that Article either because it is an annual update to the CN or because it is not a specific classification regulation.

4. Are the provisions of Article 12 (6) of the Customs Code to be understood to mean that where an annual CN update is adopted which contains no provision confirming the extent of an available grace period to BTI holders, that such holders shall not be entitled to a grace period, or should they be entitled to the usual grace period of six months for Commission classification regulations under the principle of legitimate expectation?

([1]) Commission Regulation (EC) No 1549/2006 of 17 October 2006 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff
OJ L 301, p. 1

([2]) Commission Regulation (EC) No 1214/2007 of 20 September 2007 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff
OJ L 286, p. 1

Action brought on 28 July 2009 — Commission of the European Communities v Kingdom of Spain

(Case C-295/09)

(2009/C 256/18)

Language of the case: Spanish

Parties

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

Defendant: Kingdom of Spain

Form of order sought

— declare that, by not having adopted the laws, regulations and administrative measures 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/EEC and repealing Council Directive 84/253/EEC or, in any event, by not having communicated them to the Commission, the Kingdom of Spain has failed to fulfil its obligations under that Directive.

— order Kingdom of Spain to pay the costs.

Pleas in law and main arguments

The period prescribed to transpose Directive 2006/43/EC into national law ended on 28 June 2008.

([1]) OJ L 157, p. 87

Action brought on 30 July 2009 — Commission of the European Communities v Italian Republic

(Case C-302/09)

(2009/C 256/19)

Language of the case: Italian

Parties

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

Defendant: Italian Republic

Form of order sought

— Declare that, by failing to take, within the prescribed time-limits, all the measures necessary to withdraw the aid scheme considered unlawful and incompatible with the common market by Commission Decision 2000/394/EC of 25 November 1999 on aid to firms in Venice and Chioggia by way of relief from social security contributions under Laws Nos 30/1997 and 206/1995 (notified on 10 January 2000 under document number C(1999) 4268) (OJ 2000 L 150, p. 50) and to recover from the beneficiaries the aid granted under that scheme, the Italian Republic has failed to fulfil its obligations under Articles 2, 5 and 6 of that decision and under the EC Treaty;

— order the Italian Republic to pay the costs.

Pleas in law and main arguments

The time-limit within which Italy was to have withdrawn the scheme and recovered the aid unlawfully granted expired two months after notification of the decision. More than nine years later, the Italian authorities has recovered less than 2 %.

Action brought on 30 July 2009 — Commission v Italian Republic

(Case C-303/09)

(2009/C 256/20)

Language of the case: Italian

Parties

Applicant: Commission of the European Communities (represented by: L. Flynn and E. Righini, agents)

Defendant: Italian Republic

Form of order sought

— Declare that, by failing to take, within the prescribed time-limits, all the measures necessary to withdraw the aid scheme considered unlawful and incompatible with the common market by Commission Decision 2005/315/EC of 20 October 2004 on the prolongation of the 'Tremonti-bis' law in favour of municipalities seriously affected by natural disaters in 2002 (notified on 22 October 2004 under document No C(2004) 3893) (OJ 2005 L 100, p. 46) and to recover from the beneficiaries the aid granted under that scheme, the Italian Republic has failed to fulfil its obligations under Articles 2, 5 and 6 of that decision and the EC Treaty.

— Order the Italian Republic to pay the costs.

Pleas in law and main arguments

The time limit by which Italian Republic was required to withdraw the aid scheme and recover the unlawfully paid aid expired two months after the date of notification of the decision in question. More than four years later, the Italian authorities have yet to recover more than 25 % of the aid granted, in respect of which an order for payment has been issued, and have yet to communicate to the Commission the amount of aid paid to beneficiaries who were not entitled in the first place to benefit from the scheme.

Action brought on 30 July 2009 — Commission v Italian Republic

(Case C-304/09)

(2009/C 256/21)

Language of the case: Italian

Parties

Applicant: Commission of the European Communities (represented by: L. Flynn and E. Righini, agents)

Defendant: Italian Republic

Form of order sought

— Declare that, by failing to take, within the prescribed time-limits, all the measures necessary to withdraw the aid scheme considered unlawful and incompatible with the common market by Commission Decision 2006/261/EC of 16 March 2005 on aid scheme C 8/2004 (ex NN 164/2003) implemented by Italy in favour of newly listed companies (notified on 17 March 2005 under document No C(2005) 591) (OJ 2006 L 94, p. 42) and to recover from the beneficiaries the aid granted under that scheme, the Italian Republic has failed to fulfil its obligations under Articles 2, 3 and 4 of that decision and the EC Treaty.

— Order the Italian Republic to pay the costs.

Pleas in law and main arguments

The time-limit within which Italian Republic was required to withdraw the aid scheme and recover the unlawfully paid aid expired two months after the date of notification of the decision in question. More than four years later, the Italian authorities have recovered only approximately 25 % of the aid.

Action brought on 30 July 2009 — Commission v Italian Republic

(Case C-305/09)

(2009/C 256/22)

Language of the case: Italian

Parties

Applicant: Commission of the European Communities (represented by: L. Flynn and E. Righini, Agents)

Defendant: Italian Republic

Form of order sought

— Declare that, by failing to take, within the prescribed time-limits, all the measures necessary to withdraw the aid scheme considered unlawful and incompatible with the common market by Commission Decision 2005/919/EC of 14 December 2004 on the aid scheme for urgent measures to promote development and correct the trend in public finances (notified on 17 December 2004 under document No C(2004) 4746 (OJ 2005 L 335, p. 39) and to recover from the beneficiaries the aid granted under that scheme, the Italian Republic has failed to fulfil its obligations under Articles 2, 3 and 4 of that decision and the EC Treaty.

— Order the Italian Republic to pay the costs.

Pleas in law and main arguments

The time limit within which Italian Republic was required to withdraw the aid scheme and recover the unlawfully paid aid expired two months after the date of notification of the decision in question. More than four years later, the Italian authorities have recovered only approximately 65 % of the aid, in respect of which an order for payment has been issued, and have yet to communicate to the Commission the amount of aid paid to beneficiaries who were not entitled in the first place to benefit from scheme.

Action brought on 4 August 2009 — Commission of the European Communities v Republic of Poland

(Case C-311/09)

(2009/C 256/23)

Language of the case: Polish

Parties

Applicant: Commission of the European Communities (represented by: D. Triantafyllou and K. Herrmann, acting as Agents)

Defendant: Republic of Poland

Form of order sought

— declare that, by charging VAT for the supply of international road transport services by taxable persons having their seat or permanent place of residence outside Poland in the manner set out in Chapter 13, Paragraph 35(1), (3), (4) and (5), of the Regulation of the Minister for Finance of 27 April 2004, the Republic of Poland has failed to fulfil its obligations under Articles 73, 168 and 273 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax; ([1])

— order the Republic of Poland to pay the costs.

Pleas in law and main arguments

International road transport services are liable to value added tax under the principles defined in Directive 2006/112.

In the Commission's submission, to charge and calculate VAT on international road transport services supplied by taxable persons having their seat or permanent place of residence outside Poland in the manner set out in Chapter 13, Paragraph 35(1), (3), (4) and (5), of the Regulation of the Minister for Finance of 27 April 2004 is incompatible with Articles 73, 168 and 273 of Directive 2006/112. The incompatibility with Article 73 of Directive 2006/112 consists in the fact that in every case the taxable amount is PLN 285, taking account neither of the actual distance covered in Poland by bus nor of the actual payment due for a particular service supplied. The Polish system for collection of VAT does not allow a taxable person supplying international passenger transport services to deduct the VAT on goods acquired during a given tax period for the purposes of the taxed passenger service supplied (for example on fuel), which is contrary to Article 168 of Directive 2006/112. Furthermore, the Polish system for collection of the VAT is incompatible with Article 273 of the directive because it establishes an obligation for taxable persons to submit a return showing the amount of tax to the customs office at the time when the bus carrying passengers enters Poland and to pay that tax at the customs office 'as of the moment when the bus carrying passengers enters national territory', which gives rise to formalities connected with the crossing of frontiers.

In the Commission's submission, the contested system for collecting and calculating VAT cannot be based on Article 281 or Article 395 of Directive 2006/112.

([1]) OJ 2006 L 347, p. 1.

Action brought on 6 August 2009 — Commission of the European Communities v Republic of Austria

(Case C-313/09)

(2009/C 256/24)

Language of the case: German

Parties

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

Defendant: Republic of Austria

Form of order sought

— Declare that, by failing to adopt, in full, the laws, regulations and administrative provisions necessary to implement Council Directive 2006/88/EC of 24 October 2006 on animal health requirements for aquaculture animals and products thereof, and on the prevention and control of certain diseases in aquatic animals [1] (as amended by Commission Directive 2008/53/EC of 30 April 2008 amending Annex IV to Council Directive 2006/88/EC as regards Spring viraemia of carp (SVC) [2]) or by failing to notify the Commission thereof, the Republic of Austria has failed to fulfil its obligations under that directive;

— order the Republic of Austria to pay the costs.

Pleas in law and main arguments

The period prescribed for implementation of the directive expired on 1 May 2008.

[1] OJ 2006 L 328, p. 14.
[2] OJ 2008 L 117, p. 27.

Action brought on 7 August 2009 — Commission of the European Communities v Kingdom of Belgium

(Case C-315/09)

(2009/C 256/25)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: F. Erlbacher and L. de Schietere de Lophem, acting as Agents)

Defendant: Kingdom of Belgium

Form of order sought

— Declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 2006/88/EC of 24 October 2006 on animal health requirements for aquaculture animals and products thereof, and on the prevention and control of certain diseases in aquatic animals, [1] as amended by Commission Directive 2008/53/EC of 30 April 2008 amending Annex IV to Council Directive 2006/88/EC as regards Spring viraemia of carp (SVC), [2] or, in any event, by failing to inform the Commission of those provisions, the Kingdom of Belgium has failed to fulfil its obligations under those directives;

— order the Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

The period for the transposition of Directive 2006/88/EC expired on 1 May 2008 and the period for transposition of Directive 2008/53/EC expired on 1 August 2008. However, at the time the present action was brought, the defendant had not yet adopted all the measures necessary to transpose the directive or, in any event, had not informed the Commission thereof.

[1] OJ 2006 L 328, p. 14.
[2] OJ 2008 L 117, p. 27.

Reference for a preliminary ruling from Court of Appeal (England & Wales) (Civil Division) (United Kingdom) made on 12 August 2009 — Secretary of State for the Home Department v Maria Dias

(Case C-325/09)

(2009/C 256/26)

Language of the case: English

Referring court

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

Parties to the main proceedings

Applicant: Secretary of State for the Home Department

Defendant: Maria Dias

Questions referred

1. If a European Union citizen, present in a Member State of which she is not a national, was, prior to the transposition of Directive 2004/38/EC [1], the holder of a residence permit validly issued pursuant to Article 4(2) of Directive 68/360/EEC [2], but was for a period of time during the currency of the permit voluntarily unemployed, not self-sufficient and outside the qualifications for the issue of such a permit, did that person by reason only of her possession of the permit, remain during that time someone who 'resided legally' in the host Member State for the purpose of later acquiring a permanent right of residence under Article 16(1) of Directive 2004/38/EC?

2. If five years' continuous residence as a worker prior to 30 April 2006 does not qualify to give rise to the permanent right of residence created by Article 16(1) of Directive 2004/38/EC, does such continuous residence as a worker give rise to a permanent right of residence directly pursuant to Article 18(1) of the EU Treaty on the grounds that there is a lacuna in the Directive?

