ISSN 1725-2423

Official Journal of the European Union

C 134

English edition

Volume 53

22 May 2010

Information and Notices

Notice No | Contents | Page

EN

Price: EUR 4

(Continued overleaf)

EN

(Continued overleaf)

EN

EN

(Continued overleaf)

EN

EN

(Continued overleaf)

EN

EN

(Continued overleaf)

European Union Civil Service Tribunal

EN

(Continued on inside back cover)

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COURT OF JUSTICE OF THE EUROPEAN UNION

(2010/C 134/01)

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

OJ C 113, 1.5.2010

Past publications

OJ C 100, 17.4.2010

OJ C 80, 27.3.2010

OJ C 63, 13.3.2010

OJ C 51, 27.2.2010

OJ C 37, 13.2.2010

OJ C 24, 30.1.2010

These texts are available on:

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Grand Chamber) of 23 March 2010 (reference for a preliminary ruling from the Cour de cassation — France) — Google France, Google, Inc. v Louis Vuitton Malletier (C-236/08), Viaticum SA, Luteciel SARL (C-237/08), Centre national de recherche en relations humaines (CNRRH) SARL, Pierre-Alexis Thonet, Bruno Raboin, Tiger SARL (C-238/08)

(Joined Cases C-236/08 to C-238/08) [1]

(Trade marks — Internet — Search engine — Keyword advertising — Display, on the basis of keywords corresponding to trade marks, of links to sites of competitors of the proprietors of those marks or to sites offering imitation goods — Directive 89/104/EEC — Article 5 — Regulation (EC) No 40/94 — Article 9 — Liability of the search engine operator — Directive 2000/31/EC ('Directive on electronic commerce'))

(2010/C 134/02)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Applicants: Google France, Google, Inc.

Defendants: Louis Vuitton Malletier (C-236/08), Viaticum SA, Luteciel SARL (C-237/08), Centre national de recherche en relations humaines (CNRRH) SARL, Pierre-Alexis Thonet, Bruno Raboin, Tiger SARL (C-238/08)

Re:

Reference for a preliminary ruling — Cour de Cassation — Interpretation of Articles 5(1)(a) and (b) and (2) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989 L 40, p. 1), Article 9(1)(a) to (c) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1) and Article 14 of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (OJ 2000 L 178, p. 1) — Concept of 'use' of the mark and rights of the proprietor thereof — Provider of paid Internet referencing services who does not advertise his own goods or services but makes available to advertisers keywords reproducing or imitating registered trade marks and arranges, by the referencing agreement, to create and favourably display, on the basis of those keywords, advertising links to sites offering infringing goods — Conditions under which the service provider storing information provided by the recipients of those services does not incur liability

Operative part of the judgment

1. *Article 5(1)(a) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks and Article 9(1)(a) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark must be interpreted as meaning that the proprietor of a trade mark is entitled to prohibit an advertiser from advertising, on the basis of a keyword identical with that trade mark which that advertiser has, without the consent of the proprietor, selected in connection with an internet referencing service, goods or services identical with those for which that mark is registered, in the case where that advertisement does not enable an average internet user, or enables that user only with difficulty to ascertain whether the goods or services referred to therein originate from the proprietor of the trade mark or an undertaking economically connected to it or, on the contrary, originate from a third party.*

2. *An internet referencing service provider which stores, as a keyword, a sign identical with a trade mark and organises the display of advertisements on the basis of that keyword does not use that sign within the meaning of Article 5(1) and (2) of Directive 89/104 or of Article 9(1) of Regulation No 40/94.*

3. *Article 14 of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') must be interpreted as meaning that the rule laid down therein applies to an internet referencing service provider in the case where that service provider has not played an active role of such a kind as to give it knowledge of, or control over, the data stored. If it has not played such a role, that service provider cannot be held liable for the data which it has stored at the request of an advertiser, unless, having obtained knowledge of the unlawful nature of those data or of that advertiser's activities, it failed to act expeditiously to remove or to disable access to the data concerned.*

([1]) OJ C 209, 15.8.2008.

Judgment of the Court (First Chamber) of 25 March 2010 (reference for a preliminary ruling from the Oberster Gerichtshof — Austria) — Die BergSpechte Outdoor Reisen und Alpinschule Edi Koblmüller GmbH v Günter Guni, trekking.at Reisen GmbH

(Case C-278/08) ([1])

(Trade marks — Internet — Keyword advertising — Display, on the basis of keywords which are identical with or similar to trade marks, of links to sites of competitors of the proprietors of those trade marks — Directive 89/104/EEC — Article 5(1))

(2010/C 134/03)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: Die BergSpechte Outdoor Reisen und Alpinschule Edi Koblmüller GmbH

Defendants: Günter Guni, trekking.at Reisen GmbH

Re:

Reference for a preliminary ruling — Oberster Gerichtshof — Interpretation of Article 5(1) of the First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989 L 40, p. 1) — Reservation of a sign similar or identical to a trade mark with an internet search engine operator in order that, once that sign has been entered as a search term, advertising for products or services identical or similar to those for which the trade mark in question was registered appears automatically on the screen ('keyword advertising') — Classification of that utilisation of the trade mark as a use which its proprietor is entitled to prevent

Operative part of the judgment

Article 5(1) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks must be interpreted as meaning that the proprietor of a trade mark is entitled to prohibit an advertiser from advertising, on the basis of a keyword identical with or similar to that trade mark which that advertiser has, without the consent of that proprietor, selected in connection with an internet referencing service, goods or services identical with those for which that mark is registered, in the case where that advertising does not enable an average internet user, or enables that user only with difficulty, to ascertain whether the goods or services referred to therein originate from the proprietor of the trade mark or by an undertaking which is economically connected to it or, on the contrary, originate from a third party.

([1]) OJ C 223, 30.08.2008

Judgment of the Court (Fourth Chamber) of 18 March 2010 (references for a preliminary ruling from the Giudice di Pace di Ischia — Italy) — Rosalba Alassini (C-317/08) and Filomena Califano v Wind SpA (C-318/08) and Lucia Anna Giorgia Iacono v Telecom Italia SpA (C-319/08) and Multiservice Srl v Telecom Italia SpA (C-320/08)

(Joined Cases C-317/08 to C-320/08) ([1])

(Reference for a preliminary ruling — Principle of effective judicial protection — Electronic communications networks and services — Directive 2002/22/EC — Universal Service — Disputes between end users and providers — Mandatory to attempt an out-of-court settlement)

(2010/C 134/04)

Language of the case: Italian

Referring court

Giudice di Pace di Ischia

Parties to the main proceedings

Applicants: Rosalba Alassini(C-317/08), Filomena Califano (C-318/08), Lucia Anna Giorgia Iacono (C-319/08) and Multiservice Srl (C-320/08)

Defendants: Telecom Italia SpA (C-317/08), Wind SpA (C-318/08), Telecom Italia SpA (C-319/08), Telecom Italia SpA (C-320/08)

Re:

Reference for a preliminary ruling — Giudice di Pace di Ischia — Interpretation of Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) (OJ 2002 L 108, p. 51), Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees (OJ 1999 L 171, p. 12) and Article 6 of the European Convention on Human Rights — Disputes between end users and operators concerning electronic communications, in which compensation is sought for damage suffered on account of the alleged non-performance of a contract for the supply of telephone services by the operator — National rules under which it is mandatory to attempt settlement before bringing judicial proceedings — Whether it is possible to bring judicial proceedings without first attempting settlement

Operative part of the judgment

— *Article 34 of Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on Universal Service and users' rights relating to electronic communications networks and services (Universal Service Directive) must be interpreted as not precluding legislation of a Member State under which the admissibility before the courts of actions relating to electronic communications services between end-users and providers of those services, concerning the rights conferred by that directive, is conditional upon an attempt to settle the dispute out of court.*

— *Nor do the principles of equivalence and effectiveness or the principle of effective judicial protection preclude national legislation which imposes, in respect of such disputes, prior implementation of an out-of-court settlement procedure, provided that that procedure does not result in a decision which is binding on the parties, that it does not cause a substantial delay for the purposes of bringing legal proceedings, that it suspends the period for the time-barring of claims and that it does not give rise to costs — or gives rise to very low costs — for the parties, and only if electronic means is not the only means by which the settlement procedure may be accessed and interim measures are possible in exceptional cases where the urgency of the situation so requires.*

(1) OJ C 236, 13.9.2008.

Judgment of the Court (Grand Chamber) of 16 March 2010 (reference for a preliminary ruling from the Cour de cassation — France) — Olympique Lyonnais SASP v Olivier Bernard, Newcastle United FC

(Case C-325/08) (1)

(Article 39 EC — Freedom of movement for workers — Restriction — Professional football players — Obligation to sign the first professional contract with the club which provided the training — Player ordered to pay damages for infringement of that obligation — Justification — Objective of encouraging the recruitment and training of young professional players)

(2010/C 134/05)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Applicant: Olympique Lyonnais SASP

Defendant: Olivier Bernard, Newcastle United FC

Re:

Reference for a preliminary ruling — Cour de cassation (France) — Interpretation of Article 39 EC — National provision obliging a football player to pay compensation to the club which trained him when, at the end of his training period, he signs a professional contract with a club of another Member State — Barrier to the freedom of movement for workers — Possible justification of such a restriction in the need to encourage the recruitment and training of young professional players

Operative part of the judgment

Article 45 TFUE does not preclude a scheme which, in order to attain the objective of encouraging the recruitment and training of young players, guarantees compensation to the club which provided the training if, at the end of his training period, a young player signs a professional contract with a club in another Member State, provided that the scheme is suitable to ensure the attainment of that objective and does not go beyond what is necessary to attain it.

A scheme such as the one at issue in the main proceedings, under which a 'joueur espoir' who signs a professional contract with a club in another Member State at the end of his training period is liable to pay damages calculated in a way which is unrelated to the actual costs of the training, is not necessary to ensure the attainment of that objective.

(1) OJ C 247, 27.9.2008.

Judgment of the Court (Third Chamber) of 25 March 2010 — European Commission v Kingdom of Spain

(Case C-392/08) [1]

(Failure of a Member State to fulfil obligations — Directive 96/82/EC — Control of major-accident hazards involving dangerous substances — Article 11(1)(c) — Obligation to draw up external emergency plans — Time-limit)

(2010/C 134/06)

Language of the case: Spanish

Parties

Applicant: European Commission (represented by: S. Pardo Quintillán and A. Sipos, Agents)

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

Re:

Failure of a Member State to fulfil obligations — Breach of Article 11(1)(c) of Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances, as amended by Directive 2003/105/EC (OJ 1997 L 10, p. 13) — Failure to draw up certain external emergency plans for the measures to be taken outside the establishment

Operative part of the judgment

The Court:

1. *Declares that, by failing to draw up external emergency plans for all establishments to which Article 9 of Directive 96/82/EC of 9 December 1996 on the control of major accident hazards involving dangerous substances applies, the Kingdom of Spain has failed to fulfil its obligations under Article 11(1)(c) thereof;*

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

[1] OJ C 272, 25.10.2008.

Judgment of the Court (Second Chamber) of 25 March 2010 — Sviluppo Italia Basilicata SpA v European Commission

(Case C-414/08 P) [1]

(Appeal — European Regional Development Fund (ERDF) — Reduction of financial assistance — General allocation for the purpose of implementing measures to support small and medium-sized enterprises — Deadline for completion of investment projects — Discretion of the Commission)

(2010/C 134/07)

Language of the case: Italian

Parties

Appellant: Sviluppo Italia Basilicata SpA (represented by: F. Sciaudone, R. Sciaudone and A. Neri, avvocati)

Other party to the proceedings: European Commission (represented by: L. Flynn, agent, assisted by A. Dal Ferro, avvocato)

Re:

Appeal against the judgment of 8 July 2008 in Case T-176/06 *Sviluppo Basilicata* v *Commission* by which the Court of First Instance (Third Chamber) dismissed its application for, first, annulment of Commission Decision C(2006) 1706 of 20 April 2006 reducing the financial assistance from the European Regional Development Fund in favour of an overall allocation for the purpose of implementing measures to support small and medium-sized enterprises operating in the Basilicata Region of Italy, granted under the Community support framework for Community structural assistance in the regions of Italy covered by Objective 1 and, second, damages for the harm purportedly caused by that decision

Operative part of the judgment

The Court:

1. *Dismisses the appeal.*

2. *Orders Sviluppo Italia Basilicata SpA to pay the costs.*

[1] OJ C 301, 22.11.2008.

Judgment of the Court (Fourth Chamber) of 18 March 2010 — Trubowest Handel GmbH, Viktor Makarov v Council of the European Union, European Commission

(Case C-419/08 P) [1]

(Appeal — Dumping — Regulation (EC) No 2320/97 imposing anti-dumping duties on imports of certain seamless pipes and tubes — Non-contractual liability — Damage — Causal link)

(2010/C 134/08)

Language of the case: English

Parties

Appellants: Trubowest Handel GmbH (represented by: K. Adamantopoulos and E. Petritsi, dikigoroi), Viktor Makarov (represented by: K. Adamantopoulos and E. Petritsi, dikigoroi)

Other parties to the proceedings: Council of the European Union (represented by: J.-P. Hix, acting as Agent, assisted by G. Berrisch and G. Wolf, Rechtsanwälte), European Commission (represented by N. Khan and H. van Vliet, acting as Agents)

Re:

Appeal against the judgment of 9 July 2008 of the Court of First Instance of the European Communities (Third Chamber) in Case T-429/04 *Trubowest Handel and Makarov* v *Council and Commission*, by which it dismissed an action for compensation for the damage allegedly suffered by the appellants as a result of the adoption of Council Regulation (EC) No 2320/97 of 17 November 1997 imposing definitive anti-dumping duties on imports of certain seamless pipes and tubes of iron or non-alloy steel originating in Hungary, Poland, Russia, the Czech Republic, Romania and the Slovak Republic, repealing Regulation (EEC) No 1189/93 and terminating the proceeding in respect of such imports originating in the Republic of Croatia (OJ 1997 L 322, p. 1)

Operative part of the judgment

The Court:

1. *Dismisses the appeal.*

2. *Orders Trubowest Handel GmbH and Mr Makarov to pay the costs.*

[1] OJ C 285, 08.11.2008.

Judgment of the Court (First Chamber) of 18 March 2010 (reference for a preliminary ruling from the Hoge Raad der Nederlanden — Netherlands) — F. Gielen v Staatssecretaris van Financiën

(Case C-440/08) [1]

(Direct taxation — Article 43 EC — Non-resident taxable person — Business operator — Right to a self-employed person's deduction — Hours test — Discrimination between resident and non-resident taxable persons — Option to be treated as a resident taxable person)

(2010/C 134/09)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: F. Gielen

Defendant: Staatssecretaris van Financiën

Re:

Reference for a preliminary ruling — Hoge Raad der Nederlanden Den Haag — Interpretation of Article 43 EC — National legislation granting self-employed business operators the right to deduct a flat-rate amount from their profits provided that they have devoted at least 1 225 hours per calendar year to the activities of the business — No account taken, solely in the case of a non-resident taxpayer, of hours devoted to an undertaking established in another Member State

Operative part of the judgment

Article 49 TFEU precludes national legislation which, in relation to the granting of a tax advantage, such as the self-employed person's deduction at issue in the main proceedings, is discriminatory towards non-resident taxable persons, even though those taxable persons may opt for the regime applicable to resident taxable persons in order to benefit from that tax advantage.

[1] OJ C 327, 20.12.2008.

Judgment of the Court (Third Chamber) of 25 March 2010 (reference for a preliminary ruling from the Oberlandesgericht Düsseldorf — Germany) — Helmut Müller GmbH v Bundesanstalt für Immobilienaufgaben

(Case C-451/08) [1]

(Procedures for the award of public works contracts — Public works contracts — Concept — Sale by a public body of land on which the purchaser intends subsequently to carry out works — Works corresponding to a municipal authority's urban-planning objectives)

(2010/C 134/10)

Language of the case: German

Referring court

Oberlandesgericht Düsseldorf

Parties to the main proceedings

Applicant: Helmut Müller GmbH

Defendant: Bundesanstalt für Immobilienaufgaben

Intervening parties: Gut Spascher Sand Immobilien GmbH, Municipality of Wildeshausen

Re:

Reference for a preliminary ruling — Oberlandesgericht Düsseldorf — Interpretation of Article 1(2)(b) and (3) of European Parliament and Council Directive 2004/18/EC of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ 2004 L 134, p. 114) — Concepts of 'public works contract' and 'public works concession' — Obligation to put out to tender the sale of land by a third party in circumstances where the acquirer subsequently has to carry out on that land works corresponding to town planning objectives defined by a local authority and a draft of which has been approved by that authority since before the conclusion of the sale contract.

Operative part of the judgment

1. *The concept of 'public works contracts', within the meaning of Article 1(2)(b) of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, does not require that the works which are the subject of the contract be materially or physically carried out for the contracting authority, provided that they are carried out for that authority's immediate economic benefit. The latter condition is not satisfied by the exercise by that contracting authority of regulatory urban-planning powers.*

2. *The concept of 'public works contracts', within the meaning of Article 1(2)(b) of Directive 2004/18, requires that the contractor assume a direct or indirect obligation to carry out the works which are the subject of the contract and that that obligation be legally enforceable in accordance with the procedural rules laid down by national law.*

3. *The 'requirements specified by the contracting authority', within the meaning of the third variant set out in Article 1(2)(b) of Directive 2004/18, cannot consist in the mere fact that a public authority examines certain building plans submitted to it or takes a decision in the exercise of its regulatory urban-planning powers.*

4. *In circumstances such as those of the case in the main proceedings, there is no public works concession within the meaning of Article 1(3) of Directive 2004/18.*

5. *In circumstances such as those of the case in the main proceedings, the provisions of Directive 2004/18 do not apply to a situation in which one public authority sells land to an undertaking, even though another public authority intends to award a works contract in respect of that land but has not yet formally decided to award that contract.*

[1] OJ C 6, 10.1.2009.

Judgment of the Court (Eighth Chamber) of 18 March 2010 (reference for a preliminary ruling from the Hof van beroep te Gent — Belgium) — Erotic Center BVBA v Belgische Staat

(Case C-3/09) [1]

(Sixth VAT Directive — Article 12(3)(a) — Annexe H — Reduced rate of VAT — Concept of admissions to a cinema — Individual cubicles for watching films on demand)

(2010/C 134/11)

Language of the case: Dutch

Referring court

Hof van beroep te Gent

Parties to the main proceedings

Applicant: Erotic Center BVBA

Defendant: Belgische Staat

Re:

Reference for a preliminary ruling — Hof van Beroep te Gent — Interpretation of Annex H, Category 7 of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1)(now Annex III, No. 7 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) — Reduced rate applicable to certain supplies of goods and services — Cinemas — Meaning — Individual cubicle for viewing films on demand

Operative part of the judgment

The concept of admissions to a cinema referred to in the first paragraph of Category 7 in Annex H to Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, as amended by Council Directive 2001/4/EC of 19 January 2001, must be interpreted as meaning that it does not cover the payment made by a customer so as to be able to watch on his own one or more films, or extracts from films, in private cubicles such as those in issue in the main proceedings.

([1]) OJ C 82, 4.4.2009.

Judgment of the Court (Second Chamber) of 25 March 2010 — European Commission v Kingdom of the Netherlands

(Case C-79/09) ([1])

(Failure of Member State to fulfil obligations — Value added tax — Directive 2006/112/EC — Articles 13 and 132 — Bodies governed by public law — Capacity as public authorities — Activities — Treatment as non-taxable persons — Exemptions — Socio-cultural, health and education sectors — 'Euroregions' — Promotion of work mobility — Making available of personnel — Burden of proof)

(2010/C 134/12)

Language of the case: Dutch

Parties

Applicant: European Commission (represented by: D. Triantafyllou and W. Roels, acting as Agents)

Defendant: Kingdom of the Netherlands (represented by: C.M. Wissels, D.J.M. de Grave and Y. de Vries, acting as Agents)

Re:

Failure of a Member State to fulfil its obligations — Infringement of Articles 2(1)(c), 13, 24(1) and 132 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) — Making available of personnel in the health, education and socio-cultural sectors — Promotion of work mobility — Euroregion

Operative part of the judgment

The Court:

1. *Dismisses the action.*

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

([1]) OJ C 129 of 6.6.2006.

Judgment of the Court (Fourth Chamber) of 18 March 2010 (reference for a preliminary ruling from the Hof van beroep te Brussel (Belgium)) — SGS Belgium NV, Firme Derwa NV, Centraal Beheer Achmea NV v Belgisch Interventie- en Restitutiebureau, Firme Derwa NV, Centraal Beheer Achmea NV, SGS Belgium NV, Belgisch Interventie- en Restitutiebureau

(Case C-218/09) ([1])

(Reference for a preliminary ruling — Regulation (EEC) No 3665/87 — Export refunds — Article 5(3) — Conditions for granting — Exception — Force majeure — Products which perished in transit)

(2010/C 134/13)

Language of the case: Dutch

Referring court

Hof van beroep te Brussel

Parties to the main proceedings

Applicants: SGS Belgium NV, Firme Derwa NV, Centraal Beheer Achmea NV

Defendants: Belgisch Interventie- en Restitutiebureau, Firme Derwa NV, Centraal Beheer Achmea NV, SGS Belgium NV, Belgisch Interventie- en Restitutiebureau

Re:

Reference for a preliminary ruling — Hof van beroep te Brussel — Interpretation of Article 5(3) of Commission Regulation (EEC) No 3665/87 of 27 November 1987 laying down common detailed rules for the application of the system of export refunds on agricultural products (OJ 1987 L 351, p. 1) — Conditions for granting export refunds — Exception — Product which has perished in transit for reasons of *force majeure*.

Operative part of the judgment

Article 5(3) of Commission Regulation (EEC) No 3665/87 of 27 November 1987 laying down common detailed rules for the application of the system of export refunds on agricultural products, as amended by Commission Regulation (EC) No 1384/95 of 19 June 1995, must be interpreted as meaning that damage to a consignment of beef in the conditions described by the national court does not constitute force majeure within the meaning of that provision.

([1]) OJ C 220, 12.09.2009.

Order of the Court of 25 February 2010 (reference for a preliminary ruling from the Tribunal Judicial da Comarca do Porto (Portugal)) — Santa Casa da Misericórdia de Lisboa v Liga Portuguesa de Futebol Profissional, Bwin International Ltd, formerly Baw International Ltd, Betandwin.Com Interactive Entertainment

(Case C-55/08) ([1])

(Reference for a preliminary ruling — Inadmissibility)

(2010/C 134/14)

Language of the case: Portuguese

Referring court

Tribunal Judicial da Comarca do Porto (Portugal)

Parties to the main proceedings

Applicant: Santa Casa da Misericórdia de Lisboa

Defendant: Liga Portuguesa de Futebol Profissional, Bwin International Ltd, formerly Baw International Ltd, Betandwin.Com Interactive Entertainment

Re:

Reference for a preliminary ruling — Tribunal Judicial da Comarca do Porto — Interpretation of Articles 43, 49 and 56 EC — National legislation reserving to a particular body the exclusive right to operate games of chance and pool betting and penalising the activity of organising, promoting and collecting (including by Internet) of bets on sporting events — Prohibition on an undertaking based in another Member State operating on line gambling and pool betting from promoting organising and operating such gambling and pool betting by Internet and making the value of the prizes available to winners

Operative part of the order

The reference for a preliminary ruling made by the Tribunal Judicial da Comarca do Porto (Portugal), by decision of 19 December 2007, is manifestly inadmissible.

([1]) OJ C 92, 12.4.2008.

Order of the Court of 9 December 2009 — Luigi Marcuccio v European Commission

(Case C-432/08 P) ([1])

(Appeal — Officials — Social security — Payment of medical expenses — Implied rejection of the application seeking reimbursement in full of medical expenses incurred by the applicant — Appeal in part manifestly inadmissible and in part manifestly unfounded)

(2010/C 134/15)

Language of the case: Italian

Parties

Appellant: Luigi Marcuccio (represented by: G. Cipressa, avvocato)

Other party to the proceedings: European Commission (represented by: J. Currall and C. Berardis-Kayser, acting as Agents, and A. dal Ferro, avvocato)

Re:

Appeal against the judgment of the Court of First Instance (First Chamber) of 9 July 2008 in Joined Cases T-296/05 and T-408/05 *Marcuccio* v *Commission*, by which the Court dismissed as inadmissible the application for annulment of two implied decisions of the Joint Sickness Insurance Scheme of the European Communities refusing to pay 100 % of certain medical costs incurred by the applicant and an application for an order that the Commission pay to the applicant amounts in respect of certain medical costs

Operative part of the order

1. *The appeal is dismissed.*

2. *Mr Marcuccio is ordered to pay the costs of the appeal.*

(1) OJ C 313, 6.12.2008.

Order of the Court (Eighth Chamber) of 9 March 2010 (references for a preliminary ruling from the Tribunale Amministrativo Regionale della Sicilia — Italy) — Buzzi Unicem SpA and Others

(Joined Cases C-478/08 and C-479/08) (1)

(First subparagraph of Article 104(3) of the Rules of Procedure — 'Polluter pays' principle — Directive 2004/35/EC — Environmental liability — Applicability ratione temporis — Pollution occurring before the date laid down for implementation of that directive and continuing after that date — National legislation imposing liability on a number of undertakings for the costs of remedying the damage connected with such pollution — Requirement for fault or negligence — Requirement for a causal link — Remedial measures — Duty to consult the undertakings concerned — Annex II to the directive)

(2010/C 134/16)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale della Sicilia

Parties to the main proceedings

Applicants: Buzzi Unicem SpA, ISAB Energy srl, Raffinerie Mediterranee SpA (ERG) (C-478/08), Dow Italia Divisione Commerciale Srl (C-479/08)

Defendants: Ministero dello Sviluppo Economico, Ministero della Salute, Ministero Ambiente e Tutela del Territorio e del Mare, Ministero delle Infrastrutture, Ministero dei Trasporti, Presidenza del Consiglio dei Ministri, Ministero dell'Interno, Regione Siciliana, Assessorato Regionale Territorio ed Ambiente (Sicilia), Assessorato Regionale Industria (Sicilia), Prefettura di Siracusa, Istituto Superiore di Sanità, Commissario Delegato per Emergenza Rifiuti e Tutela Acque (Sicilia), Vice Commissario Delegato per Emergenza Rifiuti e Tutela Acque (Sicilia), Agenzia Protezione Ambiente e Servizi Tecnici (APAT), Agenzia Regionale Protezione Ambiente (ARPA Sicilia), Istituto Centrale Ricerca Scientifica e Tecnologica Applicata al Mare, Subcommissario per la Bonifica dei Siti contaminati, Provincia Regionale di Siracusa, Consorzio ASI Sicilia Orientale Zona Sud, Comune di Siracusa, Comune di Augusta, Comune di Melilli, Comune di Priolo Gargallo, Azienda Unità sanitaria locale N. 8, Sviluppo Italia Aree Produttive SpA, Sviluppo Italia SpA (C-478/08), Ministero Ambiente e Tutela del Territorio e del Mare, Ministero dello Sviluppo economico, Ministero della Salute, Regione siciliana, Commissario Delegato per Emergenza Rifiuti e Tutela Acque (Sicilia) (C-479/08)

Intervening parties: ENI Divisione Exploration and Production SpA, ENI SpA, Edison SpA

Re:

Reference for a preliminary ruling — Tribunale Amministrativo Regionale della Sicilia — Interpretation of Article 174 EC and of Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (OJ 2004 L 143, p. 56) and of the 'polluter pays' principle — National legislation which allows the public authorities to require private undertakings to implement remedial measures, irrespective of whether or not any preliminary investigation has been carried out to identify the party responsible for the pollution

Operative part of the order

1. *In a situation entailing environmental pollution such as that at issue in the main proceedings:*

— *Where the conditions for the application ratione temporis and/or ratione materiæ of Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage are not met, such a situation is governed by national law, in compliance with the rules of the Treaty, and without prejudice to other secondary legislation;*

— *Directive 2004/35 does not preclude national legislation which allows the competent authority acting within the framework of the directive to operate on the presumption, also in cases involving diffuse pollution, that there is a causal link between operators and the pollution found on account of the fact that the operators' installations are located close to the polluted area. However, in accordance with the 'polluter pays' principle, in order for such a causal link thus to be presumed, that authority must have plausible evidence capable of justifying its presumption, such as the fact that the operator's installation is located close to the pollution found and that there is a correlation between the pollutants identified and the substances used by the operator in connection with his activities;*

— *Articles 3(1), 4(5) and 11(2) of Directive 2004/35 must be interpreted as meaning that, when deciding to impose measures for remedying environmental damage on operators whose activities fall within Annex III to the directive, the competent authority is not required to establish fault, negligence or intent on the part of operators whose activities are held to be responsible for the environmental damage. On the other hand, that authority must, first, carry out a prior investigation into the origin of the pollution found, and it has a discretion as to the procedures, means to be employed and length of such an investigation. Second, the competent authority is required to establish, in accordance with national rules on evidence, a causal link between the activities of the operators at whom the remedial measures are directed and the pollution;*

— *since the operators are required to take remedial measures only because they have contributed to pollution, or to the risk of pollution, the competent authority must as a rule determine the extent to which each of those operators has contributed to the pollution which it is sought to remedy, and take into account the respective contribution of those operators when it calculates the cost of the remedial actions which it charges to them, without prejudice to Article 9 of Directive 2004/35.*

2. *Articles 7 and 11(4) of Directive 2004/35, in conjunction with Annex II to the directive, must be interpreted as:*

— *permitting the competent authority to alter substantially measures for remedying environmental damage which were chosen at the conclusion of a procedure carried out on a consultative basis with the operators concerned and which have already been implemented or begun to be put into effect. However, in order to adopt such a decision, that authority:*

— *is required to give the operators on whom such measures are imposed the opportunity to be heard, except where the urgency of the environmental situation requires immediate action on the part of the competent authority;*

— *is also required to invite, inter alia, the persons on whose land those measures are to be carried out to submit their observations and to take them into account;*

— *must take account of the criteria set out in Section 1.3.1. of Annex II to Directive 2004/35 and state in its decision the grounds on which its choice is based, and, where appropriate, the grounds which justify the fact that there was no need for a detailed examination in the light of those criteria or that it was not possible to carry out such an examination due, for example, to the urgency of the environmental situation;*

— *in circumstances such as those in the main proceedings, Directive 2004/35 does not preclude national legislation which permits the competent authority to make the exercise by operators at whom environmental recovery measures are directed of the right to use their land subject to the condition that they carry out the works required by the authority, even though that land is not affected by those measures because it has already been decontaminated or has never been polluted. However, such a measure must be justified by the objective of preventing a deterioration of the environmental situation in the area in which those measures are implemented or, pursuant to the precautionary principle, by the objective of preventing the occurrence or resurgence of further environmental damage on the land belonging to the operators which is adjacent to the whole shoreline at which those remedial measures are directed.*

([1]) OJ C 19, 24.1.2009.

Order of the Court (Fifth Chamber) of 22 January 2010 — ecoblue AG v Office for Harmonisation in the Internal Market (Trade Marks and Designs), Banco Bilbao Vizcaya Argentaria SA

(Case C-23/09 P) ([1])

(Appeal — Community trade mark — Regulation (EC) No 40/94 — Article 8(1)(b) — Earlier mark BLUE — Word sign 'Ecoblue' — Likelihood of confusion — Similarity of the signs)

(2010/C 134/17)

Language of the case: English

Parties

Appellant: ecoblue AG (represented by: C. Osterrieth, Rechtsanwalt)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: D. Botis, acting as Agent), Banco Bilbao Vizcaya Argentaria SA

Re:

Appeal brought against the judgment of the Court of First Instance (First Chamber) of 12 November 2008 in Case T-281/07 *ecoblue AG* v *OHIM* by which the Court of First Instance dismissed an action brought by the applicant for the word mark 'Ecoblue' for services in Classes 35, 36 and 38 against Decision R 844/2006-1 of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 25 April 2007 dismissing the appeal brought against the decision of the Opposition Division which refused registration of that mark in the context of the opposition brought by the proprietor of the Community word mark 'BLUE' for goods and services in Classes 9, 36 and 38, and of other Community word marks containing the word 'BLUE'

Operative part of the order

1. *The appeal is dismissed.*

2. *ecoblue AG shall pay the costs.*

([1]) OJ C 90, 18.04.2009.