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

(2) Council Directive 68/360/EEC of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families
OJ L 257, p. 13

Appeal brought on 18 August 2009 by the Office for Harmonisation in the Internal Market (Trade Marks and Designs) against the judgment delivered by the Court of First Instance (Fifth Chamber) on 3 June 2009 in Case T-189/07 Frosch Touristik GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-332/09 P)

(2009/C 256/27)

Language of the case: German

Parties

Appellant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: B. Schmidt, Agent)

Other parties to the proceedings: Frosch Touristik GmbH, DSR touristik GmbH

Form of order sought

— Set aside the judgment under appeal and refer the case back to the Court of First Instance;

— Order the other parties to the proceedings to pay the costs of the proceedings at first instance and of the appeal.

Pleas in law and main arguments

This appeal is brought against the judgment of the Court of First Instance annulling the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market of 22 March 2007, by which the Board of Appeal dismissed the respondent's appeal against the decision of the Cancellation Division declaring the Community word mark 'FLUGBÖRSE' invalid in part. The Court of First Instance took the view that the Board of Appeal had erred in its application of Article 51(1)(a) of Regulation (EC) No 40/94 by focusing, in its examination as to whether registration of the mark was precluded by grounds for refusal under Article 7 of Regulation No 40/94 and whether the mark should therefore be declared invalid, on the circumstances and perception as at the date of registration of the mark at issue, instead of the date of filing of the application. According to the judgment under appeal, the only date relevant for the purposes of the assessment of an application for a declaration of invalidity is the date of filing of the application for the mark at issue. Moreover, in support of its view, the Court relied on the argument that that is the only interpretation which avoids a situation in which the probability of the mark losing its registrability increases with the length of the registration procedure. On a re-examination of grounds for refusal put forward subsequently, the examiner may take account of material subsequent to the date of filing of the application for registration only where that material enables conclusions to be drawn on the situation as it was on that date.

The appellant takes the view that the Court of First Instance misinterpreted Article 51(1)(a) of Regulation No 40/94 in so far as it deemed the date of filing of the application for registration of the mark to be the only date relevant for the purposes of assessment. This narrow interpretation is incompatible with the wording of Article 51(1)(a) and cannot be reconciled with its spirit and purpose, or with the system of protection and of the revocability of such protection under the Community trade mark regulation.

Article 51(1)(a) of Regulation No 40/94 provides for a mark to be removed from the register if it *'has been registered'* contrary to Article 7. The Court's conclusion that this wording merely sets out the circumstances in which a mark is to be refused registration or declared invalid, and that it does not (also) refer to the date for the examination, is unsustainable on the basis of the wording alone. Since no further grounds are provided by the Court, it is not clear which particular considerations caused the Court to reach its conclusion. The interpretation advanced by the appellant, that the phrase *'has been registered'* is, at the very least, also a reference to the relevant point in time, is, on the other hand, by far the more obvious interpretation in view of the wording.

However, the Court's interpretation in the judgment under appeal is also inconsistent with the notion of protection underlying Articles 7 and 51, whereby registrations which are contrary to the public interest are to be refused altogether, or, if they do proceed, may be revoked. This is the only way to avoid marks being registered contrary to the provisions of Regulation No 40/94 and thereby in disregard of the public interest underlying that provision. If the Court is right in its view, not only would an applicant for registration of a mark be able to secure protection for marks in respect of which absolute grounds for refusal of registration existed at the date of registration, but it would be impossible to cancel those marks

following registration pursuant to Article 51 of Regulation No 40/94, because they would have been registrable at the date of filing of the application and any developments between the date of filing and registration would be expressly disregarded by the Court. According to the appellant, this means that an individual would be given unjustified preferential treatment as against the public interest which merits protection, which would be incompatible with the protective purpose of Articles 7 and 51 of Regulation No 40/94.

Finally, as regards the Court's argument concerning the duration of the procedure, it should be noted that this can depend on a great number of factors, not only those within the appellant's control, but also the applicant's, or — as in the case of the conduct of the pre-registration opposition procedure provided for in Regulation No 40/94 — factors which may be determined by third parties. Furthermore, absolute grounds for refusal, which may not have been influenced, or been capable of being influenced, by the appellant, can arise at very short notice. In a proper assessment of opposing interests in such *ad hoc* situations, the public interest should be given priority, particularly since, before registration, applicants cannot be absolutely certain that they will be granted the protection sought. In such cases, it is appropriate, therefore, to take account also of developments up to the date of registration.

For those reasons, the judgment under appeal of the Court of First Instance should, therefore, be set aside on the grounds of a breach of Article 51 of Regulation No 40/94.

Reference for a preliminary ruling from the Conseil de Prud'hommes de Caen (France) lodged on 20 August 2009 — Sophie Noël v SCP Brouard Daude as liquidator in the judicial liquidation of Pronuptia Boutiques Province SA, and Centre de Gestion et d'Étude AGS (C.G.E.A.) IDF Est

(Case C-333/09)

(2009/C 256/28)

Language of the case: French

Referring court

Conseil de Prud'hommes de Caen (France)

Parties to the main proceedings

Applicant: Sophie Noël

Defendants: SCP Brouard Daude as liquidator in the judicial liquidation of Pronuptia Boutiques Province SA, and Centre de Gestion et d'Étude AGS (C.G.E.A.) IDF Est

Questions referred

1. Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms, entitled 'Prohibition of discrimination', provides: 'The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.'

   Is there discrimination in that there is different treatment of employees dismissed for economic reasons who have accepted a personal redeployment agreement, whose right to contest the breach of their contract remains subject to the five-year limitation period, and those who have refused it, who are subject to the one-year limitation period referred to in Article L.1235-7 of the Code du travail (Labour Code)?

2. Article 26 of the International Covenant on Civil and Political Rights of 16 December 1966 — which is merely the basis of Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms — provides: 'All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.'

   Must a French court thus, pursuant to Article 55 of the French Constitution of 4 October 1958, apply the provisions of Article 26 of the International Covenant on Civil and Political Rights of 16 December 1966 and disregard the discriminatory provisions of Article L.1235-7 of the Code du travail which derive from an ordinary law, No 2005-35 of 18 January 2005, subsequent to 4 February 1981, the date on which the International Covenant entered into force in national territory?

Action brought on 25 August 2009 — Commission of the European Communities v Kingdom of Spain

(Case C-340/09)

(2009/C 256/29)

Language of the case: Spanish

Parties

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

Defendant: Kingdom of Spain

Forms of order sought

— Declare that the Kingdom of Spain has failed to fulfil its obligations under Article 4(2), (3), (4) and (5) of Council Directive 1999/22/EC of 29 March 1999 relating to the keeping of wild animals in zoos, [1] in respect of certain zoos in the Autonomous Communities of Aragon, Asturias, the Balearic Islands, the Canary Islands, Cantabria, Castile and Leon, Valencia, Extremadura and Galicia:

  — by failing to ensure that, by the date laid down in the Directive, all the zoos in its territory were licensed in accordance with paragraphs 2, 3 and, in the cases of Aragon, Asturias, the Canary Islands, Cantabria and Castile and Leon, 4 of Article 4 of the Directive; and

  — by failing to order the closure of zoos, in accordance with Article 4(5) of the Directive, where they were not licensed;

— order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

The Commission considers that the Kingdom of Spain:

— has failed to ensure that, by the date laid down in the Directive, all the zoos in its territory were licensed in accordance with paragraphs 2, 3 and, in the cases of Aragon, Asturias, the Canary Islands, Cantabria and Castile and Leon, 4 of Article 4 of the Directive; and

— has failed to order the closure of zoos, in accordance with Article 4(5) of the Directive, where they were not licensed.

[1] OJ 1999 L 94, p. 24.

Action brought on 3 September 2009 — Commission of the European Communities v Ireland

(Case C-355/09)

(2009/C 256/30)

Language of the case: English

Parties

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

Defendant: Ireland

The applicant claims that the Court should:

— Declare that, by failing to adopt national measures necessary to implement Articles 10 and 12 of Regulation (EC) No 273/2004 [1], by failing to communicate those measures pursuant to Article 16 of that Regulation and by failing to adopt the national measures necessary to implement Articles 26(3) and 31 of Regulation (EC) No 111/2005 [2], Ireland has failed to fulfil its obligations under Regulation (EC) No 273/2004 on drug precursors and Regulation (EC) No 111/2005 laying down the rules for the monitoring of trade between the Community and third countries in drug precursors;

— order Ireland to pay the costs.

Pleas in law and main arguments

Member States are required to adopt the measures necessary to comply with the provisions of Regulations, within the time limits laid down in those Regulations, and to notify those measures forthwith to the Commission. The Government of Ireland has failed to adopt and communicate the measures required to implement Articles 10, 12 and 16 of Regulation (EC) no 273/2004 on drug precursors. The Government of Ireland has also failed to adopt measures in accordance with articles 26(3) and 31 of regulation (EC) no 111/2005 laying down the rules for the monitoring of trade between the Community and third countries in drug precursors.

[1] Regulation (EC) No 273/2004 of the European Parliament and of the Council of 11 February 2004 on drug precursors OJ L 47, p. 1

[2] Council Regulation (EC) No 111/2005 of 22 December 2004 laying down rules for the monitoring of trade between the Community and third countries in drug precursors OJ L 22, p. 1

Action brought on 11 September 2009 — Commission v Italian Republic

(Case C-366/09)

(2009/C 256/31)

Language of the case: Italian

Parties

Applicant: Commission of the European Communities (represented by: G. Braun and E. Vesco, Agents)

Defendant: Italian Republic

Form of order sought

— Declare that, by failing to adopt 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 annul accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC, or in any event failing to communicate such provisions to the Commission, the Italian Republic has failed to fulfil its obligations under Directive 2006/43/EC;

— Order the Italian Republic to pay the costs.

Pleas in law and main arguments

The period for implementing the directive expired on 28 June 2008.

[1] OJ 2006 L 157, p. 87.

COURT OF FIRST INSTANCE

Judgment of the Court of First Instance of 9 September 2009 — Diputación Foral de Álava and Others v Commission

(Joined Cases T-30/01 to T-32/01 and T-86/02 to T-88/02) [1]

(State aid — Tax advantages granted by a territorial entity within a Member State — Tax exemptions — Decisions declaring aid schemes incompatible with the common market and requiring recovery of aid paid out — Classification as new aid or as existing aid — Operating aid — Principle of the protection of legitimate expectations — Principle of legal certainty — Decision initiating the formal investigation procedure under Article 88(2) EC — No need to adjudicate)

(2009/C 256/32)

Language of the case: Spanish

Parties

Applicant in Cases T-30/01 and T-86/02: Territorio Histórico de Álava — Diputación Foral de Álava (Spain) (represented by: M. Morales Isasi and I. Sáenz-Cortabarría Fernández, lawyers)

Applicant in Cases T-31/01 and T-88/02: Territorio Histórico de Guipúzcoa — Diputación Foral de Guipúzcoa (Spain) (represented by: M. Morales Isasi and I. Sáenz-Cortabarría Fernández, lawyers)

Applicant in Cases T-32/01 and T-87/02: Territorio Histórico de Vizcaya — Diputación Foral de Vizcaya (Spain) (represented by: M. Morales Isasi and I. Sáenz-Cortabarría Fernández, lawyers)

Defendant: Commission of the European Communities (represented initially, in Cases T-30/01 to T-32/01, by: J. Flett, S. Pardo and J.L. Buendía Sierra and, in Cases T-86/02 to T-88/02, by: J.L. Buendía Sierra and F. Castillo de la Torre, and subsequently by Castillo de la Torre and C. Urraca Caviedes, acting as Agents)

Interveners in support of the applicants in Cases T-86/02 to T-88/02: Comunidad autónoma del País Vasco — Gobierno Vasco (Spain), (represented by: M. Morales Isasi and I. Sáenz-Cortabarría Fernández, lawyers); and Confederación Empresarial Vasca (Confebask) (Bilbao, Spain) (represented by: M. Araujo Boyd, L. Ortiz Blanco and V. Sopeña Blanco, lawyers)

Intervener in support of the defendant: Comunidad autónoma de La Rioja (Spain) (represented, in Cases T-86/02 and T-87/02, by: J.M. Criado Gámez and, in Case T-88/02, by I. Serrano Blanco, lawyers)

Re:

Application in Cases T-30/01 to T-32/01 for annulment of the Commission decision of 28 November 2000 to initiate the procedure under Article 88(2) EC in relation to the tax advantages in the form of corporation tax exemption for certain newly established firms granted by provisions adopted by the Diputación Foral de Álava, the Diputación Foral de Guipúzcoa and the Diputación Foral de Vizcaya and application in Cases T-86/02 to T-88/02 for annulment of Commission Decisions 2003/28/EC, 2003/86/EC and 2003/192/EC of 20 December 2001 on a State aid scheme in the form of corporation tax exemption implemented by Spain in 1993 for certain newly established firms in Álava (T-86/02), Vizcaya (T-87/02) and Guipúzcoa (T-88/02) (OJ 2003 L 17, p. 20; OJ 2003 L 40, p. 11, and OJ 2003 L 77, p. 1, respectively).