Order of the Court of 11 March 2010 (reference for a preliminary ruling from the Högsta domstolen (Sweden)) — Djurgården-Lilla Värtans Miljöskyddsförening v AB Fortum Värme samägt med Stockholms stad

(Case C-24/09) ([1])

(First subparagraph of Article 104(3) of the Rules of Procedure — Directive 85/337/EC — Assessment of the effects of certain public and private projects on the environment — Directive 96/61 — Integrated pollution prevention and control — Public participation in the decision-making process for environmental matters — Right of appeal against decisions authorising projects liable to have significant effects on the environment)

(2010/C 134/18)

Language of the case: Swedish

Referring court

Högsta domstolen (Sweden)

Parties to the main proceedings

Applicant: Djurgården-Lilla Värtans Miljöskyddsförening

Defendant: AB Fortum Värme samägt med Stockholms stad

Re:

Reference for a preliminary ruling — Högsta domstolen — Interpretation of Articles 1(2), 6(4) and 10a of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40), as amended by Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC — Statement by the Commission (OJ 2003 L 156, p. 17) — Interpretation of Articles 2(14) and 15a of Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control (OJ 1996 L 257, p. 26), as amended by Directive 2003/35/EC — National legislation entitling local non-profit-making associations to participate in the prior authorisation procedure for activities which are dangerous to the environment, but making the right of such an association to participate subject to the conditions that its purpose under its statutes is environmental protection, that the association has been active for at least three years and that it has at least 2 000 members

Operative part

1. *Members of the public concerned, within the meaning of Articles 1(2) and 10a of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003, and within the meaning of Articles 2(14) and 15a of Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control, as amended by Directive 2003/35/EC, the latter provisions having been repeated in Article 2(15) and (16) of Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control, must have access to a review procedure in respect of a decision by which a body which forms part of the judicial organisation of a Member State has ruled on an application for project authorisation, whatever the role they may have played during examination of that application by taking part in the proceedings before that body and putting forward their views on that occasion.*

2. *Articles 10a of Directive 85/337, as amended by Directive 2003/35, and 15a of Directive 96/61, as amended by Directive 2003/35, the latter provision having been repeated in Article 16 of Directive 2008/1, preclude a provision of national*

legislation which restricts the right to seek review of a decision on an operation which falls within the scope of Directives 85/337, as amended by Directive 2003/35, and 96/61, as amended by Directive 2003/35, respectively to environmental protection associations which have at least 2 000 members.

(1) OJ C 69, 21.3.2009.

Order of the Court of 22 January 2010 — Hellenic Republic v European Commission

(Case C-43/09 P) (1)

(Appeal — Commission Decision reducing the financial assistance initially granted by the Cohesion Fund for the project for the project for the new Athens International Airport at Spata — Action for annulment — Principles of non-retroactivity, legal certainty and proportionality — Appeal manifestly inadmissible in part and manifestly unfounded in part)

(2010/C 134/19)

Language of the case: Greek

Parties

Appellant: Hellenic Republic (represented by: C. Meïdanis and M. Tassopoulou, acting as Agents)

Other party to the proceedings: European Commission (represented by: D. Triantafyllou and B. Conte, acting as Agents)

Re:

Appeal brought against the judgment of the Court of First Instance (Eighth Chamber) in Case T-404/05 *Greece* v *Commission*, by which the Court dismissed an action seeking annulment of Commission Decision C(2005) 3243 of 1 September 2005 reducing the financial assistance initially granted by the Cohesion Fund for Project No 95/09/65/040, concerning the new Athens International airport at Spata

Operative part of the order

1. *The appeal is dismissed.*

2. *The Hellenic Republic is ordered to pay the costs.*

(1) OJ C 69, of 21.03. 2009.

Order of the Court of 29 January 2010 — Georgios Karatzoglou v European Agency for Reconstruction (EAR), European Commission, successor in law to the EAR

(Case C-68/09 P) (1)

(Appeals — Article 119 of the Rules of Procedure — Civil service — Temporary staff contract for an indefinite period — Termination)

(2010/C 134/20)

Language of the case: English

Parties

Appellant: Georgios Karatzoglou (represented by: S.A. Pappas, dikigoros)

Other parties to the proceedings: European Agency for Reconstruction (EAR), European Commission, successor in law to the EAR (represented by: D. Martin and J. Currall, Agents)

Re:

Appeal against the judgment of the Court of First Instance (First Chamber) of 2 December 2008 in Case T-471/04 *Karatzoglou* v *European Agency for Reconstruction (EAR)* — Referral back to the Court of First Instance after setting aside — Dismissal of an application for annulment of the decision of the EAR terminating the applicant's contract as a member of the temporary staff — Obligation to state reasons — Misuse of powers — Principle of sound administration.

Operative part of the order

1. *The appeal is dismissed.*

2. *Mr Karatzoglou shall pay the costs.*

(1) OJ C 82, 4.4.2009.

Order of the Court of 21 January 2010 — Iride SpA, Iride Energia SpA v European Commission

(Case C-150/09 P) [1]

(Appeal — State aid — Aid declared compatible with the common market on condition that its recipient repays earlier aid declared unlawful — Compatibility with Article 87(1) EC — Errors of law — Distortion of the appellants' arguments — Failure to state grounds — Appeal in part manifestly inadmissible and in part manifestly unfounded)

(2010/C 134/21)

Language of the case: Italian

Parties

Appellants: Iride SpA, Iride Energia SpA (represented by: L. Radicati di Brozolo, M. Merola and T. Ubaldi, avvocati)

Other party to the proceedings: European Commission (represented by: E. Righini and G. Conte, Agents)

Re:

APPEAL against the judgment of 11 February 2009 in Case T-25/07 *Iride SpA and Iride Energia SpA*, by which the Court of First Instance (Second Chamber) dismissed an application for annulment of Commission Decision 2006/941/EC of 8 November 2006 concerning State aid C 11/06 (ex N 127/05) which Italy is planning to implement for AEM Torino (OJ 2006 L 366, p. 62) in the form of subsidies intended to reimburse 'stranded' costs incurred in the energy sector, in so far as, first, the conclusion of that decision is that the aid constitutes State aid and/or, secondly, that decision makes payment of the aid subject to the condition that AEM Torino reimburse unlawful aid previously granted under the regime for undertakings known as 'municipalizzate' (local administrative bodies)

Operative part of the order

The Court:

1. *Dismisses the appeal;*

2. *Orders Iride SpA and Iride Energia SpA to pay the costs.*

[1] OJ C 153, 04.07.2009.

Reference for a preliminary ruling from the Município de Barcelos (Portugal) lodged on 23 October 2009 — Município de Barcelos v Portuguese State

(Case C-408/09)

(2010/C 134/22)

Language of the case: Portuguese

Referring court

Município de Barcelos

Parties to the main proceedings

Applicant: Município de Barcelos

Defendant: Portuguese State

By order of 12 February 2010, the Court of Justice (Seventh Chamber) held that it clearly has no jurisdiction to answer the question referred by the Município de Barcelos.

Reference for a preliminary ruling from the Bundesgerichtshof, Germany lodged on 9 December 2009 — eDate Advertising GmbH v X

(Case C-509/09)

(2010/C 134/23)

Language of the case: German

Referring court

Bundesgerichtshof, Germany

Parties to the main proceedings

Applicant: eDate Advertising GmbH

Defendant: X

Questions referred

1. Is the phrase 'the place where the harmful event. may occur' in Article 5(3) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ('Regulation 44/2001') to be interpreted as meaning, in the event of (possible) infringements of the right to protection of personality by means of content on an Internet website,

that the person concerned may also bring an action for an injunction against the operator of the website, irrespective of the Member State in which the operator is established, in the courts of any Member State in which the website may be accessed,

or

does the jurisdiction of the courts of a Member State in which the operator of the website is not established require that there be a special connection between the contested content or the website and the State of the court seised (domestic connecting factor) going beyond technically possible accessibility?

2. If such a special domestic connecting factor is necessary:

What are the criteria which determine that connection?

Does it depend on whether the intention of the operator is that the contested website is specifically (also) targeted at the Internet users in the State of the court seised or is it sufficient for the information which may be accessed on the website to have an objective connection to the State of the court seised, in the sense that in the circumstances of the individual case, in particular on the basis of the content of the website to which the applicant objects, a collision of conflicting interests — the applicant's interest in respect for his right to protection of personality and the operator's interest in the design of his website and in news reporting — may actually have occurred or may occur in the State of the court seised?

Does the determination of the special domestic connecting factor depend upon the number of times the website to which the applicant objects has been accessed from the State of the court seised?

3. If no special domestic connecting factor is required in order to make a positive finding on jurisdiction, or if it is sufficient for the presumption of such a special domestic connecting factor that the information to which the applicant objects has an objective connection to the State of the court seised, in the sense that in the circumstances of the individual case, in particular on the basis of the content of the website to which the applicant objects, a collision of conflicting interests may actually have occurred or may occur in the State of the court seised and the existence of a special domestic connecting factor may be presumed without requiring a finding as to a minimum number of times the website to which the applicant objects has been accessed from the State of the court seised:

Must Article 3(1) and (2) of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') be interpreted as meaning:

that those provisions should be attributed with a conflict-of-laws character in the sense that for the field of private law they also require the exclusive application of the law applicable in the country of origin, to the exclusion of national conflict-of-law rules,

or

do those provisions operate as a corrective at a substantive law level, by means of which the substantive law outcome under the law declared to be applicable pursuant to the national conflict-of-law rules is altered and adjusted to the requirements of the country of origin?

In the event that Article 3(1) and (2) of the Directive on electronic commerce have a conflict-of-laws character:

Do those provisions merely require the exclusive application of the substantive law applicable in the country of origin or also the application of the conflict-of-law rules applicable there, with the consequence that a renvoi under the law of the country of origin to the law of the target State remains possible?

Reference for a preliminary ruling from the Tribunale di Trani (Italy) lodged on 13 January 2010 — Vino Cosimo Damiano v Poste Italiane SpA

(Case C-20/10)

(2010/C 134/24)

Language of the case: Italian

Referring court

Tribunale di Trani

Parties to the main proceedings

Applicant: Vino Cosimo Damiano

Defendant: Poste Italiane SpA

Questions referred

1. Does Clause 8(3) of the Framework Agreement put into effect by Directive 1999/70/EC ([1]) preclude domestic rules (such as that laid down in Article 2(1)a of Legislative Decree No 368/2001) which, in implementation of Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, introduced into domestic law an 'acausal' case for the engagement of workers by Poste Italiane SpA on fixed-term contracts?

2. In order to justify a *reformatio in pejus* of the previous rules on fixed-term contracts and to preclude the operation of the prohibition laid down in Clause 8(3) of the Framework Agreement put into effect by Directive 1999/70/EC, is it sufficient for the national legislature to pursue any objective, provided that it is an objective other than that of implementing that directive, or is it necessary for such an objective not only to merit at least equal protection to the objective in respect of which penalties are imposed but also for it to be expressly 'stated'?

3. Does Clause 3(1) of the Framework Agreement put into effect by Directive 1999/70/EC preclude domestic rules (such as those laid down in Article 2(1)a of Legislative Decree No 368/2001) which, in implementation of Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, introduced into domestic law an 'acausal' case for the engagement of workers by Poste Italiane SpA on fixed-term contracts?

4. Does the general Community principle of non-discrimination and equal treatment preclude domestic rules (such as that laid down in Article 2(1)a of Legislative Decree No 368/2001) which, in implementation of Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, introduced into domestic law an 'acausal' case which places employees of Poste Italiane SpA at a disadvantage not only vis-à-vis that company but also other undertakings in the same sector or in other sectors?

5. Do Article 82 [EC], first paragraph, and Article 86(1) and (2) [EC] preclude domestic rules (such as those laid down in Article 2(1)a of Legislative Decree No 368/2001) which, in implementation of Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, introduced into domestic law an 'acausal' case which benefits only Poste Italiane SpA (an entirely publicly owned entity), giving rise to potential abuse of a dominant position?

6. If the answer to the foregoing questions is in the affirmative, is the national court required to disapply (or not to apply) the national rules which are contrary to Community law?

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

Reference for a preliminary ruling from the Regional Court in Prešov (Slovak Republic) lodged on 9 February 2010 — Pohotovosť s.r.o. v Iveta Korčkovská

(Case C-76/10)

(2010/C 134/25)

Language of the case: Slovak

Referring court

Regional Court in Prešov

Parties to the main proceedings

Applicant: Pohotovosť s.r.o.

Defendant: Iveta Korčkovská

Questions referred

1. **Question one**

(a) Is information about the total cost to the consumer in percentage points (the annual percentage rate — APR) of such importance that failure to mention it in the contract could render the cost of consumer credit non-transparent and insufficiently clear and comprehensible?

(b) Is it possible, under the consumer protection framework provided by Council Directive 93/13/EEC ([1]) of 5 April 1993 on unfair terms in consumer contracts, to regard the price as an unfair condition in a credit contract on the grounds of insufficient transparency and clarity if the contract fails to set out information on the total cost of consumer credit in percentage points and the price is expressed solely as a financial sum consisting of various fees specified both in the contract and in the General Terms and Conditions?

2. **Question two**

(a) Must Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts be interpreted as meaning that a national court, hearing an application for enforcement of a final arbitral award issued without the participation of the consumer, is required of its own motion, where the necessary information on the legal and factual state of affairs is available to it for this purpose, to consider the fairness of a penalty contained in the credit agreement concluded by a creditor with a consumer if, according to national procedural rules, such an assessment may be conducted in similar proceedings under national law?

(b) If the penalty for a violation of the consumer's obligations is disproportionate, is it for this court to draw the necessary conclusions arising therefrom under national law to ensure that the consumer will not be bound by that penalty?

(c) Can a penalty of 0,25 % per day on outstanding credit, i.e. 91,25 % p.a., be regarded as an unfair condition on the grounds that it is disproportionate?

3. **Question three**

In the application of EU legislation (Council Directive 93/13/EEC of 5 April 1993, Directive 2008/48/EC of the European Parliament and of the Council 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC), is the consumer protection framework of such a nature in relation to consumer credit agreements that, if a contract circumvents regulations designed to protect consumers in the field of consumer credit and if, under such a contract, an application is submitted for the enforcement of a ruling under an arbitral award, the court may discontinue enforcement proceedings or permit enforcement proceedings at the creditor's expense only up to the outstanding amount of the credit granted, if, under national rules, such an assessment of an arbitral award is admissible and the court has the necessary information about the factual or legal state of affairs at its disposal?

(1) OJ L 112, p. 29

Reference for a preliminary ruling from the Tribunal Supremo, Spain lodged on 12 February 2010 — Telefónica Móviles España S.A. v Administración del Estado (Secretaría de Estado de Telecomunicaciones)

(Case C-85/10)

(2010/C 134/26)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Applicant: Telefónica Móviles España, S.A.

Defendant: Administración del Estado (Secretaría de Estado de Telecomunicaciones)

Questions referred

1. On a proper construction of Article 11(2) of Directive 97/13/EC [1] of the European Parliament and of the Council of 10 April 1997 on a common framework for general authorisations and individual licences in the field of telecommunications services (OJ 1997 L 117, p. 15) and, in particular, the requirements to ensure optimal use of scarce resources and to foster innovative services, is it contrary to those provisions for national legislation to separate the proceeds of a charge on this type of resource (the fee for allocation of public radio frequencies) from the specific purpose for which it was previously expressly earmarked (the funding of research and training in the field of telecommunications and the performance of public service obligations), without specifying any other particular purpose?

2. Is it contrary to Article 11(2) of Directive 97/13/EC and, in particular, the requirements to ensure optimal use of scarce resources and to foster innovative services, for a national provision to increase, significantly and without apparent justification, the fee for a DCS-1800 digital system whilst leaving it unchanged for first generation analogue systems such as TACS?

(1) OJ L 117, p. 15.

Reference for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 17 February 2010 — Finanzamt Essen-NordOst v GFKL Financial Services AG

(Case C-93/10)

(2010/C 134/27)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Appellant: Finanzamt Essen-NordOst

Respondent: GFKL Financial Services AG

Questions referred

1. For the interpretation of Article 2(1) and Article 4 of the Sixth Council Directive of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes (77/388/EEC):

   Does the sale (purchase) of defaulted debts constitute, on account of the assumption of responsibility for debt recovery and the risk of loss, a service for consideration and an economic activity on the part of the purchaser of the debts even if the purchase price

   — is not based on the face value of the debts, with a flat-rate reduction agreed for the assumption of responsibility for debt recovery and the risk of loss, but

   — is set by reference to the risk of loss estimated for the debt concerned, with only secondary importance attached to the recovery of the debt compared to the reduction for the risk of loss?

2. If the answer to Question 1 is in the affirmative, for the interpretation of Article 13B(d)(2) and (3) of the Sixth Council Directive of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes (77/388/EEC):

   (a) Is the assumption of the risk of loss by the purchaser of defaulted debts at a purchase price significantly lower than their face value exempt from tax, as being the provision of a different security or guarantee?

   (b) If the assumption of the risk is exempt from tax, is the recovery of the debts exempt from tax, as part of a single service or as an ancillary service, or taxable as a separate service?

3. If the answer to Question 1 is in the affirmative and no exempt service has been supplied, for the interpretation of Article 11A(a) of the Sixth Council Directive of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes (77/388/EEC):

   Is the consideration for the taxable service determined by the recovery costs presumed by the parties or by the actual recovery costs?

Reference for a preliminary ruling from the Oberste Berufungs- und Disziplinarkommission (Austria) lodged on 23 February 2010 — Gentcho Pavlov and Gregor Famira v Ausschuss der Rechtsanwaltskammer Wien

(Case C-101/10)

(2010/C 134/28)

Language of the case: German

Referring court

Oberste Berufungs- und Disziplinarkommission

Parties to the main proceedings

Applicants: Gentcho Pavlov and Gregor Famira

Defendant: Ausschuss der Rechtsanwaltskammer Wien

Questions referred

1. Should Article 38(1) of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Bulgaria, of the other part, [1] have been directly applied in the period from 2 January 2004 to 31 December 2006 in a procedure to register a Bulgarian national in the list of trainee lawyers?

   If question 1 is answered in the affirmative:

2. Does Article 38(1) of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Bulgaria, of the other part, preclude the application of Paragraph 30(1) and (5) of the Austrian Rechtsanwaltsordnung (Lawyers' Code), pursuant to which, inter alia, proof of Austrian citizenship or a nationality regarded as equivalent is a registration requirement, in respect of an application by a Bulgarian national employed by an Austrian lawyer, made on 2 January 2004, for registration in the list of Austrian trainee lawyers and for the issue of a 'Legitimationsurkunde' (certificate evidencing authority) in accordance with Paragraph 15(3) of the Austrian Rechtsanwaltsordnung and the rejection of the application solely on the grounds of nationality, despite the other requirements being fulfilled and the applicant having a permanent residence and work permit for Austria?

(1) OJ 1994 L 358, 31.12.1994, p. 3

Reference for a preliminary ruling from High Court of Ireland made on 24 February 2010 — Patrick Kelly v National University of Ireland

(Case C-104/10)

(2010/C 134/29)

Language of the case: English

Referring court

High Court of Ireland

Parties to the main proceedings

Applicant: Patrick Kelly

Defendant: National University of Ireland

Questions referred

1. Does Article 4(1) of Council Directive 97/80/EC (1) entitle an applicant for vocational training, who believes that he or she has been denied access to vocational training because the principle of equal treatment was not applied to him or her, to information on the respective qualifications of the other applicants for the course in question and in particular the applicants who were not denied access to vocational training so that the applicant can 'establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination'?

2. Does Article 4 of Council Directive 76/207/EEC (2) entitle an applicant for vocational training who believes that he or she has been denied access to vocational training 'on the basis of the same criteria' and discriminated against 'on grounds of sex' in terms of accessing vocational training to information held by the course provider on the respective qualifications of the other applicants for the course in question and in particular the applicants who were not denied access to vocational training?

3. Does Article 3 of Council Directive 2002/73/EC (3) prohibiting 'direct or indirect discrimination on the grounds of sex' in relation to 'access' to vocational training entitle an applicant for vocational training who claims to have been discriminated against 'on the grounds of sex' in terms of accessing vocational training to information held by the course provider on the respective qualifications of the other applicants for the course in question and in particular the applicants who were not denied access to vocational training?

4. Does the nature of the obligation under Article 267, para. 3 TFEU differ in a Member State with an adversarial (as opposed to inquisitorial) legal system and, if so, in what respect?

5. Can any entitlement to information under the aforesaid Directives be affected by the operation of national or European laws relating to confidentiality?

(1) Council Directive 97/80/EC of 15 December 1997 on the burden of proof in cases of discrimination based on sex
OJ L 14, p. 6

(2) Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions
OJ L 39, p. 40

(3) Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (Text with EEA relevance)
OJ L 269, p. 15

Reference for a preliminary ruling from the Administrativen sad Sofia-grad (Bulgaria) lodged on 25 February 2010 — Enel Maritsa Iztok 3 v Director of the Office 'Appeals and the Administration of Enforcement' at the Central Administration of the National Revenue Agency

(Case C-107/10)

(2010/C 134/30)

Language of the case: Bulgarian

Referring court

Administrativen sad Sofia-grad

Parties to the main proceedings

Applicant: Enel Maritsa Iztok 3

Defendant: Director of the Office 'Appeals and the Administration of Enforcement' at the Central Administration of the National Revenue Agency

Questions referred

Must Article 18(4) of Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — common system of value added tax: uniform basis of assessment and Article 183(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax be interpreted as meaning that in the circumstances of the main proceedings, they permit

1. that as a result of a statutory amendment with the objective of preventing tax evasion, the period for the refund of VAT is extended to the day of issue of a tax assessment notice because within 45 days of submission of the tax return a tax inspection has been commenced in respect of the person concerned, without interest being owed for this period on the amount subject to the refund, if at the same time the following circumstances exist:

   (a) prior to this amendment, the period of 45 days laid down by statute for the tax refund had expired and interest had started to run on the amount to be refunded regardless of the commencement of the tax inspection,

   (b) the tax inspection established that the amount of the tax refund declared was correct,

   (c) the only legal possibility that the taxable person has to shorten this period consists of providing security in the form of money, government bonds or an unconditional and irrevocable bank guarantee for a certain duration in the sum of the amount subject to the refund?

2. that the legislation provides for a period for the refund of VAT with a duration of 45 days from the day of submission of the tax return for this tax and the legal possibility of suspending that period and subsequently also extending it as a result of a tax inspection ordered during this period, when the tax period for calculating this tax comprises one month?

3. that a refund of VAT is made by means of a tax assessment notice, in which the amount subject to a refund is set off against VAT debts assessed by the same notice and against other tax debts and State claims for various tax periods and interest charged on those sums up to the date of issue of the tax assessment notice, if at the tax inspection it has been established that the amount of the tax refund declared was correct and at the same time the following circumstances exist:

   (a) in the tax inspection procedure, the provision of provisional security in respect of the State's future claims which might be established in the course of the procedure up to the issue of the tax assessment notice, has not been allowed,

   (b) national legislation does not provide for setting off against claims of the State as a means of compulsory enforcement or as a measure for providing security,

   (c) the periods for challenging and voluntarily paying the principal sums and interest which had been offset had not expired, because they had been assessed by means of the same tax assessment notice, and part of them had also been challenged before the court?

4. that the State, if the correctness of the amount of the tax refund declared in the tax return was established, carries out a set-off against tax debts assessed in that notice for periods before the day of submission of the return, and against interest on those debts, [on the day of issue of the tax assessment notice] rather than on the day of the tax return, whereas the State does not owe any interest during the period laid down by statute for the refund of the amount and charges interest on the offset taxes from the day of submission of the return to the issue of the tax assessment notice?

Reference for a preliminary ruling from the Tribunale Ordinario di Venezia (Italy) lodged on 26 February 2010 — Ivana Scattolon v Ministero dell'Università e della Ricerca

(Case C-108/10)

(2010/C 134/31)

Language of the case: Italian

Referring court

Tribunale Ordinario di Venezia

Parties to the main proceedings

Applicant: Ivana Scattolon

Defendant: Ministero dell'Università e della Ricerca

Questions referred

1. Must Council Directive 77/187/EEC of 14 February 1977 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses ([1]) and/or Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses, ([2]) or the various rules of Community law considered relevant be interpreted as meaning that the latter are applicable to a situation in which staff providing auxiliary cleaning and maintenance services in State educational establishments are transferred from local authorities (municipalities and provinces) to the employment of the State, where the transfer has led to the assumption of obligations not only in respect of the activities in question and the legal relationships with all the (cleaning) staff concerned, but also in respect of the contracts entered into with private companies for the provision of those services?

2. Must the continuation of the employment relationship, pursuant to the first subparagraph of Article 3(1) of Directive 77/187 (incorporated, together with Council Directive 98/50/EC amending Directive 77/187, ([3]) in Directive 2001/23/EC), be interpreted as meaning that the transferee's pecuniary payments linked to length of service must take into account all the years worked by the staff transferred, including those in the employment of the transferor?

3. Must Article 3 of Directive 77/187 and/or Council Directives 98/50/EC and 2001/23/EC be interpreted as meaning that the employee's rights transferred to the transferee also include the advantages acquired by that employee while employed by the transferor, such as those relating to length of service, if rights of a financial nature are attached thereto under the collective agreement applicable to the transferee?

4. Must the general Community-law principles of legal certainty, the protection of legitimate expectations, procedural equity, effective judicial protection, and the right to an independent tribunal and, more generally, to a fair hearing, guaranteed by Article 6(2) of the Treaty on European Union (as amended by Article 1(8) of the Treaty of Lisbon and to which Article 46 of the Treaty on European Union refers) — in conjunction with Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, and with Articles 46, 47 and 52(3) of the Charter of Fundamental Rights of the European Union, proclaimed in Nice on 7 December 2000, as implemented by the Treaty of Lisbon — be interpreted as precluding the adoption by the Italian State, after a significant period of time (5 years), of a specific interpretative provision which is at variance with the wording to be interpreted and in conflict with the consistent and settled interpretation of the institution responsible for ensuring uniform interpretation of the law [the Corte di cassazione], a provision which, moreover, is relevant for the purpose of resolving disputes to which the Italian State is a party?

([1]) OJ 1977 L 61, p. 26.
([2]) OJ 2001 L 82, p. 16.
([3]) OJ 1998 L 201, p. 88.

Reference for a preliminary ruling from the Finanzgerichts Düsseldorf (Germany) lodged on 2 March 2010 — Zuckerfabrik Jülich AG v Hauptzollamt Aachen

(Case C-113/10)

(2010/C 134/32)

Language of the case: German

Referring court

Finanzgericht Düsseldorf

Parties to the main proceedings

Applicant: Zuckerfabrik Jülich AG

Defendant: Hauptzollamt Aachen

Question referred

Is Commission Regulation (EC) No 1193/2009 of 3 November 2009 correcting Regulations (EC) No 1762/2003, (EC) No 1775/2004, (EC) No 1686/2005, (EC) No 164/2007 and fixing the production levies in the sugar sector for marketing years 2002/2003, 2003/2004, 2004/2005, 2005/2006 [1] valid?

[1] OJ 2009 L 321, p. 1.

Reference for a preliminary ruling from the Rechtbank van eerste aanleg, Brussels lodged on 3 March 2010 — Belpolis Benelux SA v Belgische Staat

(Case C-114/10)

(2010/C 134/33)

Language of the case: Dutch

Referring court

Rechtbank van eerste aanleg, Brussels

Parties to the main proceedings

Applicant: Belpolis Benelux SA

Defendant: Belgische Staat

Question referred

1. Does Community law, in particular the principle of the freedom to provide services as laid down in Article 56 TFEU, preclude rules such as those laid down in Articles 1 and 1a of Belgian Royal Decree No 20 of 20 July 1970, under which the reduced rate of VAT (6 %) may be applied to construction work only if the service provider is registered in Belgium as a contractor in accordance with Articles 400 and 401 of the Wetboek van Inkomstenbelastingen (Belgian Income Tax Code) 1992?

2. Do the provisions contained in Article 1 and 1a of Royal Decree No 20 of 20 July 1970 contravene the principle of fiscal neutrality and/or the general Community law principle of equal treatment by allowing the reduced rate of VAT (6 %) on construction work to apply only if the service provider is registered as a contractor in Belgium in accordance with Articles 400 and 401 of the Belgian Income Tax Code 1992?

Reference for a preliminary ruling from the Fővarosí Bíróság lodged on 3 March 2010 — Bábolna Mezőgazdagasági Termelő és Fejlesztő Kereskedelmi Zrt v Mezőgazdagasági és Fejlesztő és Vidékfejlesztési Hivatal Központi Szerve

(Case C-115/10)

(2010/C 134/34)

Language of the case: Hungarian

Referring court

Fővarosí Bíróság

Parties to the main proceedings

Applicants: Bábolna Mezőgazdagasági Termelő és Fejlesztő Kereskedelmi Zrt

Defendants: Mezőgazdagasági és Fejlesztő és Vidékfejlesztési Hivatal Központi Szerve

Questions referred

1. May the conditions for Community aid under the Common Agricultural Policy (EAGGF) differ from the conditions for national supplementary aid, that is to say, may other, stricter rules than are applied to aid financed by the EAGGF apply to the conditions for national supplementary aid?

2. May the scope ratione personae, as regards the recipients of aid, of Article 1(4) of Council Regulation (EEC) No 3508/92 [1] and Article 10(a) of Council Regulation (EC) No 1259/1999 [2] be interpreted as meaning that there are only two conditions for the recipients of aid: (a) the (individual) group of agricultural producers (b) whose farm is situated in the territory of the Community will be entitled to receive aid?

3. May the above regulations be interpreted as meaning that an agricultural producer whose farm is in the territory of the Community but who wishes to cease activity in the future (after using the aid) is not entitled to aid?

4. In the light of the above two regulations, how is the status of such a producer under national law to be interpreted?

5. Does that status under national law extend to the legal status of an agricultural producer (group) undergoing any form of cessation of activity? Hungarian law provides for separate legal positions (statuses) in cases of cessation of activity (bankruptcy, liquidation or voluntary dissolution).

6. May the conditions for applications for (Community) single area payments and for supplementary national aid be subject to separate rules entirely independent of one another? What is the relationship between the principles, system and objectives of both types of aid?

7. May a group (person) be excluded from supplementary national aid where they otherwise meet the requirements for area aid?

8. Does the scope of Council Regulation (EC) No 1259/1999 extend, under Article 1 thereof, to supplementary national aid, bearing in mind that where the EAGGF provides finance only in part, supplementary national aid provides finance as appropriate?

9. Does an agricultural producer whose farm, which functions legally and effectively, is in the territory of the Community, have a right to receive supplementary national aid?

10. If national law contains specific regulations for procedures for terminating the activity of commercial companies, do those regulations have any relevance from the point of view of Community aid (and national aid linked to it)?

11. Should Community legislation and national legislation on the functioning of the Common Agricultural Policy be interpreted as meaning that they have to create a complex legal system which can be interpreted uniformly and which functions on the basis of identical principles and requirements?

12. Should the scope of Article 1(4) of Council Regulation (EEC) No 3508/92 and Article 10(a) of Council Regulation (EC) No 1259/1999 be interpreted as meaning that, from the point of view of aid, both the intention of the agricultural producer to cease activity in the future and the appropriate legal regime for that intention are wholly irrelevant?

([1]) Council Regulation (EEC) No 3508/92 of 27 November 1992 establishing an integrated administration and control system for certain Community aid schemes (OJ 1992 L 355, 5.12.1992, p. 1).

([2]) Council Regulation (EC) No 1259/1999 of 17 May 1999 establishing common rules for direct support schemes under the common agricultural policy (OJ 1999 L 160, 26.6.1999, p. 113).

Reference for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on 4 March 2010 — Frisdranken Industrie Winters BV v Red Bull GmbH

(Case C-119/10)

(2010/C 134/35)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: Frisdranken Industrie Winters BV

Defendant: Red Bull GmbH

Questions referred

1. (a) Is the mere 'filling' of packaging which bears a sign (as referred to in paragraph 3.1 (iv) above) to be regarded as using that sign in the course of trade within the meaning of Article 5 of the Trade Mark Directive, ([1]) even if that filling takes place as a service provided to and on the instructions of another person, for the purposes of distinguishing that person's goods?

(b) Does it make any difference to the answer to question 1.a if there is an infringement for the purposes of Article 5(1)(a) or (b)?

2. If the answer to question 1.a is in the affirmative, can using the sign then also be prohibited in the Benelux on the basis of Article 5 of the Trade Mark Directive if the goods bearing the sign are destined exclusively for export to countries outside (a) the Benelux area or (b) the European Union, and they cannot — except in the undertaking where the filling took place — be seen therein by the public?