Operative part of the judgment

The Court:

1. *Orders the joinder of Cases T-30/01 to T-32/01, and T-86/02 to T-88/02 for the purposes of judgment.*

2. *In Cases T-30/01 to T-32/01:*

   — *Declares there is no longer any need to adjudicate on those actions;*

   — *orders the Territorio Histórico de Álava — Diputación Foral de Álava, the Territorio Histórico de Guipúzcoa — Diputación Foral de Guipúzcoa and the Territorio Histórico de Vizcaya — Diputación Foral de Vizcaya to bear their own costs, and to pay the costs of the Commission.*

3. *In Cases T-86/02 to T-88/02:*

   — *Dismisses the actions;*

   — *orders the Territorio Histórico de Álava — Diputación Foral de Álava, the Territorio Histórico de Guipúzcoa — Diputación Foral de Guipúzcoa and the Territorio Histórico de Vizcaya — Diputación Foral de Vizcaya to bear their own costs and to pay the costs of the Commission and the Comunidad autónoma de La Rioja;*

   — *orders the Comunidad autónoma del País Vasco — Gobierno Vasco and the Confederación Empresarial Vasca (Confebask) each to bear their own costs.*

[1] OJ C 108, 7.4.2001.

Judgment of the Court of First Instance of 9 September 2009 — Diputación Foral de Álava and Others v Commission

(Joined Cases T-227/01 to T-229/01, T-265/01, T-266/01 and T-270/01) [1]

(State aid — Tax advantages granted by a territorial entity within a Member State — Tax credit of 45 % of the amount of investments — Decisions declaring aid schemes incompatible with the common market and requiring recovery of aid paid out — Trade association — Admissibility — Classification as new aid or as existing aid — Principle of the protection of legitimate expectations — Principle of legal certainty — Principle of proportionality)

(2009/C 256/33)

Language of the case: Spanish

Parties

Applicants in Case T-227/01: Territorio Histórico de Álava — Diputación Foral de Álava (Spain); and Comunidad Autónoma del País Vasco — Gobierno Vasco (Spain) (represented initially by: R. Falcón Tella, and subsequently by M. Morales Isasi and I. Sáenz-Cortabarría Fernández, lawyers)

Applicants in Case T-228/01: Territorio Histórico de Vizcaya — Diputación Foral de Vizcaya (Spain); and Comunidad autónoma del País Vasco — Gobierno Vasco (represented initially by: R. Falcón Tella, and subsequently by M. Morales Isasi and I. Sáenz-Cortabarría Fernández, lawyers)

Applicants in Case T-229/01: Territorio Histórico de Guipúzcoa — Diputación Foral de Guipúzcoa (Spain); and Comunidad autónoma del País Vasco — Gobierno Vasco (represented initially by: R. Falcón Tella, and subsequently by M. Morales Isasi and I. Sáenz-Cortabarría Fernández, lawyers)

Applicant in Cases T-265/01, T-266/01 and T-270/01: Confederación Empresarial Vasca (Confebask) (Bilbao, Spain) (represented initially by: M. Araujo Boyd, L. Ortiz Blanco and V. Sopeña Blanco, lawyers)

Defendant: Commission of the European Communities (represented initially by: J. Buendía Sierra, and subsequently by F. Castillo de la Torre and C. Urraca Caviedes, acting as Agents)

Interveners in support of the applicants in Case T-227/01: Cámara Oficial de Comercio e Industria de Álava (Spain) (represented by: I. Sáenz-Cortabarría Fernández and M. Morales Isasi, lawyers); and Confederación Empresarial Vasca (Confebask) (Bilbao) (represented initially by: M. Araujo Boyd and R. Sanz, and subsequently by Araujo Boyd, L. Ortiz Blanco and V. Sopeña Blanco, lawyers)

Interveners in support of the applicants in Case T-228/01: Cámara Oficial de Comercio, Industria y Navegación de Vizcaya (Spain) (represented by: I. Sáenz-Cortabarría Fernández and M. Morales Isasi, lawyers); and Confederación Empresarial Vasca (Confebask) (Bilbao) (represented initially by: M. Araujo Boyd and R. Sanz, and subsequently by Araujo Boyd, L. Ortiz Blanco and V. Sopeña Blanco, lawyers)

Interveners in support of the applicants in Case T-229/01: Cámara Oficial de Comercio, Industria y Navegación de Guipúzcoa (Spain) (represented by: I. Sáenz-Cortabarría Fernández and M. Morales Isasi, lawyers); and Confederación Empresarial Vasca (Confebask) (Bilbao) (represented initially by: M. Araujo Boyd and R. Sanz, and subsequently by Araujo Boyd, L. Ortiz Blanco and V. Sopeña Blanco, lawyers)

Intervener in support of the defendant: Comunidad Autónoma de la Rioja (Spain) (represented initially by: A. Bretón Rodríguez, J. Criado Gámez and I. Serrano Blanco, lawyers)

Re:

Application in Cases T-227/01 and T-265/01 for annulment of Commission Decision 2002/820/EC of 11 July 2001 on the State aid scheme implemented by Spain for firms in Álava in the form of a tax credit amounting to 45 % of investments (OJ 2002 L 296, p. 1); application in Cases T-228/01 and T-266/01 for annulment of Commission Decision 2003/27/EC of 11 July 2001 on the State aid scheme implemented by Spain for firms in Vizcaya in the form of a tax credit amounting to 45 % of investments (OJ 2003 L 17, p. 1), and application in Cases T-229/01 and T-270/01 for annulment of the Commission decision 2002/894/EC of 11 July 2001 on the State aid scheme implemented by Spain for firms in Guipúzcoa in the form of a tax credit amounting to 45 % of investments (OJ 2002 L 314, p. 26).

Operative part of the judgment

The Court:

1. *Joins Cases T-227/01 to T-229/01, T-265/01, T-266/01 and T-270/01 for the purposes of judgment.*

2. *Dismisses the actions.*

3. *In Cases T-227/01 to T-229/01:*

   — *Orders the Territorio Histórico de Álava — Diputación Foral de Álava, the Territorio Histórico de Vizcaya — Diputación Foral de Vizcaya, the Territorio Histórico de Guipúzcoa — Diputación Foral de Guipúzcoa and the Comunidad autónoma del País Vasco — Gobierno Vasco to each bear their own costs and to pay the costs of the Commission and the Comunidad autónoma de La Rioja;*

— *Orders the Confederación Empresarial Vasca (Confebask), the Cámara Oficial de Comercio e Industria de Álava, the Cámara Oficial de Comercio, Industria y Navegación de Vizcaya and the Cámara Oficial de Comercio, Industria y Navegación de Guipúzcoa to each bear their own costs.*

4. *In Cases T-265/01, T-266/01 and T-270/01 orders Confebask to bear its own costs and to pay the costs of the Commission and the Comunidad autónoma de La Rioja.*

([1]) OJ C 331, 24.11.2001.

Judgment of the Court of First Instance of 9 September 2009 — Diputación Foral de Álava and Others v Commission

(Joined Cases T-230/01 to T-232/01 and T-267/01 to T-269/01) ([1])

(State aid — Tax advantages granted by a territorial entity within a Member State — Reduction of the tax base for corporation tax — Decisions declaring aid schemes incompatible with the common market and requiring recovery of aid paid out — Trade association — Admissibility — Withdrawal of a plea in law — Classification as new aid or as existing aid — Principle of the protection of legitimate expectations — Principle of legal certainty — Principle of proportionality)

(2009/C 256/34)

Language of the case: Spanish

Parties

Applicants in Case T-230/01: Territorio Histórico de Álava — Diputación Foral de Álava (Spain); and Comunidad autónoma del País Vasco — Gobierno Vasco (Spain) (represented initially by: R. Falcón Tella, and subsequently by M. Morales Isasi and I. Sáenz-Cortabarría Fernández, lawyers)

Applicants in Case T-231/01: Territorio Histórico de Vizcaya — Diputación Foral de Vizcaya (Spain); and Comunidad autónoma del País Vasco — Gobierno Vasco (represented initially by: R. Falcón Tella, and subsequently by M. Morales Isasi and I. Sáenz-Cortabarría Fernández, lawyers)

Applicants in Case T-232/01: Territorio Histórico de Guipúzcoa — Diputación Foral de Guipúzcoa (Spain); and Comunidad autónoma del País Vasco — Gobierno Vasco (represented initially by: R. Falcón Tella, and subsequently by M. Morales Isasi and I. Sáenz-Cortabarría Fernández, lawyers)

Applicant in Cases T-267/01 to T-269/01: Confederación Empresarial Vasca (Confebask) (Bilbao, Spain) (represented by: M. Araujo Boyd, L. Ortiz Blanco and V. Sopeña Blanco, lawyers)

Defendant: Commission of the European Communities (represented initially by: J. Buendía Sierra, and subsequently by F. Castillo de la Torre and C. Urraca Caviedes, acting as Agents)

Interveners in support of the applicants in Case T-230/01: Cámara Oficial de Comercio e Industria de Álava (Spain) (represented by: I. Sáenz-Cortabarría Fernández and M. Morales Isasi, lawyers); and Confederación Empresarial Vasca (Confebask) (Bilbao) (represented initially by: M. Araujo Boyd and R. Sanz, and subsequently by Araujo Boyd, L. Ortiz Blanco and V. Sopeña Blanco, lawyers)

Interveners in support of the applicants in Case T-231/01: Cámara Oficial de Comercio, Industria y Navegación de Vizcaya (Spain) (represented by: I. Sáenz-Cortabarría Fernández and M. Morales Isasi, lawyers); and Confederación Empresarial Vasca (Confebask) (Bilbao) (represented initially by: M. Araujo Boyd and R. Sanz, and subsequently by Araujo Boyd, L. Ortiz Blanco and V. Sopeña Blanco, lawyers)

Interveners in support of the applicants in Case T-232/01: Cámara Oficial de Comercio, Industria y Navegación de Guipúzcoa (Spain) (represented by: I. Sáenz-Cortabarría Fernández and M. Morales Isasi, lawyers); and Confederación Empresarial Vasca (Confebask) (Bilbao) (represented initially by: M. Araujo Boyd and R. Sanz, and subsequently by Araujo Boyd, L. Ortiz Blanco and V. Sopeña Blanco, lawyers)

Intervener in support of the defendant: Comunidad Autónoma de la Rioja (Spain) (represented initially by: A. Bretón Rodríguez, J. Criado Gámez and I. Serrano Blanco, lawyers)

Re:

Application in Cases T-230/01 and T-267/01 for annulment of Commission Decision 2002/892/EC of 11 July 2001 on the State aid scheme applied by Spain to certain newly established firms in Álava (OJ 2002 L 314, p. 1); application in Cases T-231/01 and T-268/01 for annulment of Commission Decision 2002/806/EC of 11 July 2001 on the State aid scheme applied by Spain to certain newly established firms in Vizcaya (OJ 2002 L 279, p. 35), and application in Cases T-232/01 and T-269/01 for annulment of the Commission decision 2002/894/EC of 11 July 2001 on the State aid scheme applied by Spain to certain newly established firms in Guipúzcoa (OJ 2002 L 174, p. 31).