3. If the answer to question II (a or b) is in the affirmative, what criterion must be used when answering the question whether there has been trade-mark infringement: should the criterion be the perception of an average consumer who is reasonably well-informed and reasonably observant and circumspect in the Benelux or alternatively in the European Union — who then in the given circumstances can only be determined in a fictional or abstract way — or must a different criterion be used in this case, for example, the perception of the consumer in the country to which the goods are exported?

(1) First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989 L 40, p. 1).

Action brought on 5 March 2010 — European Commission v Council of the European Union

(Case C-121/10)

(2010/C 134/36)

Language of the case: English

Parties

Applicant: European Commission (represented by: V. Di Bucci, L. Flynn, A. Stobiecka-Kuik, K. Walkerová, Agents)

Defendant: Council of the European Union

The applicant claims that the Court should:

— annul Council Decision 2009/1017/EU of 22 December 2009 on the granting of State aid by the authorities of the Republic of Hungary for the purchase of agricultural land between 1 January 2010 and 31 December 2013 (1);

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

Pleas in law and main arguments

The Council, by adopting the contested decision, has overturned the Commission's decision resulting from the proposal for appropriate measures in point 196 of the 2007 Agricultural Guidelines and from its unconditional acceptance by Hungary, obliging the latter to bring to an end two existing aid schemes for the purchase of agricultural land by 31 December 2009 at the latest. Under the guise of exceptional circumstances, the Council has in fact allowed Hungary to maintain those schemes until the expiry of the 2007 Agricultural Guidelines on 31 December 2013. The circumstances put forward by the Council as the grounds for its decision are self-evidently not exceptional circumstances of such a nature as to justify the decision taken and make no allowance for the Commission's decision on those schemes.

In support of its action for annulment, the Commission puts forward four pleas in law:

(a) In the first place, it considers that the Council was not competent to act under the third subparagraph of Article 108(2) TFEU because the aid which it approved was existing aid which Hungary had committed to eliminating by the end of 2009 when it accepted the appropriate measures proposed to it by the Commission.

(b) Secondly, the Council has misused its powers, seeking to neutralise the determination of the Commission regarding aid measures which Hungary was free to retain until the end of 2009 but not after that date, by allowing those measures to be kept in place until 2013.

(c) Thirdly, the contested decision was adopted in breach of the principle of sincere cooperation which applies to Member States and also between institutions. By its decision, the Council has released Hungary from its obligation of cooperation with the Commission in relation to the appropriate measures accepted by that Member State regarding existing aid for purchase of agricultural land in the context of the cooperation established by Article 108(1) TFEU.

(d) By its final plea, the Commission argues that the Council committed a manifest error of assessment insofar it found that exceptional circumstances existed which justify the adoption of the approved measure.

(1) OJ L 348, p 55

Reference for a preliminary ruling from the Supremo Tribunal Administrativo (Portugal) lodged on 10 March 2010 — FOGGIA — Sociedade Gestora de Participações Sociais, SA v Secretário de Estado dos Assuntos Fiscais

(Case C-126/10)

(2010/C 134/37)

Language of the case: Portuguese

Referring court

Supremo Tribunal Administrativo

Parties to the main proceedings

Appellant: FOGGIA — Sociedade Gestora de Participações Sociais, SA

Respondent: Secretário de Estado dos Assuntos Fiscais

Intervening Party: Ministério Público

Questions referred

(a) What are the meaning and effect of Article 11(1)(a) of Directive 90/434/EEC [1] of 23 July 1990 and, in particular, what is the meaning of 'valid commercial reasons' and 'restructuring or rationalisation of the activities' of companies participating in operations covered by Directive 90/434/EEC ?

(b) Is the view taken by the tax authorities, that there are no serious commercial reasons for the acquiring company's request to transfer tax losses, leading them to conclude that, from the acquiring company's point of view, there was no apparent commercial interest in acquisition, since the acquired company had developed no activity as a holding company and had no financial holdings, and would consequently transfer only substantial losses, although the merger might represent a positive effect in terms of the cost structure of the group, compatible with that provision of Community law?

[1] Article 11(1)(a) of Council Directive 90/434/EEC of 23 July 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States (OJ 1990 L 225, p. 1).

Reference for a preliminary ruling from the Simvoulio tis Epikratias (Greece) lodged on 11 March 2010 — Navtiliaki Etairia Thasou AE v Ipourgos Emborikis Navtilias

(Case C-128/10)

(2010/C 134/38)

Language of the case: Greek

Referring court

Simvoulio tis Epikratias (Council of State), Greece

Parties to the main proceedings

Applicant: Navtiliaki Etairia Thasou AE

Defendants: Ipourgos Emborikis Navtilias (Minister for Mercantile Marine)

Question referred

Do the provisions of Articles 1, 2 and 4 of Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage) (OJ 1992 L 364, p. 7), interpreted in accordance with the principle of freedom to provide services, allow national schemes to be adopted, whereby shipowners cannot provide cabotage services without a prior administrative authorisation, when: (a) the purpose of the authorisation system in question is to allow verification of whether, in light of the prevailing conditions in a specific port, the schedules declared by the shipowner can be implemented under conditions of safety for the ship and maintenance of order in the port and verification of the ability of the scheduled vessel to enter a specific port unhindered at the time declared by the shipowner as the preferred time for a specific service without, however, determination in advance in a legal rule of the criteria on the basis of which the authorities rule on such questions, especially in a case where more than one shipowner is interested in entering the same port at the same time; (b) at the same time, the authorisation system in question constitutes a means of imposing public service obligations, inasmuch as it has in that respect the following features: (i) it applies without exception to all scheduled shipping routes to the islands, (ii) it grants the administrative authority responsible for issuing authorisations the broadest discretionary powers in terms of imposing public service obligations, without determining in advance in a legal rule the criteria for the exercise of those powers and without determining in advance the content of the public service obligations which may be imposed?

Reference for a preliminary ruling from the Simvoulio tis Epikratias (Greece) lodged on 11 March 2010 — Amalthia I Navtiki Etairia v Ipourgos Emborikis Nautilias

(Case C-129/10)

(2010/C 134/39)

Language of the case: Greek

Referring court

Simvoulio tis Epikratias (Council of State), Greece

Parties to the main proceedings

Applicant: Amalthia I Navtiki Etairia

Defendant: Ipourgos Emborikis Nautilias (Minister for Mercantile Marine)

Question referred

Do the provisions of Articles 1 and 2 of Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage) (OJ 1992 L 364, p. 7), interpreted in accordance with the principle of freedom to provide services, allow national schemes to be adopted, whereby shipowners cannot provide cabotage services without a prior administrative authorisation issued, in the context of an authorisation system aimed inter alia at ensuring verification of whether, in light of the prevailing conditions in a specific port, the schedules declared by the shipowner can be implemented under conditions of safety for the ship and maintenance of order in the port and verification of the ability of the scheduled vessel to enter a specific port unhindered at the time declared by the shipowner as the preferred time for a specific service without, however, determination in advance in a legal rule of the criteria on the basis of which the authorities rule on such questions, especially in cases where more than one shipowner is interested in entering the same port at the same time?

Action brought on 11 March 2010 — European Parliament v Council of the European Union

(Case C-130/10)

(2010/C 134/40)

Language of the case: English

Parties

Applicant: European Parliament (represented by: E. Perillo, K. Bradley, A. Auersperger Matić, Agents)

Defendant: Council of the European Union

The applicant claims that the Court should:

— Annul Council Regulation (EU) Nº 1286/2009 ([1]) of 22 December 2009 amending Regulation (EC) Nº 881/2002 ([2]) imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban;

— Order that the effects of Council Regulation (EU) Nº 1286/2009 be maintained until it is replaced;

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

Pleas in law and main arguments

The European Parliament considers that Council Regulation (EU) No 1286/2009 of 22 December 2009 amending Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban is invalid for the following reasons:

— having regard to its aim and content, the correct legal basis for the Regulation is Article 75 of the Treaty on the Functioning of the European Union;

— in the alternative, the conditions for recourse to Article 215 of the Treaty on the Functioning of the European Union were not fulfilled, because no proposal had been validly presented, and the Council had not previously adopted a decision in accordance with Chapter 2 of Title V of the Treaty on the European Union.

Should the Court annul the contested Regulation, Parliament nonetheless proposes that the Court exercise its discretion to maintain the effects of the contested Regulation, in accordance with Article 264, second paragraph, TFEU, until such time as it is replaced.

(1) OJ L 346, p. 42
(2) OJ L 139, p. 9

Reference for a preliminary ruling from the Rechtbank van eerste aanleg te Leuven (Belgium) lodged on 15 March 2010 — 1. Olivier Paul Louis Halley, 2. Julie Jacqueline Marthe Marie Halley and 3. Marie Joëlle Armel Halley v Belgische Staat

(Case C-132/10)

(2010/C 134/41)

Language of the case: Dutch

Referring court

Rechtbank van eerste aanleg te Leuven

Parties to the main proceedings

Applicants: Olivier Paul Louis HALLEY
Julie Jacqueline Marthe Marie HALLEY
Marie Joëlle Armel HALLEY

Defendant: Belgische Staat

Question referred

Is point 2 of the first paragraph of Article 137 of the Inheritance Tax Code (Wetboek Successierechten), in conjunction with Article 111 of the Inheritance Tax Code, compatible with Articles 26, 49, 63 and 65 of the Treaty on the Functioning of the European Union, given that the limitation period in respect of inheritance tax payable on registered shares is two years where the company's centre of effective management is in Belgium, but 10 years where the company's centre of effective management is not in Belgium?

Reference for a preliminary ruling from the Corte di Appello di Torino (Italy), lodged on 15 March 2010 — SCF Consorzio Fonografici v Marco Del Corso

(Case C-135/10)

(2010/C 134/42)

Language of the case: Italian

Referring court

Corte di Appello di Torino

Parties to the main proceedings

Appellant: SCF Consorzio Fonografici

Respondent: Marco Del Corso

Questions referred

1. Are the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations of 26 October 1961, the TRIPs Agreement (Agreement on Trade-Related Aspects of Intellectual Property Rights) and the WIPO (World Intellectual Property Organisation) Treaty on Performances and Phonograms (WPPT) directly applicable within the Community legal order?

2. Are the abovementioned sources of uniform international law also directly effective within the context of private-law relationships?

3. Do the concepts of 'communication to the public' contained in the abovementioned treaty-law texts mirror the Community concepts contained in Directives 92/100/EEC (1) and 2001/29/EC (2) and, if not, which source should take precedence?

4. Does the broadcasting, free of charge, of phonograms within private dental practices engaged in professional economic activity, for the benefit of patients of those practices and enjoyed by them without any active choice on their part, constitute 'communication to the public' or 'making available to the public' for the purposes of the application of Article 3(2)(b) of Directive 2001/29/EC?

5. Does such an act of transmission entitle the phonogram producers to the payment of remuneration?

(1) OJ 1992 L 346, p. 61.
(2) OJ 2001 L 167, p. 10.

Reference for a preliminary ruling from the Hoge Raad der Nederlanden, lodged on 17 March 2010 — Prism Investments BV v J.A. van der Meer, in his capacity as receiver in the liquidation of Arilco Holland BV

(Case C-139/10)

(2010/C 134/43)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Appellant: Prism Investments BV

Respondent: J.A. van der Meer, in his capacity as receiver in the liquidation of Arilco Holland BV

Question referred

Does Article 45 of Council Regulation (EC) No 44/2001 [1] preclude the court with which an appeal is lodged under Article 43 or Article 44 of that regulation from refusing or revoking the declaration of enforceability on a ground, other than one of those specified in Articles 34 and 35 of that regulation, which has been advanced against enforcement of the judgment declared enforceable and which arose after that judgment had been delivered, such as the ground that there has been compliance with that judgment?

[1] Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1).

Order of the President of the First Chamber of the Court of 23 February 2010 (reference for a preliminary ruling from the Corte Suprema di Cassazione — Italy) — Latex Srl v Agenzie delle Entrate, Amministrazione Dell'Economia e delle Finanze

(Case C-316/08) [1]

(2010/C 134/44)

Language of the case: Italian

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

[1] OJ C 260, 11.10.2008.

Order of the President of the Court of 23 February 2010 (reference for a preliminary ruling from the Tribunale Amministrativo per la Sardegna — Italy) — Telecom Italia SpA v Regione autonoma della Sardegna, opposing Space SpA and Passamonti Srl and Others

(Case C-290/09) [1]

(2010/C 134/45)

Language of the case: Italian

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

[1] OJ C 233, 26.9.2009.

Order of the President of the Court of 10 February 2010 — Mineralbrunnen Rhöne-Sprudel Egon Schindel GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs), Schwarzbräu GmbH

(Joined Cases C-364/09 P and 365/09 P) [1]

(2010/C 134/46)

Language of the case: German

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

[1] OJ C 267, 7.11.2009.

GENERAL COURT

Judgment of the General Court of 19 March 2010 — Evropaïki Dynamiki v Commission

(Case T-50/05) ([1])

(Public service contracts — Community tendering procedure — Provision of computer services relating to telematic systems to control the movement of products subject to excise duty — Rejection of a tenderer's bid — Action for annulment — Consortium of tenderers — Admissibility — Principles of equal treatment of tenderers and transparency — Award criteria — Principles of sound administration and diligence — Obligation to state the reasons on which the decision is based — Manifest error of assessment)

(2010/C 134/47)

Language of the case: English

Parties

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

Defendant: European Commission (represented: initially by L. Parpala and K. Kańska, subsequently by L. Parpala and E. Manhaeve and lastly by L. Parpala, E. Manhaeve and M. Wilderspin, Agents)

Re:

Action for the annulment of the Decision of the Commission of the European Communities of 18 November 2004 rejecting the tender submitted by the consortium formed by the applicant and another undertaking in a tendering procedure relating to the provision of computer services concerning the specification, development, maintenance and support of telematic systems to control the movement of products subject to excise duty within the European Community under the excise-duty suspension arrangements and awarding the contract to another tenderer.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE to bear its own costs and to pay those incurred by the European Commission.*

([1]) OJ C 106, 30.4.2005.

Judgment of the General Court (Third Chamber) of 19 March 2010 — Gollnisch v Parliament

(Case T-42/06) ([1])

(Privileges and immunities — Member of the European Parliament — Decision not to defend his privileges and immunities — Action for annulment — No longer any interest in bringing proceedings — No need to adjudicate — Action for damages — Conduct alleged against the Parliament — Sufficiently serious breach of a rule of law conferring rights on individuals — Causal link)

(2010/C 134/48)

Language of the case: French

Parties

Applicant: Bruno Gollnisch (Limonest, France) (represented by: W. de Saint Just and G. Dubois, lawyers)

Defendant: European Parliament (represented by: H. Krück, C. Karamarcos and A. Padowska and subsequently by H. Krück, D. Moore and A. Padowska, Agents)

Re:

Application for, first, annulment of the decision of the European Parliament of 13 December 2005 not to defend the immunity and privileges of Mr Bruno Gollnisch and, second, compensation for the damage suffered by Mr Gollnisch as a result of that decision

Operative part of the judgment

The Court:

1. *Rules that there is no need to adjudicate on the claim for annulment;*

2. *Dismisses the claim for damages;*

3. *Orders the European Parliament to bear its own costs and to pay two thirds of the costs incurred by Mr Bruno Gollnisch, including those relating to the application for interim measures;*

4. *Orders Mr Bruno Gollnisch to bear one third of his costs, including those relating to the application for interim measures.*

(1) OJ C 86, 8.4.2006.

Judgment of the General Court of 19 March 2010 — Bianchi v ETF

(Case T-338/07 P) (1)

(Appeal — Staff case — Temporary staff — Contract for a fixed period — Decision refusing to renew the contract — Article 47(b) of the CEOS)

(2010/C 134/49)

Language of the case: French

Parties

Appellant: Irène Bianchi (Turin, Italy) (represented by: M.-A. Lucas, lawyer)

Other party to the proceedings: European Training Foundation (ETF) (Turin, Italy) (represented by: M. Dunbar, Agent, assisted by G. Vandersanden, then by L. Levi, lawyers)

Re:

Appeal against the judgment of 28 June 2007 of the European Union Civil Service Tribunal (Second Chamber) in Case F-38/06 *Bianchi* v *ETF*, not yet published in the ECR, seeking the setting aside of that judgment

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Mrs Irène Bianchi to bear her own costs and to pay those incurred by the European Training Foundation (ETF) for the purposes of these proceedings.*

(1) OJ C 269, 10.11.2007.