Operative part of the judgment

The Court:

1. *Joins Cases T-230/01 to T-231/01, T-232/01, T-267/01, T-268/01 and T-269/01 for the purposes of judgment.*

2. *Dismisses the actions.*

3. *In Cases T-230/01 to T-232/01:*

— *Orders the Territorio Histórico de Álava — Diputación Foral de Álava, the Territorio Histórico de Vizcaya — Diputación Foral de Vizcaya, the Territorio Histórico de Guipúzcoa — Diputación Foral de Guipúzcoa and the Comunidad autónoma del País Vasco — Gobierno Vasco to each bear their own costs and to pay the costs of the Commission and the Comunidad autónoma de La Rioja;*

— *Orders the Confederación Empresarial Vasca (Confebask), the Cámara Oficial de Comercio e Industria de Álava, the Cámara Oficial de Comercio, Industria y Navegación de Vizcaya and the Cámara Oficial de Comercio, Industria y Navegación de Guipúzcoa to each bear their own costs.*

4. *In Cases T-267/01 to T-269/01 orders Confebask to bear its own costs and to pay the costs of the Commission and the Comunidad autónoma de La Rioja.*

([1]) OJ C 348, 8.12.2001.

Judgment of the Court of First Instance of 9 September 2009 — Clearstream v Commission

(Case T-301/04) ([1])

(Competition — Abuse of a dominant position — Financial services — Decision finding an infringement of Article 82 EC — Refusal to provide cross-border clearing and settlement services — Discriminatory pricing — Relevant market — Imputability of the infringement)

(2009/C 256/35)

Language of the case: German

Parties

Applicants: Clearstream Banking AG (Frankfurt am Main, Germany) and Clearstream International SA (Luxembourg, Luxembourg) (represented by: H. Satzky and B. Maassen, lawyers)

Defendant: Commission of the European Communities (represented initially by: T. Christoforou, A. Nijenhuis and M. Schneider, and subsequently by A. Nijenhuis and R. Sauer, acting as Agents)

Re:

Application for annulment of Commission Decision C (2004) 1958 final of 2 June 2004, relating to a proceeding under Article 82 [EC] (Case COMP/38.096 — Clearstream (Clearing and Settlement)).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Clearstream Banking AG and Clearstream International to pay the costs.*

([1]) OJ C 262, 23.10.2004.

Judgment of the Court of First Instance of 4 September 2009 — Italy v Commission

(Case T-211/05) ([1])

(State aid — Aid scheme implemented by the Italian authorities in favour of newly listed companies — Decision declaring the aid incompatible with the common market and ordering its recovery — Obligation to state reasons — Selective nature — Effect on trade between Member States — Adverse effect on competition)

(2009/C 256/36)

Language of the case: Italian

Parties

Applicant: Italian Republic (represented initially by I. Braguglia, subsequently by R. Adam and lastly by I. Bruni, acting as Agents, and P. Gentili, lawyer)

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

Re:

Application for annulment of Commission Decision 2006/261/EC of 16 March 2005 on aid scheme C 8/2004 (ex NN 164/2003) implemented by Italy in favour of newly listed companies (OJ 2006 L 94, p. 42).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

([1]) OJ C 182, 23.7.2005.

Judgment of the Court of First Instance of 8 September 2009 — AceaElectrabel v Commission

(Case T-303/05) ([1])

(State aid — Energy sector — Investment aid for the construction of a distance heating system — Decision declaring the aid compatible with the common market — Obligation to repay first aid declared unlawful and incompatible with the common market — Concept of economic unit)

(2009/C 256/37)

Language of the case: Italian

Parties

Applicant: AceaElectrabel Produzione SpA (represented by: L. Radicati di Brozolo, M. Merola, C. Bazoli and F. D'Alessandri, lawyers)

Defendant: Commission of the European Communities (represented by: V. DiBucci and E. Righini, agents)

Intervener in support of the applicant: Electrabel (represented by: L. Radicati di Brozolo, M. Merola and C. Bazoli, lawyers)

Re:

Annulment of Commission Decision 2006/598/EC of 16 March 2005 concerning State aid that Italy (Regione Lazio) intends to grant for the reduction of greenhouse gas emissions (OJ 2006 L 244, p. 8)

Operative part of the judgment

The Court:

1. *dismisses the action;*

2. *orders AceaElectrabel to pay the costs, except those referred to in point 3 below;*

3. *orders Electrabel to bear its own costs and to pay the costs incurred by the Commission as a result of its intervention.*

([1]) OJ C 257 of 15.10.2005.

Judgment of the Court of First Instance of 4 September 2009 — Austria v Commission

(Case T-368/05) ([1])

(EAGGF — Guarantee Section — Expenditure excluded from Community financing — Cattle premium — Suckler cow premium — Payment for extensification — Key controls — Duty to use a computerised geographical information system — Control of Alpine forage areas — Duty to cooperate — Duty to state reasons — Type of financial correction applied — Extrapolation of the findings of default)

(2009/C 256/38)

Language of the case: German

Parties

Applicant: Republic of Austria (represented by: H. Dossi, initially, H. Dossi and C. Pesendorfer, subsequently, and C. Pesendorfer and A. Hable, finally, Agents)

Defendant: Commission of the European Communities (represented by: F. Erlbacher, Agent)

Re:

Annulment of Commission Decision 2005/555/EC of 15 July 2005 excluding from Community financing certain expenditure incurred by the Member States under the 'Guarantee' Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ 2005 L 188, p. 36), inasmuch as it excluded certain expenditure by the Republic of Austria.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

([1]) OJ C 296, 26.11.2005.

Judgment of the Court of First Instance of 9 September 2009 — Brink's Security Luxembourg v Commission

(Case T-437/05) ([1])

(Public services contracts — Community tender procedure — Security and surveillance of the Commission's buildings in Luxembourg — Rejection of a tenderer's bid — Equal treatment — Access to documents — Effective judicial protection — Duty to give reasons — Transfer of undertaking — Action for damages)

(2009/C 256/39)

Language of the case: French

Parties

Applicant: Brink's Security Luxembourg SA (Luxembourg, Luxembourg) (represented by: C. Point and G. Dauphin, lawyers)

Defendant: Commission of the European Communities (represented by: E. Manhaeve, M. Šimerdová and K. Mojzesowicz, Agents, and by J. Stuyck, lawyer)

Intervener in support of the defendant: G4S Security Services SA, formerly Group 4 Falck — Surveillance and Security Company SA (Luxembourg, Luxembourg) (represented by: M. Molitor, P. Lopes Da Silva, N. Cambonie and N. Bogelmann, lawyers)

Re:

First, an action for annulment of the Commission Decision of 30 November 2005 rejecting the tender submitted by the applicant in call for tenders No 16/2005/OIL (provision of building surveillance and security services); the Commission Decision of 30 November 2005 to award the contract to another tenderer; an alleged implied Commission Decision refusing to withdraw its two previous decisions and two of its letters, dated 7 and 14 December 2005, responding to the applicant's requests for information. Second, an action for damages seeking compensation for the loss allegedly suffered by the applicant.

Operative part of the judgment

The Court:

1. *Annuls the Commission Decision of 14 December 2005, rejecting the request that the composition of the evaluation committee in call for tenders No 16/2005/OIL be communicated to the applicant;*

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

3. *Dismisses the action for damages;*

4. *Orders Brink's Security Luxembourg SA to pay, apart from its own costs, half of the costs incurred by the Commission of the European Communities and by G4S Security Services SA, including those relating to the interlocutory proceedings;*

5. *Orders the Commission to bear half of its own costs;*

6. *Orders G4S Security Services to bear half of its own costs.*

([1]) OJ C 48, 25.2.2006.

Judgment of the Court of First Instance of 9 September 2009 — Holland Malt v Commission

(Case T-369/06) ([1])

(State aid — Malt production — Investment aid — Decision declaring the aid incompatible with the common market — Adverse effect on competition — Effect on trade between Member States — Obligation to state the reasons on which the decision is based — Guidelines for State aid in the agriculture sector)

(2009/C 256/40)

Language of the case: English

Parties

Applicant: Holland Malt BV (Lieshout, Netherlands) (represented initially by: O. Brouwer and D. Mes, and subsequently by O. Brouwer, A. Stoffer and P. Schepens, lawyers)

Defendant: Commission of the European Communities (represented by: T. Scharf and A. Stobiecka-Kuik, acting as Agents)

Intervener in support of the applicant: Kingdom of the Netherlands (represented by: C. Wissels, M. de Grave, C. ten Dam and Y. de Vries, acting as Agents)

Re:

Application for annulment of Commission Decision 2007/59/EC of 26 September 2006 concerning the State aid granted by the Netherlands to Holland Malt BV (OJ 2007 L 32, p. 76).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Holland Malt BV to bear its own costs and to pay those incurred by the Commission;*

3. *Orders the Kingdom of the Netherlands to bear its own costs.*

([1]) OJ C 42, 24.2.2007.

Judgment of the Court of First Instance of 8 September 2009 — ETF v Landgren

(Case T-404/06) ([1])

(Appeals — Staff cases — Members of the temporary staff — Contract for an indefinite period — Decision to dismiss — Article 47(c)(i) of the Conditions of Employment of other servants — Obligation to state the reasons on which the decision is based — Manifest error of assessment — Unlimited jurisdiction — Monetary compensation)

(2009/C 256/41)

Language of the case: French

Parties

Appellant: European Training Foundation (ETF) (represented by: G. Vandersanden and L. Levi, lawyers)

Other party to the proceedings: Pia Landgren (Revigliasco, Italy) (represented by: M.-A. Lucas, lawyer)

Re:

Appeal against the judgment of the European Union Civil Service Tribunal (Full Court) of 26 October 2006 in Case F 1/05 *Landgren* v *ETF* [2006] EC- SC-I-A-123 and II-A-I 459 seeking to have that judgment set aside

Operative part of the judgment

The Court:

1. *dismisses the appeal;*

2. *orders the European Training Foundation (ETF) to bear its own costs and to pay the costs incurred by Ms Landgren in the present instance;*

3. *orders the Commission of the European Communities to bear its own costs.*

([1]) OJ C 42 of 24.2.2007.

Judgment of the Court of First Instance of 2 September 2009 — El Morabit v Council

(Joined Cases T-37/07 and T-323/07) ([1])

(Common Foreign and Security Policy — Restrictive measures with a view to combating terrorism — Freezing of funds — List of persons, groups and entities — Action for annulment)

(2009/C 256/42)

Language of the case: Dutch

Parties

Applicant: Mohamed El Morabit (Amsterdam, Netherlands) (represented by: U. Sarikaya, lawyer)

Defendant: Council of the European Union (represented by: E. Finnegan, G. Van Hegelsom and B. Driessen, Agents)

Interveners in support of the defendant: Kingdom of the Netherlands (represented by: C. Wissels and M. De Mol, and, in Case T-37/07, M. de Grave and, in Case T-323/07, Y. de Vries and M. Noort, Agents); and Commission of the European Communities (represented: in Case T-37/07 by S. Boelaert and J. Aquilina, and in Case T-323/07 by P. van Nuffel and S. Boelaert, Agents)

Re:

Action for the annulment, in part, of, first, Council Decision 2007/445/EC of 28 June 2007 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Decisions 2006/379/EC and 2006/1008/EC (OJ 2007 L 169, p. 58) and, second, Council Decision 2006/1008/EC of 21 December 2006 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (OJ 2006 L 379, p. 123), in so far as the name of the applicant appears on the lists of persons, groups and entities to which those provisions apply.

Operative part of the judgment

The Court:

1. *Dismisses the actions;*

2. *Orders Mr Mohamed El Morabit to bear his own costs and pay those of the Council;*

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

([1]) OJ C 82, 14. 4. 2007.

Judgment of the Court of First Instance of 14 September 2009 — Lange Uhren v OHIM (Geometric shapes on a watch-face)

(Case T-152/07) ([1])

(Community trade mark — Application for a Community figurative mark — Geometric shapes on a watch-face — Absolute ground for refusal — Lack of distinctive character — Article 7(1)(b) of Regulation (EC) No 40/94 (now Article 7(1)(b) of Regulation (EC) No 207/2009) — Lack of distinctive character acquired through use — Article 7(3) of Regulation No 40/94 (now Article 7(3) of Regulation No 207/2009)

(2009/C 256/43)

Language of the case: German

Parties

Applicant: Lange Uhren GmbH (Glashütte, Germany) (represented by: M. Schaeffer, lawyer)

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

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 15 February 2007 (Case R 1176/2005-1) concerning an application for registration as a Community trade mark of a figurative sign representing geometric shapes on a watch-face.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Lange Uhren GmbH to pay the costs.*

([1]) OJ C 155, 7.7.2007.

Judgment of the Court of First Instance of 3 September 2009 — Cheminova and Others v Commission

(Case T-326/07) ([1])

(Plant-protection products — Active substance 'malathion' — Non-inclusion in Annex I to Directive 91/414/EEC — Action for annulment — Locus standi — Admissibility — Evaluation procedure — Assessment by EFSA — Plea of illegality — Article 20 of Regulation (EC) No 1490/2002 — Submission of new studies — Article 8(2) and (5) of Regulation (EC) No 451/2000 — Legitimate expectation — Proportionality — Equal treatment — Principle of sound administration — Rights of the defence — Principle of subsidiarity — Article 95(3) EC, Articles 4(1) and 5(1) of Directive 91/414)

(2009/C 256/44)

Language of the case: English

Parties

Applicants: Cheminova A/S (Harboøre, Denmark); Cheminova Agro Italia Srl (Rome, Italy); Cheminova Bulgaria EOOD (Sofia, Bulgaria); Agrodan, SA, (Madrid Spain); and Lodi SAS (Grand-Fougeray, France) (represented by: C. Mereu and K. Van Maldegem, lawyers, and P. Sellar, Solicitor)

Defendant: Commission of the European Communities (represented by: B. Doherty and L. Parpala, acting as Agents)

Re:

Annulment of Commission Decision 2007/389/EC of 6 June 2007 concerning the non-inclusion of malathion in Annex I to Council Directive 91/414/EEC and the withdrawal of authorisations for plant protection products containing that substance (OJ 2007 L 146, p. 19)

Operative part of the judgment

The Court:

1. *Dismisses the action.*

2. *Orders Cheminova A/S, Cheminova Agro Italia Srl, Cheminova Bulgaria EOOD, Agrodan, SA and Lodi SAS to bear their own costs and to pay those incurred by the Commission, including those relating to the application for interim measures.*

([1]) OJ C 247, 20.10.2007.

Judgment of the Court of First Instance of 15 September 2009 — Royal Appliance International v OHIM — BSH Bosch und Siemens Hausgeräte (Centrixx)

(Case T-446/07) ([1])

(Community trade mark — Opposition procedure — Application for Community word mark Centrixx — Earlier national word mark sensixx — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94 (now Article 8(1) of Regulation (EC) No 207/2009)

(2009/C 256/45)

Language of the case: German

Parties

Applicant: Royal Appliance International GmbH (Hilden, Germany) (represented by: K.-J. Michaeli and M. Schork, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance: BSH Bosch und Siemens Hausgeräte GmbH (Munich, Germany) (represented by: S. Biagosch, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 3 October 2007 (Case R 572/2006-4) concerning opposition proceedings between BSH Bosch und Siemens Hausgeräte GmbH and Royal Appliance International GmbH.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Royal Appliance International GmbH to pay the costs.*

([1]) OJ C 37, 9.2.2008.

Judgment of the Court of First Instance of 15 September 2009 — Wella v OHIM (TAME IT)

(Case T-471/07) ([1])

(Community trade mark — International registration — Request for territorial extension of protection — Word mark TAME IT — Absolute ground for refusal — Lack of distinctive character — Article 7(1)(b) of Regulation (EC) No 40/94 (now Article 7(1)(b) of Regulation (EC) No 207/2009)

(2009/C 256/46)

Language of the case: English

Parties

Applicant: Wella AG (Darmstadt, Germany) (represented by: B. Klingberg and K. Sandberg, lawyers)

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

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 24 October 2007 (Case R 713/2007-2), relating to a territorial extension, to the European Community, of the protection in respect of the international registration of the word mark TAME IT

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Wella AG to pay the costs.*

([1]) OJ C 51, 23.2.2008.

Judgment of the Court of First Instance of 15 September 2009 — Parfums Christian Dior v OHIM — Consolidated Artists (MANGO adorably)

(Case T-308/08) [1]

(Community trade mark — Opposition proceedings — Application for Community figurative mark MANGO adorably — Earlier national and international word marks J'ADORE and ADIORABLE — Relative grounds for refusal — Likelihood of confusion — Risk of unfair advantage being taken of the repute of the earlier marks — Article 8(1)(b) and (5) of Regulation (EC) No 40/94 (now Article 8(1)(b) and (5) of Regulation (EC) No 207/2009)

(2009/C 256/47)

Language of the case: French

Parties

Applicant: Parfums Christian Dior (Paris, France) (represented by: F. de Visscher, E. Cornu and D. Moreau, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance: Consolidated Artists BV (Rotterdam, Netherlands) (represented by: S. Bénoliel-Claux, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 23 May 2008 (Case R 1162/2007-2) relating to opposition proceedings between Parfums Christian Dior and Consolidated Artists BV

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Parfums Christian Dior to pay the costs.*

[1] OJ C 260, 11.10.2008.

Order of the Court of First Instance of 4 September 2009 — Inalca and Cremonini v Commission

(Case T-174/06) [1]

(Non-contractual liability — OLAF investigations concerning irregularities in export refunds on beef and veal exported to Jordan — Communication to the national authorities of information on the facts capable of giving rise to criminal proceedings — National decision to recover the refunds — Provision of Guarantees — Action for damages — Limitation period — Continuing nature of the harm — Partial inadmissibility — Causation)

(2009/C 256/48)

Language of the case: Italian

Parties

Applicant: Inalca SpA — Industria Alimentaria Carni (Castelvetro, Italy) and Cremonini SpA (Castelvetro) (represented by: F. Sciandone and C. D'Andria, lawyers)

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

Re:

Action for non-contractual damages seeking compensation for loss allegedly suffered by the applicants as a result of the communication to the Italian authorities of the findings of an investigation conducted by the European Anti-Fraud Office (OLAF), implicating the applicants, to ascertain whether certain refunds for beef and veal exported to Jordan were lawful.

Operative part of the order

1. *The action is dismissed.*

2. *Inalca SpA — Industria Alimentaria Carni and Cremonini SpA are ordered to pay the costs.*

[1] OJ C 190, 12.8.2006.

Order of the Court of First Instance of 27 August 2009 — Abouchar v Commission

(Case T-367/08) [1]

(Non-contractual liability — EDF — Conditions for the grant and control of credits for an agricultural holding project in Senegal — Limitation period — Inadmissibility)

(2009/C 256/49)

Language of the case: French

Parties

Applicant: Michel Abouchar (Dakar, Senegal) (represented by: B. Dubreuil-Basire and J.-J. Lorang, lawyers)

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

Re:

Action for damages to compensate for the material and non-material harm allegedly suffered by the applicant as a result of the alleged errors of the Commission and its agents inherent in the conditions of grant and the control of loans financed by the European Development Fund (EDF) for its agricultural holding project in Senegal.

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *Mr Michel Abouchar is ordered to pay the costs.*

[1] OJ C 285, 8.11.2008.

Action brought on 30 July 2009 — EFIM v Commission

(Case T-296/09)

(2009/C 256/50)

Language of the case: German

Parties

Applicant: European Federation of Ink and Ink Cartridge Manufacturers (EFIM) (Cologne, Germany) (represented by: D. Ehle, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— Annul the decision of the Commission of 20 May 2009 in case — COMP/C 3/39.391 EFIM;

— Order the defendant to pay the costs.

Pleas in law and main arguments

The applicant contests the decision of the Commission of 20 May 2009 in case — COMP/C 3/39.391 EFIM. In that decision, the Commission dismissed the applicant's complaint, in which it claimed various infringements of Articles 81 and 82 EC by several manufactures of ink-jet printers on their markets for ink-cartridges.

In the reasoning for its action, the applicant claims, first, that the Commission did not take into account a large number of important elements of fact and, in so doing, infringed the principle of sound administration, the duty of care, the obligation to state reasons and the right to a fair hearing. Moreover, the applicant contends that the assessments made by the defendant in the contested decision, in particular with regard to the criteria for priority in treatment of the appeal procedure, are obviously incorrect and vitiated by a manifest error of assessment. Finally, it is submitted that an effective protection of competition, against the restrictions alleged by the applicant, can only be safeguarded by the defendant, because the national Competition Authorities and the Courts only have limited territorial jurisdiction.

Action brought on 29 July 2009 — Gühring v OHIM (combination of the colours broom yellow and silver grey)

(Case T-299/09)

(2009/C 256/51)

Language in which the application was lodged: German

Parties

Applicant: Gühring OHG (Albstadt, Germany) (represented by: A. von Mühlendahl and H. Hartwig, lawyers)

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 30. April 2009 in Case R 1330/2008-1;

— Annul the decision of the defendant's Examination Division dated 21 July 2008, in which it refused registration of the applicant's mark Nr. 6 703 581;

— Declare, that the trade mark applied for No. 6 703 581 complies with the conditions laid down in Article 7(1)(b) of Regulation (EC) No 207/2009 [1];

in the alternative,

— Annul the decision of the First Board of Appeal of OHIM of 30. April 2009 in Case R 1330/2008-1;

— Order the defendant to pay the costs, including those incurred by the applicant before the Board of Appeal.