Judgment of the General Court of 19 March 2010 — Mirto Corporación Empresarial v OHIM — Maglificio Barbara (Mirtillino)

(Case T-427/07) (1)

(Community trade mark — Opposition proceedings — Application for Community figurative mark Mirtillino — Earlier Community word mark MIRTO — Relative grounds for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94 (now Article 8(1)(b) of Regulation (EC) No 207/2009))

(2010/C 134/50)

Language of the case: Spanish

Parties

Applicant: Mirto Corporación Empresarial, SL (Madrid, Spain) (represented by: E. Armijo Chávarri, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Maglificio Barbara Srl (Busto Arsizio, Italy)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 29 August 2007 (Case R 875/2006-2), relating to opposition proceedings between Creaciones Mirto SA and Maglificio Barbara Srl.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Mirto Corporación Empresarial, SL to pay the costs.*

(1) OJ C 22, 26.1.2008.

Judgment of the General Court of 25 March 2010 — Nestlé v OHIM — Master Beverage Industries (Golden Eagle and Golden Eagle Deluxe)

(Joined Cases T-5/08 to T-7/08) [1]

(Community trade mark — Opposition proceedings — Application for figurative Community marks Golden Eagle and Golden Eagle Deluxe — Earlier international and national figurative marks representing a mug and coffee beans — Relative ground for refusal — Similarity of the signs — Article 8(1)(b) of Regulation (EC) No 40/94 (now Article 8(1)(b) of Regulation (EC) No 207/2009))

(2010/C 134/51)

Language of the case: English

Parties

Applicant: Société des produits Nestlé SA (Vevey, Switzerland) (represented by A. von Mühlendahl, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the Court: Master Beverage Industries Pte Ltd (Singapore, Singapore) (represented by N. Clarembeaux, D. Vervaet and P. Maeyaert, lawyers)

Re:

Actions brought against three decisions of the Second Board of Appeal of OHIM of 1 October 2007 (Cases R 563/2006-2, R 568/2006-2 and R 1312/2006-2) concerning opposition proceedings between Société des produits Nestlé SA and Master Beverage Industries Pte Ltd.

Operative part of the judgment

The Court:

1. *Annuls the decisions of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 1 October 2007 (Cases R 563/2006-2, R 568/2006-2 and R 1312/2006-2);*

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

3. *Orders OHIM and Master Beverage Industries Pte Ltd to bear their own costs and pay those incurred by Société des produits Nestlé SA.*

[1] OJ C 64, 8.3.2008.

Judgment of the General Court of 24 March 2010 — 2nine v OHIM — Pacific Sunwear of California (nollie)

(Case T-363/08) [1]

(Community trade mark — Opposition proceedings — Application for the Community figurative mark nollie — Earlier national and international word marks NOLI — Relative ground for refusal — No similarity between the goods — No likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94 (now Article 8(1)(b) of Regulation (EC) No 207/2009) — Article 74(1) of Regulation No 40/94 (now Article 76(1) of Regulation No 207/2009))

(2010/C 134/52)

Language of the case: English

Parties

Applicant: 2nine Ltd (London, United Kingdom) (represented by: S. Palmer, Solicitor)

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

Other party to the proceedings before the Board of Appeal of OHIM: Pacific Sunwear of California, Inc. (Anaheim, California, United States)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 16 June 2008 (Case R 1590/2007-2), relating to opposition proceedings between 2nine Ltd and Pacific Sunwear of California, Inc.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders 2nine Ltd to bear its own costs and to pay those incurred by the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM).*

[1] OJ C 272, 25.10.2008.

Judgment of the General Court of 24 March 2010 — 2nine v OHIM — Pacific Sunwear of California (nollie)

(Case T-364/08) [1]

(Community trade mark — Opposition proceedings — Application for the Community figurative mark nollie — Earlier national and international word marks NOLI — Relative ground for refusal — No similarity between the goods — No likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94 (now Article 8(1)(b) of Regulation (EC) No 207/2009) — Article 74(1) of Regulation No 40/94 (now Article 76(1) of Regulation No 207/2009))

(2010/C 134/53)

Language of the case: English

Parties

Applicant: 2nine Ltd (London, United Kingdom) (represented by: S. Palmer, Solicitor)

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

Other party to the proceedings before the Board of Appeal of OHIM: Pacific Sunwear of California, Inc. (Anaheim, California, United States)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 16 June 2008 (Case R 1591/2007-2), relating to opposition proceedings between 2nine Ltd and Pacific Sunwear of California, Inc.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders 2nine Ltd to bear its own costs and to pay those incurred by the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM).*

[1] OJ C 272, 25.10.2008.

Judgment of the General Court of 24 March 2010 — Inter-Nett 2000 v OHIM — Unión de Agricoltores (HUNAGRO)

(Case T-423/08) [1]

(Community trade mark — Opposition proceedings — Application for Community figurative mark HUNAGRO — Earlier Community figurative mark UNIAGRO — Partial refusal to register — Relative grounds for refusal — Likelihood of confusion — Article 8(1)(b) and Article 12 (a) and (b) of Regulation (EC) No 40/94 (now Article 8(1)(b) and Article 12 (a) and (b) of Regulation (EC) No 207/2009))

(2010/C 134/54)

Language of the case: Hungarian

Parties

Applicant: Inter-Nett 2000 Kereskedelmi és Szolgáltató kft (Inter-Nett 2000 kft) (Mór, Hungary) (represented by: E. Petruska, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: initially P. Sipos, subsequently P. Sipos and O. Montalto, Agents)

Other party to the proceedings before the Board of Appeal of OHIM: Unión de Agricoltores, SA (El Ejido, Spain)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 22 July 2008 (Case R 71/2008-2) relating to opposition proceedings between Unión de Agricoltores, SA and Inter-Nett 2000 Kereskedelmi és Szolgáltató kft.

Operative part of the judgment

The Court:

1. *Dismisses the action.*

2. *Orders Inter-Nett 2000 Kereskedelmi és Szolgáltató kft (Inter-Nett 2000 kft) to pay the costs.*

[1] OJ C 313 of 6.12.2008.

Judgment of the General Court of 26 March 2010 — Proges v Commission

(Case T-577/08) [1]

(Public service contracts — Community tendering procedure — Programme for creation of land use models — Rejection of tenderer's bid — Action for annulment — Interest in bringing proceedings — Admissibility — Award criteria)

(2010/C 134/55)

Language of the case: Italian

Parties

Applicant: Proges — Progetti di sviluppo Srl (Rome, Italy) (represented by: M. Falcetta, lawyer)

Defendant: European Commission (represented by: N. Bambara and E. Manhaeve, Agents, assisted by A. Dal Ferro, lawyer)

Re:

Application for annulment of the Commission decision of 29 October 2008 not to accept the tender submitted by the applicant in a tendering procedure relating to the implementation of a programme for the creation of land use models, and also a claim for damages for the losses incurred by the applicant.

Operative part of the judgment

The Court:

1. *Dismisses the application;*

2. *Orders Proges — Progetti di sviluppo Srl to bear its own costs and to pay those incurred by the Commission.*

[1] OJ C 44, 21.2.2009.

Judgment of the General Court of 24 March 2010 — Eliza v OHIM — Went Computing Consultancy Group (eliza)

(Case T-130/09) [1]

(Community trade mark — Opposition proceedings — Application for Community figurative mark incorporating the word eliza — Earlier Community word mark ELISE — Relative grounds for refusal — Likelihood of confusion — Refusal of registration — Article 8(1)(b) of Regulation (EC) No 40/94 (now Article 8(1)(b) of Regulation (EC) No 207/2009))

(2010/C 134/56)

Language of the case: English

Parties

Applicant: Eliza Corporation (Beverly, United States) (represented by: R. Köbbing, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the Court: Went Computing Consultancy Group BV (Utrecht, Netherlands) (represented by: A. Meijboom, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 28 July 2008 (Case R 1244/2008-4) relating to opposition proceedings between Went Computing Consultancy Group BV and Eliza Corp.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Eliza Corporation to bear its own costs and to pay the costs incurred by the Office for Harmonisation in the Internal Market (Trade Marks and Designs) and by Went Computing Consultancy Group BV.*

[1] OJ C 153, 4.7.2009.

Order of the General Court of 3 March 2010 — MarketTools v OHIM — Optimus-Telecomunicações (ZOOMERANG)

(Case T-105/07) [1]

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

(2010/C 134/57)

Language of the case: English

Parties

Applicant: MarketTools, Inc. (San Francisco, United States) (represented by: W. von der Osten-Sacken, A. González Hähnlein, O. Günzel and A. Wenninger, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the General Court: Optimus-Telecomunicações, SA (Maia, Portugal) (represented by: T. Colaço Dias and J. Conceição Pimenta, lawyers)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 25 January 2007 (Case R 253/2006-2) relating to opposition proceedings between Optimus-Telecomunicações, SA and MarketTools, Inc.

Operative part of the order

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

2. *The applicant shall bear its own costs and those incurred by the defendant.*

3. *The intervener shall bear its own costs.*

[1] OJ C 129, 9.6.2007.

Order of the General Court of 24 March 2010 — Eriksen v Commission

(Case T-516/08) [1]

(Action for damages — Public health implications of the nuclear accident at Thule (Greenland) — Directive 96/29/Euratom — Commission's failure to adopt measures against a Member State — Action manifestly lacking any foundation in law)

(2010/C 134/58)

Language of the case: English

Parties

Applicant: Heinz Helmuth Eriksen (Ebeltoft, Denmark) (represented by: I. Anderson, lawyer)

Defendant: European Commission (represented by: E. White and M. Patakia, Agents)

Re:

Action for compensation for damage suffered as a result of the Commission's alleged failure to adopt the measures necessary to ensure that the Kingdom of Denmark adopted the legislative and administrative provisions enabling it to comply with Council Directive 96/29/Euratom of 13 May 1996 laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation (OJ 1996 L 159, p. 1) and applied those provisions to workers involved in the nuclear accident at Thule (Greenland).

Operative part of the order

The Court hereby:

1. *Dismisses the action;*

2. *Orders Mr Heinz Helmuth Eriksen to pay the costs.*

[1] OJ C 44, 21.2.2009.

Order of the General Court of 24 March 2010 — Lind v Commission

(Case T-5/09) [1]

(Action for damages — Public health implications of the nuclear accident at Thule (Greenland) — Directive 96/29/Euratom — Commission's failure to adopt measures against a Member State — Action manifestly lacking any foundation in law)

(2010/C 134/59)

Language of the case: English

Parties

Applicant: Brigit Lind (Greve, Denmark) (represented by: I. Anderson, lawyer)

Defendant: European Commission (represented by: E. White and M. Patakia, Agents)

Re:

Action for compensation for damage suffered as a result of the Commission's alleged failure to adopt the measures necessary to ensure that the Kingdom of Denmark adopted the legislative and administrative provisions enabling it to comply with Council Directive 96/29/Euratom of 13 May 1996 laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation (OJ 1996 L 159, p. 1) and applied those provisions to workers involved in the nuclear accident at Thule (Greenland).

Operative part of the order

The Court hereby:

1. *Dismisses the action;*

2. *Orders Ms Brigit Lind to pay the costs.*

[1] OJ C 69, 21.3.2009.

Order of the General Court of 24 March 2010 — Hansen v European Commission

(Case T-6/09) [1]

(Action for damages — Public health implications of the nuclear accident at Thule (Greenland) — Directive 96/29/Euratom — Commission's failure to adopt measures against a Member State — Action manifestly lacking any foundation in law)

(2010/C 134/60)

Language of the case: English

Parties

Applicant: Bent Hansen (Aarslev, Denmark) (represented by: I. Anderson, lawyer)

Defendant: European Commission (represented by: E. White and M. Patakia, Agents)

Re:

Action for compensation for damage suffered as a result of the Commission's alleged failure to adopt the measures necessary to ensure that the Kingdom of Denmark adopted the legislative and administrative provisions enabling it to comply with Council Directive 96/29/Euratom of 13 May 1996 laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation (OJ 1996 L 159, p. 1) and applied those provisions to workers involved in the nuclear accident at Thule (Greenland).

Operative part of the order

The Court hereby:

1. *Dismisses the action*

2. *Orders Mr Bent Hansen to pay the costs.*

[1] OJ C 69, 21.3.2009.

Order of the General Court of 8 March 2010 — Maxcom v OHIM — Maxdata Computer (maxcom)

(Case T-155/09) [1]

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

(2010/C 134/61)

Language of the case: Polish

Parties

Applicant: Maxcom Sp. z o.o. (Tychy, Poland) (represented by: P. Kral, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Maxdata Computer GmbH & Co. KG (Marl, Germany)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 30 January 2009 (Case R 1019/2008-2) concerning opposition proceedings between Maxdata Computer GmbH & Co. KG and Maxcom Sp. z o.o.

Operative part of the order

The General Court:

1. *Rules that there is no need to adjudicate;*

2. *Orders Maxcom Sp. z o.o. to bear its own costs and pay those incurred by OHIM.*

[1] OJ C 153, 4.7.2009.

Order of the President of the General Court of 26 March 2010 — SNF v ECHA

(Case T-1/10 R)

(Proceedings for interim measures — REACH — Identification of acrylamide as a substance of very high concern — Application for suspension of operation of the measure and for interim relief — No urgency)

(2010/C 134/62)

Language of the case: English

Parties

Applicant: SNF SAS (Andrézieux-Bouthéon, France) (represented by: K. Van Maldegem and R. Cana, lawyers, and P. Sellar, Solicitor)

Defendant: European Chemicals Agency (ECHA) (represented by: M. Heikkila and W. Broere, Agents)

Re:

Application for suspension of operation of the decision identifying acrylamide as a substance of very high concern stated to have been adopted by the European Chemicals Agency (ECHA) on 7 December 2009 pursuant to Article 59 of Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ 2006 L 396, p. 1).

Operative part of the order

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

2. *Costs are reserved.*

Order of the President of the General Court of 26 March 2010 — Sviluppo Globale v Commission

(Case T-6/10 R)

(Interim measures — Public contracts — Tendering procedure — Rejection of tender — Application for suspension of operation and interim measures — Loss of opportunity — Lack of serious and irreparable harm — Lack of urgency)

(2010/C 134/63)

Language of the case: Italian

Parties

Applicant: Sviluppo Globale GEIE (Rome, Italy) (represented by: F. Sciaudone, R. Sciaudone and A. Neri, lawyers)

Defendant: European Commission (represented by: P. Costa de Oliveira, F. Erlbacher and P. Manzini, Agents)

Re:

Application for interim measures concerning call for tenders EUROPEAID/127843/D/SER/KOS for the provision of support services to the customs and tax authorities in Kosovo.

Operative part of the order

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

2. *The costs are reserved.*

Order of the President of the General Court of 26 March 2010 — Alisei v Commission

(Case T-16/10 R)

(Interim measures — Programme establishing a 'food facility' intended for developing countries — Call for proposals for the grant of funding — Refusal of funding — Application for suspension of operation — Lack of interest in bringing proceedings — Disregard of formal requirements — Inadmissibility)

(2010/C 134/64)

Language of the case: Italian

Parties

Applicant: Alisei (Rome, Italy) (represented by: F. Sciaudone, R. Sciaudone and A. Neri, lawyers)

Defendant: European Commission (represented by: L. Prete and P. van Nuffel, Agents)

Re:

Application for interim measures relating to the selection of applications for funding submitted under the 'Facility for rapid response to soaring food prices in developing countries' (EuropeAid/128608/C/ACT/Multi).

Operative part of the order

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

2. *The costs are reserved.*

Action brought on 3 March 2010 — Germany v Commission

(Case T-104/10)

(2010/C 134/65)

Language of the case: German

Parties

Applicant: Federal Republic of Germany (represented by: J. Möller and C. von Donat, lawyer)

Defendant: European Commission

Form of order sought

— Annul Commission Decision C(2009) 10561 of 18 December 2009 on the reduction of the contribution from the European Regional Development Fund (ERDF) granted by Commission Decision C(95) 2529 of 27 November 1995 and latterly by Commission Decision C(1999) 3557 of 15 November 1999 in respect of the RESIDER II Programme Saarland (1994-1999) in the Federal Republic of Germany;

— Order the Commission to pay the costs.

Pleas in law and main arguments

By the contested decision the Commission reduced the overall contribution granted from the ERDF in respect of the Community initiative RESIDER II SAARLAND (1994-1999) in the Federal Republic of Germany.