Pleas in law and main arguments

Community trade mark concerned: a mark made up of a combination of the colours of broom yellow and silver grey for goods in Class 7 (registration application No. 6 703 581)

Decision of the Examiner: Refusal of the application

Decision of the Board of Appeal: Rejection of the appeal

Pleas in law: Infringement of Article 7(1)(b) of Regulation No 207/2009, because the trade mark applied for has a distinctive character. In addition, infringement of procedural law, in particular of Articles 75 and 76(1) 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)

Action brought on 29 July 2009 — Gühring OHG v OHIM (combination of the colours ochre yellow and silver grey)

(Case T-300/09)

(2009/C 256/52)

Language in which the application was lodged: German

Parties

Applicant: Gühring OHG (Albstadt, Germany) (represented by: A. von Mühlendahl and H. Hartwig, lawyers)

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 30. April 2009 in Case R 1329/2008-1;

— Annul the decision of the defendant's Examination Division dated 22 July 2008, in which it refused registration of the applicant's mark Nr. 6 703 565;

— Declare, that the trade mark applied for No. 6 703 565 complies with the conditions laid down in Article 7(1)(b) of Regulation (EC) No 207/2009 (1);

in the alternative,

— Annul the decision of the First Board of Appeal of OHIM of 30. April 2009 in Case R 1329/2008-1;

— Order the defendant to pay the costs, including those incurred by the applicant before the Board of Appeal.

Pleas in law and main arguments

Community trade mark concerned: a mark made up of the combination of the colours of ochre yellow and silver grey for goods in Class 7 (registration application No. 6 703 565)

Decision of the Examiner: Refusal of the application

Decision of the Board of Appeal: Rejection of the appeal

Pleas in law: Infringement of Article 7(1)(b) of Regulation No 207/2009 because the trade mark applied for has a distinctive character. In addition, infringement of procedural law, in particular of Articles 75 and 76 (1) 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)

Action brought on 18 August 2009 — Commission v Irish Electricity Generating

(Case T-323/09)

(2009/C 256/53)

Language of the case: English

Parties

Applicant: Commission of the European Communities (represented by: A.– M. Rouchaud-Joët, F. Mirza, agents)

Defendant: Irish Electricity Generating Co. Ltd (Waterford, Ireland)

Form of order sought

— order the defendant to pay the Commission of the European Communities the sum due of EUR 237 384,31 being the principal amount of EUR 180 664,70 together with EUR 56 719,61 as late payment interest calculated at the European Central Bank rate +3.50 % (5.56 %) for the period between 25 August 2003 and 15 April 2009;

— order the defendant to pay EUR 27,52 per day by way of interest from 16 April 2009 until the date on which the debt is repaid in full; and

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

Pleas in law and main arguments

Under the European Community's Fourth Research Framework Programme, the Council adopted Decision No 94/806/EC of 23 November 1994 [1] to set up a specific programme for research and technological development, including demonstration, in the field of non-nuclear energy. Article 5 of the decision charged the Commission with the responsibility for drawing up a work programme covering the objectives and contents specified in Annex 1 of the Decision, and for issuing for calls and proposals for projects on the basis on the work programme.

On 2 March 1998, following a tender procedure, the contract No WE/178/97/IEGB (hereinafter: "the contact") for the construction of two wind turbines was attributed to the defendant. In accordance with the contract terms, the Commission agreed, from the total estimated eligible costs of the project amounting to ECU 1 531,697, to grant a financial support of 40 % of the approved eligible costs of the project up to a maximum of ECU 612,679.

However, the applicant argues, that despite the fact that it advanced to the defendant, between 6 April 1998 and 30 April 2001 the sum of EUR 225 083,79, the defendant did not implement the contract. Moreover, the applicant claims that despite the fact it took the procedural steps required under the contract and the Community Budget Rules [2] to establish the amount of the debt and to notify it to the defendant, the latter did not react. Hence, by letter of 13 December 2002, the Commission terminated the contract pursuant to Article 5.3 a) i) of Annex II to the contract.

Accordingly, the Commission brought the present application, pursuant to Article 238 EC in order to seek reimbursement of the amount allegedly overpaid to the defendant, which is EUR 180 664,70, plus interest calculated at the rate of 5,56 % from the date on which the debt fell due, i.e. 24 August 2003.

[1] Décision du Conseil, du 23 novembre 1994, arrêtant un programme spécifique de recherche, de développement technologique, y compris de démonstration, dans le domaine de l'énergie non nucléaire (1994-1998) (JO L 334 du 22.12.1994, p. 87)

[2] Article 71 of Council Regulation No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 248 p. 1) and Article 78 of its implementing Regulation, Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 357, p. 1)

Action brought on 18 August 2009 — J & F Participações v OHIM — Fribo Foods (Friboi)

(Case T-324/09)

(2009/C 256/54)

Language in which the application was lodged: English

Parties

Applicants: J & F Participações SA (Sorocaba, Brazil) (represented by: A. Fernández Fernández-Pacheco, lawyer)

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

Other party to the proceedings before the Board of Appeal: Fribo Foods Ltd (Wrexham, United Kingdom)

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 22 April 2009 in case R 824/2008-1; and

— Order the defendant and the other party to the proceedings before the Board of Appeal to bear the costs.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The figurative mark "Friboi", for goods in class 29

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

Mark or sign cited: United Kingdom trade mark registration of the word mark "FRIBO" for goods in class 29; United Kingdom trade mark registration of the figurative mark "Fribo" for goods in class 29; German trade mark registration of the word mark "FRIBO" for goods in class 29; German trade mark registration of the figurative mark "FRIBO" for goods in class 29; French trade mark registration of the word mark "FRIBO" for goods in class 29; French trade mark registration of the figurative mark "FRIBO" for goods in class 29; Italian trade mark registration of the word mark "FRIBO" for goods in class 29; Italian trade mark registration of the figurative mark "FRIBO" for goods in class 29.

Decision of the Opposition Division: Upheld the opposition

Decision of the Board of Appeal: Allowed the appeal in part

Pleas in law: Infringement of Article 8(1)(b) Council Regulation 207/2009 as the Board of Appeal wrongly held that there was a likelihood of confusion between the trade marks concerned; infringement of Article 42 Council Regulation 207/2009 as the Board of Appeal erred when taking into account evidence for proof of use submitted by the other party to the proceedings before the Board of Appeal which did not meet the requirements of the said legal provision and did not show place, time, extent and nature of use.

Appeal brought on 17 August 2009 by Vahan Adjemian and Others against the judgment of the Civil Service Tribunal delivered on 4 June 2009 in Joined Cases F-134/07 Adjemian and Others v Commission and F-8/08 Renier v Commission

(Case T-325/09 P)

(2009/C 256/55)

Language of the case: French

Parties

Appellants: Vahan Adjemian (Angera, Italy), Matteo Ambietti (Gallarate, Italy), Elisabetta Avanti (Vedano Olona, Italy), Daniela Baiguera (Cadrezzate, Italy), Douglas James Beare (Azzale, Italy), Valentina Benzi (Varese, Italy), Maria Nicoletta Berta (Buguggiate, Italy), Conrad Bielsky (Ispra, Italy), Maria Bielza Diaz-Caneja (Ispra), Roberta Bino (Ispra), Kristin Boettcher (Ranco, Italy), Valeria Boschini (Taino, Italy), Mounir Bouhifd (Arolo di Leggiuno, Italy), Cristina Brovelli (Ispra), Daniela Brovelli (Ranco), Clementine Burnley (Taino), Daniela Buzica (Ispra), Giovanni Calderone (Leggiuno, Italy), Marco Canonico (Refrancore, Italy), Stefano Casalegno (Angera), Javier Castro Jimenez (Ispra), Denise Cecconello (Cocquio Trevisago, Italy), Francesca Cellina (Varese), Francesca Cenci (Travedona Monate, Italy), Laura Ceriotti (Dairago, Italy), Houtai Choumane (Laveno), Graziella Cimino Reale (Guidonia Monticelio, Italy), Marco Clerici (Legnano, Italy), Bruno Combal (Besozzo, Italy), Costanza Giulia Conte (Ispra), Tatiana Conti (Vedano Olona), Domenica Cortellini (Brebbia, Italy), Orna Cosgrove (Varese), Giulio Cotogno (Rovellesca, Italy), Cristina Croera (Taino), Ana Maria Cruz Naranjo (Cardana di Besozzo, Italy), Barbara Cuniberti (Angera), Bianca D'Alimonte (Sesto Calende, Italy), Miranta Dandoulaki (Athens, Greece), Alexander De Meij (Leggiuno), Wim Decoen (Brebbia), Christiane Deflandre (Travedona Monate), Riccardo Del Torchio (Gemonio, Italy), Elena Demicheli (Sesto Calende), Manuela Di Lorenzo (Sangiano, Italy), Stefano Donadello (Arsago Seprio, Italy), Anna Donato (Taino), Bruno Duarte De Matos E Sousa Pereira (Ispra), Sami Dufva (Biandronno, Italy), Wesley Duke (Gavirate, Italy), Diego Escudero Rodrigo (Taino), Claudio Forti (Malgesso, Italy), Monica Gandini (Buguggiate), Aliki Georgakaki (Alkmaar, Netherlands), Giovanni Giacomelli (Laveno), Alessandra Giallombardo (Gavirate), Nadia Giboni (Brebbia), Maria Giovanna Giordanelli (Vergiate, Italy), Maria Giuseppina Grillo (Sangiano), Manuela Grossi (Ranco), Laurence Guy-Mikkelsen (Angera), Rachel Margaret Harvey-Kelly (Cardana di Besozzo), Paul Hasenohr (Arolo di Leggiuno), Ulla Marjaana Helminen (Laveno), Gea Huykman (Db Anna Paulowna, Netherlands), Elisabeth Marie Cecile Joossens (Biandronno), Lyudmila Kamburska (Ranco), Maria Cristina La Fortezza (Arsago Seprio), Debora Lacchin (Brebbia), Rafal Leszczyna (Varese), Amin Lievens (Taino), Silvia Loffelholz (Gavirate), Davide Lorenzini (Varese), Chiara Macchi (Casalzuigno, Italy), Andrew John Edgar MacLean (Varese), Andrea Magistri (Ispra), Alessia Maineri (Varese), Simone Malfara (Ispra), Adriana Marino (Taino), Patrizia Masoin (Brussels, Belgium), Matteo Mazzuccato (Legnano), Stefania Minervino (Cittiglio, Italy), Eduardo Luis Montes Torralbo (Ispra), Davide Moraschi (Seville, Spain), Claudio Moroni (Besozzo), Giovanni Narciso (Ispra), Andrew Darren Nelson (Angera), Elisa Nerboni (Angera), Isabella Claudia Neugebauer (Arolo di Leggiuno), Francesca Nicoli (Laveno), Victor Alexander Nievaart (Am Alkmaar), Magdalena Novackova (Am Alkmaar), Joanna Nowak (Ispra), Victoria Wendy O'Brien (Angera), Davide Orto (Gallarate), Alessio Ossola (Brebbia), Silvia Parnisari (Arona, Italy), Manuela Pavan (San Felice, Italy), Immaculada Pizzaro Moreno (Seville, Spain), Marina Pongillupi (Ranco), Marsia Pozzato (Sesto Calende), Elisa Pozzi (Taino), Giovanna Primavera (Angera), Michele Rinaldin (Sesto Calende), Alice Ripoli (Gavirate), Emanuela Rizzardi (Laveno), Michela Rossi (Taino), Andrew Rowlands (Bodio, Italy), Helen Salak (Cocquio Trevisago), Jaime Sales Saborit (Ispra), Maria Sonia Salina (Vergiate), Anne Marie Sanchez Cordeil (Besozzo), Ferruccio Scaglia (Oleggio, Italy), Niels Schulze (Sesto Calende), Francesca Serra (Cadrezzate), Penka Shegunova (Geel, Belgium), Donatella Soma (Ispra), Monica Squizzato (Inarco, Italy), Alan Steel (Laveno), Robert Oleij Strobl (Ranco), Marcel Suri (Brebbia), Malcolm John Taberner (Monvalle, Italy), Martina Telo, (Vicenza, Italy), Saara Tetri (Cittiglio), Barbara Claire Thomas (Cocquio Trevisago), Donatella Turetta (Ranco), Adamo Uboldi (Cardana di Besozzo), Monica Vaglica (Osmate, Italy), Paulo Valente De Jesus Rosa (Travedona Monat), Corinna Valli, (Leggiuno), Federica Vanetti (Cittiglio), Christophe Vantongelen (Besozzo), Irene Vernacotola (Legnano), Ottaviano Veronese (Segrate, Italy), Patricia Vieira Lisboa (Angera, Italy), Maria Pilar Vizcaino Martinez, (Monvalle), Giulia Zerauschek (Trieste, Italy), Marco Zucchelli (Ternate, Italy), Erika Adorno (Travedona Monate), Valeria Bossi (Comerio, Italy), Barbara Cattaneo (Leggiuno), Claudia Cavicchioli (Caravate, Italy), Fatima Doukkali (Varese), Orla Huryley (Ranco), Romina La Micela (Besozzo), Lucia Martinez Simon (Ranco), Daniela Piga (Roggiano, Italy), Pamela Porcu (Cittiglio), Silvia Sciacca (Varese), Sarah Solda (Brebbia), Cristina Zocchi (Bregano, Italy), Angela Baranzini (Besozzo), Elly Bylemans (Balen, Italy), Sabrina Calderini (Solbiate Arno, Italy), Davide Capuzzo (Vergiate), Ivano Caravaggi (Besozzo), Elisa Dalle Molle (Ranst, Belgium), Wendy De Vos (Groot-Bijgaarden, Belgium), Volkmar Ernst (Weingarten, Germany), Matteo Fama (Sangiano, Italy), Arianna Farfaletti Casali (Varese), Sasa Gligorijevic (Monvalle), Raffaella Magi Galluzzi (Varese), Sophie Mühlberger (Karlsruhe, Germany), Pamela Muscillo (Varese), Jan Paepen (Balen), Marco Paviotti (Bagnaria Arsa, Italy), Slavka Prvakova (Eg Alkmaar, Netherlands), Andreas Ratzel (Linkenheim, Germany), Thierry Romero (Strasbourg, France), Jose Pablo Solans Vila (Monvalle), Susan Wray (TM Tutjenhoin, Netherlands), Sven Wurzer (Linkenheim), Sylvia Zamana (RZ Castricum, Netherlands), Uwe Zweigner (Leopoldshafen, Germany), Colette Renier (Brussels) (represented by S. Orlandi, A. Coolen, J.-N. Louis and E. Marchal, lawyers)