The applicant relies on five pleas in law in support of its action.

In its first plea the applicant submits that there is no legal basis for the consolidation and extrapolation of financial corrections in the programming period 1994 to 1999.

Secondly, the applicant alleges infringement of Article 24(2) of Regulation (EEC) No 4253/88 [1] as the conditions for a reduction have not been met. It submits, in particular, in that regard that the Commission misconstrued the notion of 'irregularity'. Furthermore, the Commission did not establish that the national authorities responsible for the administration of Structural Funds were in breach of their obligations under Article 23 of Regulation No 4253/88. There is insufficient definition, for an allegation of systematic irregularity, of the administrative and control systems to be submitted. The assumptions regarding systemic errors in relation to administration and control are, moreover, according to the applicant, based on erroneous findings of fact. The applicant also submits that important aspects of the factual background have been determined and assessed incorrectly.

In the alternative, the applicant submits by its third plea in law that the reductions put forward in the contested decision are disproportionate. The applicant claims in this respect that the Commission failed to exercise its discretion under Article 24(2) of Regulation No 4253/88. Furthermore, the flat-rate corrections applied are in excess of the (potential) risk of loss to the Community budget. The applicant maintains that, over and above that, correction rates were cumulated without the outcome in individual cases being checked by reference to the principle of proportionality. The applicant also takes the view that the extrapolation of errors is disproportionate because specific errors cannot be applied to a heterogeneous whole.

By its fourth plea the applicant submits that insufficient reasons were given for the contested decision. It submits in that regard that the derivation and grounds for the amount of the flat-rate reductions could not be deduced from the contested decision. In addition, there is nothing to indicate that the Commission sufficiently took into account the submission of the German authorities. Furthermore, the Commission failed to draw any conclusions from the weaknesses identified in the project assessments carried out by external assessors with regard to the conclusiveness of the findings.

Lastly, the applicant puts forward a fifth plea in law alleging that the defendant infringed the principle of partnership because it now relies on the 'datasheets on the eligibility of expenditure' which were only compiled during the current programming period. Furthermore, the Commission bases the contested decision on systemic failings in the administrative and control system, even though it confirmed, in the course of the programming period, that the administrative and control systems were capable of functioning.

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

Action brought on 3 March 2010 — Procter & Gamble Manufacturing Cologne v OHIM — Natura Cosméticos (NATURAVIVA)

(Case T-107/10)

(2010/C 134/66)

Language in which the application was lodged: English

Parties

Applicant: Procter & Gamble Manufacturing Cologne GmbH (Cologne, Germany) (represented by: K. Sandberg, lawyer)

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

Other party to the proceedings before the Board of Appeal: Natura Cosméticos, SA (Itapecerica da Serra, Brazil)

Form of order sought

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 23 November 2009 in case R 1558/2008-2;

— Order the defendant to pay the costs of the proceedings; and

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

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 'NATURAVIVA', for goods and services in classes 3, 5 and 44

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

Mark or sign cited: German trade mark registrations of the mark 'VIVA', for goods in class 3; Community trade mark registration of the mark 'VIVA', for goods in class 3

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

Decision of the Board of Appeal: Upheld the appeal

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 207/2009 as the Board of Appeal wrongly found that there was no likelihood of confusion between the trade marks concerned.

Action brought on 5 March 2010 — Luxembourg v Commission

(Case T-109/10)

(2010/C 134/67)

Language of the case: French

Parties

Applicant: Grand Duchy of Luxembourg (represented by: C. Schiltz, Agent, and P. Kinsch, lawyer)

Defendant: European Commission

Form of order sought

— Annul the contested decision in so far as it applies to the Grand Duchy of Luxembourg;

— Order the Commission to pay the costs.

Pleas in law and main arguments

The applicant seeks the annulment, in so far as it applies to the Grand Duchy of Luxembourg, of Commission Decision C(2009) 10712 of 23 December 2009 reducing the assistance granted to the Community Initiative Interreg II/C 'Rhine/Meuse Flooding*' in the Kingdom of Belgium, Federal Republic of Germany, the French Republic, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands by the European Regional Development Fund (ERDF) under Commission Decision C(97) 3742 of 18 December 1997 (ERDF No. 970010008).

In support of its action, the applicant puts forward two pleas in law.

By the first plea in law, the applicant claims that if the actions for annulment brought by the Dutch and German authorities are upheld, the Grand Duchy of Luxembourg should benefit as a result. If it is found that the errors and weaknesses, allegedly systematic, which the Commission's audit was thought to have revealed in the functioning of the program in question in the Netherlands and Germany, do not in reality exist, the very basis of the decision's reasoning fails and with it the linear financial correction applied to the projects implemented in Luxembourg.

The second plea in law alleges the illegality of the extension, to the Grand Duchy of Luxembourg, of a financial adjustment* that might be justified only in respect of other Member States. No anomalies have been found in the operation* of the program in the Grand Duchy of Luxembourg. The fact that Luxembourg agreed to participate in a joint project with Germany, Belgium, France and the Netherlands does not justify the negative effects, in terms of financial adjustment* of its own projects, of errors or weaknesses that were discovered during the audit of Dutch or German projects, and which consist almost exclusively in alleged breaches of provisions of the procedure for awarding public contracts. Despite the fact that this is a matter of joint participation by five Member States in the same program, procedures for public procurement* awarding public contracts come within the exclusive responsibility of the national authorities of the Member States concerned.

Action brought on 8 March 2010 — Insula v Commission

(Case T-110/10)

(2010/C 134/68)

Language of the case: French

Parties

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

Defendant: European Commission

Form of order sought

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

— Declare that the Commission's demand for repayment of a sum of EUR 84 120 is unfounded and, therefore, order the Commission to issue a credit note in the sum of EUR 84 120;

— Order that the action be joined to Case T-366/09, on account of the connection between them, for the purposes of the written and oral procedure;

— Order the Commission to pay the costs.

Pleas in law and main arguments

By the present action, based on an arbitration clause, the applicant requests the Court to declare that the debit note of 28 January 2010 by which the Commission, following an audit report from OLAF, demanded recovery of the advances paid to the applicant, does not comply with the terms of the EL HIERRO (NNE5/2001/950) contract concluded within the framework of a specific program for research, technological development and demonstration on energy, the environment and sustainable development.

The applicant puts forwards two pleas in law.

By the first plea in law, it challenges the enforceability of the debt claimed by the Commission following the audit carried out in 2005.

By the second plea in law, it claims that the Commission, by issuing the new debit note, is in breach of its contractual obligations which no longer entitle it to demand, six years after the last payment to Insula and without notification on its part in the period laid down by the contract, additional supporting documentary evidence.

Action brought on 8 March 2010 — Germany v Commission

(Case T-114/10)

(2010/C 134/69)

Language of the case: German

Parties

Applicant: Federal Republic of Germany (represented by: J. Möller and C. Blaschke, Agents, and U. Karpenstein, lawyer)

Defendant: European Commission

Form of order sought

— Declare null and void Commission Decision C(2009) 10712 of 23 December 2009 on the reduction in the financial aid granted to the Rhine-Meuse flood protection programme under Community initiative programme Interreg II/C in the Kingdom of Belgium, the Federal Republic of Germany, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands by the European Regional Development Fund (ERDF) pursuant to Commission Decision C(97)3742 of 18 December 1997 (ERDF No 970010008);

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

Pleas in law and main arguments

By the contested decision, the Commission reduced the aid granted by the ERDF for the period 1 January 1994 to 31 December 1999 to the Rhine-Meuse flood protection programme under Community initiative programme Interreg II/C in the Kingdom of Belgium, the Federal Republic of Germany, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands.

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

As its first plea in law, the applicant submits that the conditions for a financial correction under Article 24(2) of Regulation (EEC) No 4253/88 [1] are not met. In the applicant's view, that does not entitle the Commission to make financial corrections for administrative errors or perceived deficiencies in the administrative and monitoring systems. Further, it submits that even if administrative errors or perceived deficiencies in the administrative and monitoring systems under Article 24 of Regulation No 4253/88 were found, there should be no question of a financial correction. Firstly, 'irregularities', as alleged here by the Commission, can be corrected by financial corrections only if they have or have had a negative effect on the European Union's budget. In the view of the applicant, the measures objected to by the Commission have not had such an effect. Secondly, the applicant submits that in the case of a series of projects also objected to in this matter, there has been no breach of Community law.

The second plea in law alleges that the Commission was not entitled under Regulation No 4253/88 to apply flat-rate and extrapolated financial corrections. In addition, the applicant submits that the clear wording of Article 24 of that regulation relates to concrete situations and quantifiable amounts.

In its third plea in law, the applicant alleges infringement of the principle of proportionality and claims that an extrapolation across States, on the basis of which one Member State is required to accept responsibility for the errors of another Member State, is not permitted.

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

Action brought on 8 March 2010 — Germany v Commission

(Case T-116/10)

(2010/C 134/70)

Language of the case: German

Parties

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

Defendant: European Commission

Form of order sought

— Annul Commission Decision C(2009) 10675 of 23 December 2009 on the reduction of the assistance from the European Regional Development Fund (ERDF) granted by Commission Decision C(97) 1120 in respect of the Objective 2 programme Nordrhein-Westfalen (1997-1999) in the Federal Republic of Germany;

— Order the Commission to pay the costs.

Pleas in law and main arguments

By the contested decision the Commission reduced the assistance granted from the ERDF in respect of the Objective 2 programme Nordrhein-Westfalen (1997-1999) in the Federal Republic of Germany.

The applicant relies on four pleas in law in support of its action.

By its first plea in law the applicant submits that the Commission erroneously assessed the factual situation. The applicant takes the view that the Commission included incorrect amounts in the calculation of the margin of error which it took as a basis.

In the second plea the applicant submits that the conditions for a financial correction in Article 24(2) of Regulation (EEC) No 4253/88 [1] have not been met. The applicant takes the view that that provision does not give the Commission the right to make financial corrections in respect of administrative errors or ostensibly inadequate administrative and control systems. Furthermore, it is submitted that a financial correction in the amount assumed by the Commission is also out of the question

for other reasons. First, 'irregularities', as complained of by the Commission in the present case, can justify financial corrections only if they have, or have had, a negative effect on the Union budget. According to the applicant, that was not the case as regards the conduct complained of by the Commission. Secondly, the applicant submits that, even on the substance, there is no infringement of Community law as regards a series of the projects complained of.

By its third plea the applicant submits that the Commission had no right under Regulation No 4253/88 to make flat-rate and extrapolated financial corrections. The applicant submits in that regard that the clear wording of Article 24 of that regulation relates to concrete cases and quantifiable amounts.

In its last plea the applicant submits that, even if it were to be assumed that flat-rate and extrapolated financial corrections are permitted, they are unlawful in the present case. In that regard it is submitted that the Commission did not explain the 'system-inherent nature' of the conduct of which it complained and that the flat-rate financial corrections do not comply with the principle of proportionality.

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

Action brought on 8 March 2010 — ClientEarth e.a. v Commission

(Case T-120/10)

(2010/C 134/71)

Language of the case: English

Parties

Applicants: ClientEarth (London, United Kingdom), Transport & Environment (Brussels, Belgium) European Environmental Bureau (Brussels, Belgium) and BirdLife International (Brussels, Belgium), (represented by: S. Hockman QC, Barrister)

Defendant: European Commission

Form of order sought

— declare the defendant in violation of Regulation (EC) No 1049/2001 (1) and Regulation (EC) No 1367/2006 (2);

— declare that the reasons for refusal of a document under Article 4(3) of Regulation (EC) No 1049/2001 must be stated in a written reply during the prescribed time-limits of the two-stage administrative procedure, or be waived as claims to an exception of defences at law, and otherwise fall outside the scope of judicial review;

— annul the contested decision of 9 February 2010 (SG.E3/MM/psi-Ares (2010)70321), by which the Commission declared its intention to withhold from the applicants certain documents containing environmental information;

— order the defendant to provide access to all requested documents identified in the course of its review of the 15 October 2009 application, the confirmatory application of 17 December 2009, and all documents generated during the consideration thereof, without delay or redaction according to Article 10 of Regulation (EC) No 1049/2001; and

— order the defendant to pay applicant's costs, including the costs of any intervening party.

Pleas in law and main arguments

By means of the present application, the applicant seeks, pursuant to Article 263 TFUE, the annulment of the Commission's decision of 9 February 2010, by which the defendant declared its intention to withhold from the applicants certain documents containing environmental information relating to greenhouse gas emissions resulting of production of biofuels, produced and/or used by the Commission in accordance with Directive 2009/28/EC (3).

In support of his appeal, the appellant submits the following pleas in law:

Firstly, violation of Article 8 of Regulation (EC) No 1049/2001 for failure to provide timely disclosure of documents or reasons for withholding. The application was submitted on 15 October 2009. The defendant issued a partial refusal, releasing four documents and withholding approximately two hundred documents. Applicants challenged the basis of the refusal. On 9 February 2010, the date of expiration of the time-limit prescribed in the regulation, the Commission refused to disclose the remaining documents or to provide valid reasons for withholding them.

Secondly, violation of Articles 7(1) and 8(1) of Regulation (EC) No 1049/2001 for failure to provide detailed reasons for withholding each document. In order to qualify for an exception, detailed reasons for withholding each document must be provided in a written reply within the prescribed time-limit. On 9 February 2010, the date of expiration of the time-limit prescribed in the regulation, the Commission refused to release the remaining documents and offered no detailed reasons for withholding them as required under the regulation and case-law.

In addition, the applicants claim violation of Article 4 of Regulation (EC) No 1049/2001 for failure to carry out a concrete, individual assessment of the content of each document. The Commission is required to perform a concrete, individual assessment of the content of each document in determining whether the document or any portion thereof falls under an exception to the general rule that all documents should be made accessible. On 9 February 2010, the date of expiration of the time-limit prescribed in the regulation, the Commission admitted that this analysis had not been performed on the request documents and, to the extent any analysis was performed, it was not made available to applicants.

Furthermore, the applicants claim infringement of Article 4(3) of Regulation (EC) No 1049/2001 and Article 6(1) of Regulation (EC) No 1367/2006 for unlawful application of the Article 4(3) exception. The Commission originally claimed the Article 4(3) exception for approximately two hundred documents. On 9 February 2010, the date of expiration of the time-limit prescribed in the regulation, the Commission did not release the documents. In order to claim the Article 4(3) exception, the Commission must show that the document or information contained therein would seriously undermine its decision-making process. Applicants allege that the documents, containing environmental information relating to emissions in the environment, would not seriously undermine the Commission's decision-making process and, to the extent that any document or information qualified for an exception, there is an overriding public interest in disclosure.

At the same time, the applicants claim violation of Article 4(6) of Regulation (EC) No 1049/2001 for failure to redact documents. In the instance the Commission refuses to release requested documents, it must consider redaction, if possible, of those sections that otherwise qualify for a claim to exception and release those portions that fall outside the exception. Applicants allege that the Commission failed to consider and perform redaction and, as a result, withheld information or portions of documents that should have otherwise been released.

Finally, it is submitted that the defendant infringed Article 4(7) of Regulation (EC) No 1049/2001 for failure to identify the period of application of the Article 4(3) exception. In the instance the Commission refuses to release requested documents or portions thereof, it must identify the period that the exception applies. Applicants allege that the Commission failed to consider and disclose the period that any otherwise valid claim to exception applies.

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

([2]) Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ L 264, p. 13)

([3]) Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (Text with EEA relevance) (OJ L 140, p. 16)

Action brought on 11 March 2010 — Conte and Others v Council

(Case T-121/10)

(2010/C 134/72)

Language of the case: Italian

Parties

Applicants: Conte (Pomezia, Italy), Casa del Pescatore Soc. coop. rl (Civitanova Marche, Italy), Guidotti Giovanni & Figli Snc (Termoli, Italy), Organizzazione di produttori della pesca di Civitanova Marche Soc. coop. rl (Civitanova Marche, Italy), Consorzio gestione mercato ittico Manfredonia Soc. coop. rl (Cogemim) (Manfredonia, Italy) (represented by: P. Cavasola, G. Micucci and V. Cannizzaro, lawyers)

Defendant: Council of the European Union

Form of order sought

— Annul the contested regulation.

— Order the defendant to pay the costs.

Pleas in law and main arguments

The applicants in the present case all operate in the fisheries sector and are subject to the obligations laid down in the contested regulation.