Other parties to the proceedings: Commission of the European Communities and Council of the European Union

Form of order sought by the appellants

— Set aside the judgment of 4 June 2009 in Joined Cases F-134/07 *Adjemian and Others* v *Commission*, supported by the Council of the European Union and F-8/08 *Renier* v *Commission*, supported by the Council of the European Union;

— Giving judgment itself, having declared the decision of the Commission of the European Communities of 28 April 2004 concerning the maximum duration of the recourse to non-permanent staff in its services to be unlawful, and Article 88 of the Conditions of Employment of other servants of the European Communities to be inapplicable in so far as it limits the duration of the contracts of auxiliary contract staff,

  — annul the Commission's decisions of 23 August and 31 October 2007 rejecting complaints R/263/07 and R/492/07 brought against the decisions of the Commission to renew the engagement of the appellants as contract staff only for a fixed period;

  — annul the decision of 31 October 2007 rejecting complaint R/390/07 brought against the decisions of the Commission to conclude a contract or to renew the engagement of the appellants (Adorno and others — appellants' list No 2) as contract staff only for a fixed period;

  — annul the Commission's decision of 5 September 2007 rejecting the appellants' applications of 31 May and 20 July 2007 for an extension for an indefinite period of the appellants' contracts as members of the contract staff;

  — annul the Commission's decision of 28 November 2007 rejecting the complaint brought against the decision of 5 September 2007 rejecting the appellants' applications of 31 May and 20 July 2007 for an extension for an indefinite period of their contracts as members of the contract staff;

  — annul the Commission's decisions laying down the respective conditions of the appellants' employment in so far as their engagement or the extension thereof is limited to a fixed period;

— Order the defendant to pay the costs of the proceedings at first instance and of the appeal.

Pleas in law and main arguments

By their appeal, the appellants ask the Court to set aside the judgment of the Civil Service Tribunal ('the Tribunal') delivered on 4 June 2009 in Joined Cases F-134/07 *Adjemian and Others* v *Commission* and F-8/08 *Renier* v *Commission* dismissing the applications by which the appellants had sought the annulment of the Commission's decisions — and the rejection of their complaints in that regard — to renew their contracts as members of the contract staff only for a fixed period rather than for an indefinite period.

In support of their appeal, the appellants put forward a number of grounds of appeal alleging:

— that the Tribunal erred in law in deciding that Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP [1] could not sustain a plea of illegality in respect of a provision of the Conditions of Employment of other servants of the European Communities ('Conditions of Employment');

— that the Tribunal erred in law in deciding that the framework agreement on fixed-term work — intended to establish a framework to prevent abuse arising from the use of successive fixed-term employment contracts or relationships — could not sustain pleas of illegality in respect of Article 88 of the Conditions of Employment and the Commission's decision of 28 April 2004 concerning the maximum duration of the recourse to non-permanent staff in the Commission's services, and in deciding that the reasons given for Article 88 of the Conditions of Employment were sufficient;

— that the Tribunal erred in law and in fact in assessing the appellants' situation as against the Commission's obligation to observe the minimum requirements applicable at Community level arising from the framework agreement on fixed-term work and Article 10 EC;

— that, having defined the scope of the duty to act in good faith and of the principles of cooperation in good faith and consistency required to be observed by the Commission, the Tribunal failed to draw the appropriate conclusions from their infringement in the present case;

— that the Tribunal erred in law in deciding that the decisions at issue were sufficiently reasoned notwithstanding the fact that, according to the appellants, the decisions contain only formal statements of reasons and do not provide information enabling the appellants to assess their merits or the Community judicature to carry out a judicial review.

[1] OJ 1999 L 175, p. 43.

Action brought on 10 August 2009 — E v Parliament

(Case T-326/09)

(2009/C 256/56)

Language of the case: French

Parties

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

Defendant: European Parliament

Form of order sought

— annul the decision adopted by the Bureau of the Parliament of 9 March and 3 April 2009 amending the Additional Voluntary Pension Scheme for Members of the European Parliament;

— order the Parliament to pay the costs.

Pleas in law and main arguments

By the present action, the applicant seeks annulment of the decisions of the Bureau of the European Parliament of 9 March and 3 April 2009 amending the rules on the Additional (Voluntary) Pension Scheme in Annex VIII of the Rules governing the payment of expenses and allowances to Members of the European Parliament. The amendments essentially concern the withdrawal of the possibility to take early retirement from age 50 and the possibility to receive the pension as a lump sum, and the raising of the retirement age from 60 to 63 years.

The pleas in law and main arguments invoked by the applicant are, in essence, identical or similar to those invoked in the context of Case T-219/09 *Balfe and Others* v *Parliament* [1].

[1] OJ 2009 C 205, p. 39.

Action brought on 25 August 2009 — Häfele v OHIM — Topcom Europe (Topcom)

(Case T-336/09)

(2009/C 256/57)

Language in which the application was lodged: English

Parties

Applicants: Häfele GmbH & Co. KG (Nagold, Germany) (represented by: J. Dönch, lawyer)

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

Other party to the proceedings before the Board of Appeal: Topcom Europe NV (Heverlee, Belgium)

Form of order sought

— Repeal the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 5 June 2009 in case R 1500/2008-2; and

— Order the defendant to bear the costs.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The word mark "Topcom", for goods in classes 7, 9 and 11

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 "TOPCOM" for goods in class 9; Benelux trade mark registration of the word mark "TOPCOM" for goods in class 9.

Decision of the Opposition Division: Rejected the opposition

Decision of the Board of Appeal: Upheld the appeal, allowed the opposition and annulled the decision of the Opposition Division

Pleas in law: Infringement of Article 8(1)(b) Council Regulation 40/94 (which became Article 8(1)(b) of Council Regulation 207/2009) as the Board of Appeal wrongly held that there was a likelihood of confusion between the trade marks concerned, due to the fact that the goods in question are not similar nor complementary.

Action brought on 24 August 2009 — Colegio Oficial de Farmacéuticos de Valencia v Commission

(Case T-337/09)

(2009/C 256/58)

Language of the case: Spanish

Parties

Applicant: Colegio Oficial de Farmacéuticos de Valencia (Valencia, Spain) (represented by: E. Navarro Varona, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— annul, under Articles 230 and 231 EC, the Commission decision of 15 June 2009 partly denying access to information requested by the applicant by means of its initial application of 23 October 2008 and its confirmatory application of 19 January 2009.

— order the Commission to pay the costs incurred by the applicant.

Pleas in law and main arguments

This action is brought against the decision of the Commission of the European Communities partly refusing access to certain documents drawn up by the consultants ECORYS Nederland BV for the preparation of the report titled 'Study of regulatory restrictions in the field of pharmacies' of 22 June 2007 for the defendant's Directorate General Internal Market and Services.

In support of its claims, the applicant alleges infringement of Article 4(2) and Article 8 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents. ([1])

The applicant claims that the contested decision:

— does not contain an adequate statement of reasons.

— errs in its assessment of the exception relating to the commercial interests of a legal person, including intellectual property.

— contains a manifest error of reasoning, by not taking into account that there is an overriding public interest.

— Fails to comply with the prescribed periods for replying to the confirmatory application for access to the documents.

([1]) OJ L 145 of 31.5.2001, p. 43

Action brought on 27 August 2009 — Consejo Regulador de la Denominación de Origen Txakoli de Álava and Others v OHIM (TXAKOLI)

(Case T-341/09)

(2009/C 256/59)

Language of the case: Spanish

Parties

Applicants: Consejo Regulador de la Denominación de Origen Txakoli de Álava (Amurrio, Spain), Consejo Regulador de la Denominación de Origen Txakoli de Bizkaia (Leoia, Spain), Consejo Regulador de la Denominación de Origen Txakoli de Getaria (Getaria, Spain) (represented by J. Grimau Muñoz and J. Villamor Muguerza, lawyers)

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

Form of order sought

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market of 4 June 2009 in Case R 197/2009-2 and allow the application for registration of 'TXAKOLI' as a Community trade mark (collective word mark) for Classes 33, 35, 41 and 42.

— Order OHIM to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: Collective word mark 'TXAKOLI' (Application No 6 952 014) for goods and services in Classes 33, 35, 41 and 42.

Decision of the Examiner: Application refused.

Decision of the Board of Appeal: Appeal dismissed.

Pleas in law: Incorrect application of Article 7(1)(c) of Regulation No 207/2009 inasmuch as that provision is not applicable to the term 'Txakoli' since the latter is considered to be a traditional term by Commission Regulation (EC) No 753/2002 of 29 April 2002 laying down certain rules for applying Council Regulation (EC) No 1493/1999 as regards the description, designation, presentation and protection of certain wine sector products. ([1])

([1]) OJ 2002 L 118, p. 1.

Action brought on 28 August 2009 — Bard v OHIM — Braun Melsungen (PERFIX)

(Case T-342/09)

(2009/C 256/60)

Language in which the application was lodged: English

Parties

Applicants: C.R. Bard, Inc. (Murray Hill, United States) (represented by: A. Bryson, Barrister, O. Bray, A. Hobson and G. Warren, Solicitors)

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

Other party to the proceedings before the Board of Appeal: B. Braun Melsungen AG (Melsungen, Germany)

Form of order sought

— Annul the decision of the Fifth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 4 June 2009 in case R 1577/2007-5; and

— Order the defendant and/or the other party to the proceedings before the Board of Appeal to bear the costs.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The word mark "PERFIX", for goods in class 10

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

Mark or sign cited: German trade mark registration of the word mark "PERIFIX" for goods in class 10; International trade mark registration of the word mark "PERIFIX" for goods in class 10

Decision of the Opposition Division: Upheld the opposition

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8(1)(b) Council Regulation 40/94 (which became Article 8(1)(b) of Council Regulation 207/2009) as the Board of Appeal wrongly held that there was a likelihood of confusion between the trade marks concerned.

Action brought on 31 August 2009 — Hearst Communications v OHIM — Vida Estética (COSMOBELLEZA)

(Case T-344/09)

(2009/C 256/61)

Language in which the application was lodged: English

Parties

Applicants: Hearst Communications, Inc. (New York, United States) (represented by: A. Nordemann, lawyer)

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

Other party to the proceedings before the Board of Appeal: Vida Estética, S.L. (Barcelona, Spain)

Form of order sought

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 4 June 2009 in case R 770/2007-2; and

— Order the defendant to pay the costs

Pleas in law and main arguments

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

Community trade mark concerned: The word mark "COSMO-BELLEZA", for goods and services in classes 35 and 41

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

Mark or sign cited: French trade mark registration of the mark "COSMOPOLITAN" registered for goods in class 16; International trade mark registration of the mark "COSMO TEST" registered for goods and services in classes 25, 38 and 41; Portuguese trade mark registration of the mark "COSMO" registered for services in class 41; international trade mark registration of the mark "COSMOPOLITAN TELEVISION" registered for goods and services in classes 38 and 41; international trade mark registration of the mark "COSMOPOLITAN" registered for services in classes 35 and 39; United Kingdom trade mark registration of the mark "COSMOPOLITAN" registered for services in classes 35 and 39; United Kingdom trade mark registration of the figurative mark "THE COSMOPOLITAN SHOW" registered for services in classes 35 and 41; United Kingdom trade mark registration of the mark "COSMO" registered for services in classes 35 and 41; United Kingdom trade mark registration of the mark "COSMOPOLITAN TELEVISION" registered for services in classes 38 and 41; Irish trade mark registration of the mark "COSMOPOLITAN TELEVISION" registered for services in classes 38 and 41; well known trade marks "COSMO" and "COSMOPOLITAN" in all the Member States for goods and services in classes 16, 28 and 41; non-registered trade marks "COSMO" and "COSMOPOLITAN" used in all the Member States for goods and services in classes 16, 28 and 41, as well as the trade names "COSMO" and "COSMOPOLITAN" used in all the Member States for goods and services in the same classes.

Decision of the Opposition Division: Rejected the opposition

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 wrongly held that the trade marks concerned are not similar, that the goods and services in question are not similar and thus that there was no likelihood of confusion between the trade marks concerned.

Action brought on 28 August 2009 — Bodegas y Viñedos Puerta de Labastida v OHIM — Unión de Cosecheros de Labastida (PUERTA DE LABASTIDA)

(Case T-345/09)

(2009/C 256/62)

Language in which the application was lodged: Spanish

Parties

Applicant: Bodegas y Viñedos Puerta de Labastida, SL (Autol, Spain) (represented by: J. Grimau Muñoz and J. Villamor Muguerza, 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: Unión de Cosecheros de Labastida, S. Coop. Ltda (Labastida, Spain)

Form of order sought

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market of 28 May 2009 in Case R 1021/2008-1, allowing the application for registration of 'PUERTA DE LABASTIDA' (word mark) as a Community trade mark for Classes 29, 33 and 35;

— Order OHIM to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: BODEGAS Y VIÑEDOS PUERTA DE LABASTIDA S.L.

Community trade mark concerned: Word mark 'PUERTA DE LABASTIDA' (Application No 4473278) for goods and services in Classes 29, 33 and 35.

Proprietor of the mark or sign cited in the opposition proceedings: UNIÓN DE COSECHEROS DE LABASTIDA, S. COOP. LTDA.

Mark or sign cited in opposition: Spanish word mark 'CASTILLO DE LABASTIDA' (No 617 137) for goods in Class 33; Community word mark 'CASTILLO LABASTIDA' (No. 23 382) for goods in Class 33; and Community word mark 'CASTILLO LABASTIDA' (No 3 515 566) for services in Classes 35, 39 and 43.

Decision of the Opposition Division: Opposition upheld in part.

Decision of the Board of Appeal: Appeal dismissed.

Pleas in law: Infringement of Articles 42 and 8(1)(b) of Regulation No 207/2009 on the Community trade mark.

Action brought on 1 September 2009 — Winzer Pharma v OHIM — Alcon (BAÑOFTAL)

(Case T-346/09)

(2009/C 256/63)

Language in which the application was lodged: English

Parties

Applicants: Dr. Robert Winzer Pharma GmbH (Berlin, Germany) (represented by: S. Schneller, lawyer)

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

Other party to the proceedings before the Board of Appeal: Alcon, Inc. (Hünenberg, Switzerland)

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 28 May 2009 in case R 795/2008-1;

— Order the defendant, in any event the other party to the proceedings before the Board of Appeal, to pay the costs; and

— In the auxiliary, defer the matter to OHIM.

Pleas in law and main arguments

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

Community trade mark concerned: The word mark "BAÑOFTAL", for goods in class 5

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

Mark or sign cited: German trade mark registration of the mark "PAN-OPHTAL" registered for goods in class 5; German trade mark registration of the mark "KAN-OPHTAL" registered for goods class 5

Decision of the Opposition Division: Rejected the opposition

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 wrongly assessed the visual, phonetic and conceptual similarities between the trade marks concerned, wrongly held that the Community trade mark concerned would not fall under the series of "Ophtal" trade marks of the other party to the proceedings before the Board of Appeal and wrongly denied an enhanced distinctiveness of the trade marks cited in the opposition proceedings based on use, thereby wrongly decided that there was no likelihood of confusion between the trade marks concerned; infringement of Article 8(5) of Council Regulation 207/2009 as the Board of Appeal omitted to make any statements on this ground of opposition; infringement of Articles 75 and 76(1) of Council Regulation 207/2009 as the Board of Appeal wrongly omitted to provide reasons, in any event comprehensive reasons, allowing an understanding of the decision.

Action brought on 4 September 2009 — Acetificio Marcello de Nigris v Commission

(Case T-351/09)

(2009/C 256/64)

Language of the case: Italian

Parties

Applicant: Acetificio Marcello de Nigris Srl (Afragola, Italy) (represented by: P. Perani and P. Pozzi, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Declare that the granting of the registration of the name 'Aceto Balsamico di Modena' as a protected geographical indication in the register of protected designations of origin and protected geographical indications constitutes an infringement of Article 3 of Regulation 510/2006 and an infringement of the procedural guarantees expressly laid down in Community law;

— annul Commission Regulation (EC) No 583/2009 of 3 July 2009, published on 4 July 2009, entering a name in the register of protected designations of origin and protected geographical indications (Aceto Balsamico di Modena) (PGI);

— as a consequence of the annulment, take all the steps necessary to cancel the registration of 'Aceto Balsamico di Modena' as a protected geographical indication in the register of protected designations of origin and protected geographical indications;

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicant, which is engaged in the production and sale of wine vinegar and other condiments, including Balsamic vinegar from Modena, objects to the registration of the name 'Aceto Balsamico di Modena' as a protected geographical indication, brought about by the contested regulation.

In support of its application, the applicant claims:

— infringement of Article 3 of Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs, ([1]) in so far as it is highly apparent from the historical background to how the production of Balsamic vinegar from Modena developed that there is no connection whatsoever between such products and a particular geographical area. In fact, there can be no doubt that, for several decades, a majority of the Balsamic vinegar from Modena sold in Italy and abroad has been produced outside the historical territory of origin. Against that background, the name in question describes a product made in accordance with particular production methods and having specific characteristics which do not, however, depend on the place of production;

— that it is impossible for the applicant to object to the registration of the name 'Aceto Balsamico di Modena' as a protected geographical indication. As a result of the sequence and timing of the relevant events in this case, it was possible for the protected geographical indication at issue in this case to be registered without the applicant being given the opportunity to lodge an objection to the registration by submitting a substantiated statement, in breach of the procedural guarantees laid down in both

Article 7(3) of Council Regulation (EEC) No 2081/1992 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs [2] and in Article 5(5) of Regulation 510/2006.

[1] OJ L 93, 31.3.2006, p. 12.
[2] OJ L 208, 24.7.1992. p. 1.

Order of the Court of First Instance of 7 September 2009 — Grain Millers v OHIM — Grain Millers (GRAIN MILLERS)

(Case T-429/08) [1]

(2009/C 256/65)

Language of the case: English

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

[1] OJ C 313, 6.12.2008.

Order of the Court of First Instance of 27 July 2009 — Visonic v OHIM — Sedea Electronique (VISIONIC)

(Case T-569/08) [1]

(2009/C 256/66)

Language of the case: English

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

[1] C 55, 7.3.2009.

Order of the Court of First Instance of 1 September 2009 — United Kingdom v Commission

(Case T-107/09) [1]

(2009/C 256/67)

Language of the case: English

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

[1] OJ C 113, 16.5.2009.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Action brought on 17 August 2009 — Simone Daake v OHIM

(Case F-72/09)

(2009/C 256/68)

Language of the case: German

Parties

Applicant: Simone Daake (Alicante, Spain) (represented by: H. Tettenborn, lawyer)

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

Subject-matter and description of the proceedings

Annulment of the decision of OHIM of 12 September 2008 terminating the applicant's contract of employment and payment of damages; alleged circumvention of the provisions for an open-ended contract by means of successive fixed-term contracts.

Forms of order sought

— Set aside the OHIM's declaration in its letter of 12 September 2008 according to which the applicant's contract of employment with OHIM was to terminate on 31 October 2008,

— Annul the decision of OHIM of 6 May 2009 by which OHIM rejected the applicant's complaint of 12 December 2008 under Article 90(2) of the Staff Regulations,

— Order OHIM to compensate the applicant for material damages amounting to the difference between:

on the one hand, her actual salary according to the formal classification as contract staff member under Article 3a of the Conditions of Employment of other Servants from 1 November 2005 until 31 October 2008 and the unemployment benefits paid to her from 1 November 2008 until today, and

on the other hand, the salary to which she is entitled as temporary staff member under Article 2(a) of the Conditions of Employment of other Servants from 1 November 2005 until today — in the alternative, at least the salary to which she is entitled as temporary staff member under Article 2(a) of the Conditions of Employment of other Servants from 1 November 2005 until 31 October 2008 and the unemployment benefits to which she was entitled calculated according to her salary for October 2008 under Article 2(a) of the Conditions of Employment of other Servants –

and the resulting losses to retirement pension and other indemnities, salary and benefits taking into account appropriate promotion based on her performance until 1 April 2008,

— Order OHIM to compensate the applicant for the non-material damage caused by the discrimination vis-à-vis other OHIM employees in an amount to be calculated by the Court,

— Order the Office for Harmonisation in the Internal Market (Trade Marks and Designs) to pay the costs.

European Union Civil Service Tribunal

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