In support of their claims, the applicants put forward the following grounds:

1. Articles 9(2) and (3) and 10(1) and (2) of the contested regulation are invalid in so far as those provisions lay down an unconditional obligation for fishing vessels over 15 metres to be equipped with a double monitoring system: a satellite tracking system, provided for in Article 9, and, in addition, an automatic ship identification system. These are two different monitoring systems which essentially have the same function. No adequate reasons are given for that obligation. The obligation also appears to be in breach of the principle of proportionality, in this case as regards the need for and appropriateness of the measure. Moreover, the obligation to be equipped with a double monitoring system represents a financial burden for the applicants which is unjustified and unreasonable.

2. Articles 15 and 17 of the contested regulation are invalid in so far as those provisions lay down an obligation for fishing vessels of 12 metres' length or more to provide certain information on a daily basis and, in any event, before entry to port, or even four hours before entry to port. According to the applicants, that obligation is unreasonable, disproportionate and even incapable of being fulfilled. Especially for vessels engaged in small scale fishing in fishing zones located at a distance of a few hours' navigation from ports, it would be impossible to comply with that obligation, unless the vessels were to remain stuck outside the port until the time periods in question have elapsed.

3. The system of surveillance and inspections is invalid in so far as the contested regulation lays down an unconditional obligation to grant access to rooms of the vessel and to files and electronic documents and to submit to forms of inspection and questioning by officers who are to operate without any authorisation from the judicial authorities and are not subject to any control by police bodies. The rights to confidentiality, home-life and privacy and the right of defence in their various forms would thus be infringed. Such control, as well as infringing the various basic rights referred to above, would ultimately, as a result of its intrusive nature, deprive of all substance the right of fisheries operators to exercise an economic freedom, guaranteed by the founding Treaties. A specific ground of invalidity relates to Article 82, which gives the inspection officers the power to take protective measures in relation to evidence of possible infringements.

4. Article 73(8) of the contested regulation is invalid in so far as that provision provides for the freedom for Member States to make fisheries operators liable for the financial burden of the surveillance system. It is submitted in this connection that that provision is clearly invalid because it is at odds with the principle of social distribution of expenditure necessary for the furtherance of public interests.

5. Article 92 of the contested regulation is invalid in so far as that provision provides for a system of transferring liability for any infringement, so that, irrespective of who is responsible, it ultimately lies with the owner of the fishing vessel and any assignees. It is submitted in this regard that that provision is contrary to the principle that liability should be imputed only to the person responsible, the principle of the protection of the right to private property and the principle of proportionality, since it is not directed, from any rational perspective, at preventing circumvention of the sanctions regime.

6. Article 103 of the contested regulation is invalid in so far as that provision provides that, where a Member State fails to fulfil its obligations under the regulation itself, that can lead to the financial assistance provided under Regulation 1198/2006 ([1]) and Regulation 861/2006 ([2]) being suspended. The suspension of the aid entails a transfer of liability from the State to the individuals, who are thus made to bear the adverse consequences of the State's conduct. That form of transfer of sanctions infringes the principle that punishment should be applied only to the offender and the principle of proportionality.

7. Article 14(1), (2), (3), (4) and (5), Article 17(1), Article 58(1), (2), (3) and (5), Article 59(2) and (3), Article 60(4) and (5), Article 62(1), Article 63(1), Article 64, Article 65, Article 66(1) and (3), Article 67(1) and Article 68 of the contested regulation are invalid. The applicants submit in this connection that the regulation is based only on Article 37 TEC, which permits the establishment of a common fisheries policy, and that the measures contained in the regulation are lawful only if they relate to the fisheries policy established by the Community institutions in various

acts. However, the provisions referred to above do not relate to sectors or species which are governed by the common fisheries policy and therefore fall outside the scope of Article 37 TEC.

(1) Council Regulation (EC) No 1198/2006 of 27 July 2006 on the European Fisheries Fund.
(2) Council Regulation (EC) No 861/2006 of 22 May 2006 establishing Community financial measures for the implementation of the common fisheries policy and in the area of the Law of the Sea.

Action brought on 18 March 2010 — Hartmann v OHIM (Complete)

(Case T-123/10)

(2010/C 134/73)

Language in which the application was lodged: German

Parties

Applicant: Paul Hartmann AG (Heidenheim, Germany) (represented by N. Aicher, lawyer)

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

Form of order sought

— annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 20 January 2010 in Case R 601/2009-4;

— order the defendant to pay the costs, including the costs of the proceedings before OHIM.

Pleas in law and main arguments

Community trade mark concerned: Word mark 'Complete' for goods in classes 5 and 10 (Application No 7 432 024)

Decision of the Examiner: Rejection of the application

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 7(1)(c) of Regulation (EC) No 207/2009, (1) in that the sign applied for in respect of the goods in question is not directly descriptive and, further, infringement of Article 7(1)(b) of Regulation No 207/2009 in that this sign does not lack the requisite distinctive character.

(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 17 March 2010 — Lidl Stiftung v OHIM — Vinotasia (VITASIA)

(Case T-124/10)

(2010/C 134/74)

Language in which the application was lodged: German

Parties

Applicant: Lidl Stiftung & Co. KG (Neckarsulm, Germany) (represented by: M. Schaeffer and A. Marx, 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: Vinotasia GmbH (Koblenz, Germany)

Form of order sought

— annul the decision of the Fourth Board of Appeal of 14 January 2010 in Case R 1054/2008-4;

— reject Opposition No B 1 027 947, lodged on 30 June 2006, in so far as it was upheld by the decision of the Opposition Division of 30 March 2008;

— order the defendant to pay the costs of the proceedings before the Court of Justice of the European Union and the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs);

— in the alternative, stay the proceedings until a final decision is taken on the application for a declaration of invalidity, lodged on 17 March 2010 at the Deutsches Patent- und Markenamt, against the earlier German mark No 302 15 015 'VINOSTASIA'

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: Word mark 'VITASIA' for goods in classes 29, 30, 31, 32 and 33 (Application No 4 691 101)

Proprietor of the mark or sign cited in the opposition proceedings: Vinotasia GmbH

Mark or sign cited in opposition: German word mark 'VINOTASIA' No 302 15 015 for goods and services in classes 32, 33 and 35

Decision of the Opposition Division: To uphold the opposition in part

Decision of the Board of Appeal: To dismiss the appeal

Pleas in law: Infringement of Article 8(1)(b) of Regulation No 207/2009, ([1]) in that no likelihood of confusion between the abovementioned marks exists

([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 17 March 2010 — Lux Management v OHIM — Zeis Excelsa (KULTE)

(Case T-130/10)

(2010/C 134/75)

Language in which the application was lodged: English

Parties

Applicant: Lux Management Holding SA (Luxembourg, Luxembourg) (represented by: S. Mas, lawyer)

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

Other party to the proceedings before the Board of Appeal: Zeis Excelsa SPA (Montegranaro, Italy)

Form of order sought

— Declare the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 15 January 2010 in case R 712/2008-4 without object;

— In the alternative, annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 15 January 2010 in case R 712/2008-4 because it failed to take into account the evidence presented by the applicant;

— In the alternative, annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 15 January 2010 in case R 712/2008-4 because it lacks motivation regarding the acquiescence of the registered Community trade mark subject of the application for revocation by the applicant; and

— Order the defendant to bear the costs.

Pleas in law and main arguments

Registered Community trade mark subject of the application for revocation: The figurative mark 'KULTE' for goods in classes 14, 18 and 25

Proprietor of the Community trade mark: The applicant

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

Trade mark right of the party requesting the revocation: Italian trade mark registration of the figurative mark 'CULT', for all goods in class 25; international trade mark registration with effect in France and the Benelux of the figurative mark 'CULT', for goods in classes 14, 18 and 25

Decision of the Cancellation Division: Declared partially invalid the registration of the Community trade mark subject of the application for revocation

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 43 of Council Regulation No 207/2009 as the Board of Appeal failed to recognise that its decision is without object because of the fact that the parties have reached an agreement relating to the coexistence of the trade marks in question and the subsequent request of withdrawal; infringement of Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms as the Board of Appeal refused to admit new evidence presented by the applicant; infringement of Article 57(2) of Council Regulation No 207/2009 as the Board of Appeal erred in its assessment of the meaning of evidence transmitted and failed to provide reasons with regard to the proof of acquiescence by the other party to the proceedings before the Board of Appeal of the registered Community trade mark subject of the application for revocation.

Action brought on 23 March 2010 — Pieno žvaigždės v OHIM — Fattoria Scaldasole (Iogurt.)

(Case T-135/10)

(2010/C 134/76)

Language in which the application was lodged: English

Parties

Applicant: AB 'Pieno žvaigždės' (Vilnius, Lithuania) (represented by: I. Lukauskienė and R. Žabolienė, lawyers)

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

Other party to the proceedings before the Board of Appeal: Fattoria Scaldasole Srl (Monguzzo, Italy)

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 18 January 2010 in case R 1070/2009-2; and

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

Pleas in law and main arguments

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

Community trade mark concerned: The figurative mark 'Iogurt.', for goods in class 29

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

Mark or sign cited: Lithuanian trade mark registration of the figurative mark 'jogurtas', for goods in class 29; Community trade mark registration of the figurative mark 'jogurt', for goods in class 29

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

Decision of the Board of Appeal: Deemed the appeal not to have been filed

Pleas in law: Infringement of Article 60 of Council Regulation No 207/2009 in conjunction with Article 8 of Commission Regulation No 2869/95 [1] as the Board of Appeal wrongly concluded that the fee for appeal was not paid within the prescribed time-limit of two months from the date of notification of the appealed decision.

---

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

Action brought on 24 March 2010 — Spain v Commission

(Case T-138/10)

(2010/C 134/77)

Language of the case: Spanish

Parties

Applicant: Kingdom of Spain (represented by: J. Rodríguez Cárcamo)

Defendant: European Commission

Form of order sought

— Annulment of Commission Decision No 337 of 28 January 2010 reducing the assistance from the European Regional Development Fund (ERDF) for the Comunidad Valenciana operational programme Objective 1 (1994-1999) in Spain pursuant to Decision C(1994) 3043/6, ERDF No 94.11.09.011, and

— an order that the Commission should pay the costs.

Pleas in law and main arguments

By Decision C(94) 30346 of 25 November 1994, the Commission granted assistance from the European Regional Development Fund (ERDF) for an operational programme in the Valencia region, forming part of the Community support framework for action by the structural funds in the Spanish regions concerned by Objective No 1 in the period 1994-1999, for a maximum amount of ECU 1 207 941 000. The decision contested in these proceedings maintains that irregularities occurred in 23 of the 38 projects audited, and reduces the assistance originally granted by EUR 115 612 377,25.

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

— infringement of Article 24 of Council Regulation (EEC) No 4253/88 of 19 December 1988, ([1]) in that the extrapolation method was used in the contested decision, given that that article does not provide for it to be possible to extrapolate irregularities found in specific actions to the whole body of actions included in the operational programmes financed by ERDF funds. The applicant maintains that the correction applied by the Commission in the contested decision has no basis in law, because the Commission's internal guidelines of 15 October 1997 concerning net financial corrections in the context of the application of Article 24 of Council Regulation (EEC) No 4253/88 cannot, in accordance with the judgment of the Court of Justice in Case C-443/97 *Spain* v *Commission*, ([2]) be considered to produce legal effects vis-à-vis the Member States, and because that provision envisages the reduction of assistance only when examination of that assistance reveals an irregularity, a principle breached by the application of corrections by extrapolation;

— as a subsidiary plea, infringement of Article 24 of Council Regulation (EEC) No 4253/88 of 19 December 1988 read in conjunction with the present Article 4(3) TEU (principle of sincere cooperation), for the correction was applied by extrapolation although no deficiency had been revealed in the management, supervision or audit systems regarding the amended contracts, given that the management bodies applied the Spanish legislation which has not been declared by the Court to be contrary to the law of the European Union. The Kingdom of Spain takes the view that the management bodies' observance of national law, even though it may lead to a finding by the Commission of irregularities or of actual infringements of European Union law, cannot serve as a basis for extrapolation on the ground of failings in the system of management, when the law applied by those bodies has not been declared contrary to European Union law by the Court of Justice and when the Commission has not brought an action against the Member State under Article 258 TFEU;

— as a subsidiary plea, infringement of Article 24 of Regulation (EEC) No 4253/88, in that the sample used for the application of the financial correction by extrapolation was unrepresentative. The Commission formed the sample for the application of extrapolation with a very limited number of projects (38 out of 7 862), without taking into consideration all the essential parts of the operational programme, including expenditure withdrawn beforehand by the Spanish authorities, taking as the starting point the expenditure declared and not the assistance granted and by using an IT programme which offered a level of reliability of less than 85 %. The Kingdom of Spain considers, therefore, that the sample does not satisfy the conditions of representativity required in order for it to serve as a basis for extrapolation;

— expiry of the limitation period for proceedings pursuant to Article 3 of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995. Finally, the Kingdom of Spain considers that the communication of irregularities to the Spanish authorities (which took place in July 2004, in most cases concerning irregularities committed during the years 1997, 1998 and 1999) must determine the moment from which the period of four years laid down in Article 3 of Regulation No 2988/95 ([3]) started to run with regard to those irregularities.

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

([2]) Case C-443/97 *Spain* v *Commission* [2000] ECR I-2415.

([3]) Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests (OJ 1995 L 312, p. 1).

Action brought on 30 March 2010 — Ben Ri Electrónica v OHIM — Sacopa (LT LIGHT-THECNO)

(Case T-143/10)

(2010/C 134/78)

Language in which the application was lodged: Spanish

Parties

Applicant: Ben Ri Electrónica SA (Madrid, Spain) (represented by: A. Alejos Cutuli, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Sacopa SAU (Sant Jaume de Llierca (Girona), Spain)

Form of order sought

— annul the decision of the Fourth Board of Appeal of OHIM and reject Community mark No 4 520 193;

— order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Sacopa SAU

Community trade mark concerned: Figurative mark which contains the word element 'LT' (Application No 4 520 193) for goods in Classes 7, 9 and 11.

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

Mark or sign cited in opposition: Community figurative mark (No 13 375) and Spanish figurative marks (Nos 1 719 729 and 1 719 730) composed of the juxtaposition of and 'L' and a 'T' superimposed on a circle for goods in Classes 9 and 11.

Decision of the Opposition Division: Partial rejection of the opposition.

Decision of the Board of Appeal: Annulment of the contested decision and rejection of the opposition.

Pleas in law: Incorrect interpretation of Article 8(1)(b) of Regulation No 207/2009 on the Community trade mark.

Action brought on 29 March 2010 — Space Beach Club v OHIM — Flores Gómez (SpS space of sound)

(Case T-144/10)

(2010/C 134/79)

Language in which the application was lodged: Spanish

Parties

Applicant: Space Beach Club SA (San Jorge (Ibiza), Spain) (represented by: A. Alejos Cutuli, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Miguel Ángel Flores Gómez (Madrid, Spain)

Form of order sought

— annul the decision of the Second Board of Appeal of OHIM and refuse registration of Community trade mark application No 5683693;

— order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Miguel Ángel Flores Gómez

Community trade mark concerned: Figurative mark containing the verbal component 'SpS space of sound' (Application No 5 683 693) for goods and services in Classes 9, 35 and 41.

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

Mark or sign cited in opposition: Spanish figurative marks which contain the word element 'SPACE' (Nos 2 021 783, 2 610 677, 2 644 838, 2 644 839, 2 654 511, 2 694 428, 2 583 870, 3 175 742 and 4 529 814) for goods and services in Classes 9, 25 and 41.

Decision of the Opposition Division: Opposition rejected.

Decision of the Board of Appeal: Action dismissed.

Pleas in law: Incorrect interpretation of Article 8(1)(b) of Regulation No 207/2009 on the Community trade mark.

Order of the General Court (Eighth Chamber) of 4 March 2010 — Jong v Council and Commission

(Case T-303/94)

(2010/C 134/80)

Language of the case: Dutch

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

Order of the General Court (Eighth Chamber) of 24 March 2010 — Ellinikos Niognomon v Commission

(Case T-312/08) [1]

(2010/C 134/81)

Language of the case: English

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

---

[1] OJ C 272, 25.10.2008.

Order of the General Court of 18 March 2010 — Papierfabrik Hamburger-Spremberg v Commission

(Case T-350/08) [1]

(2010/C 134/82)

Language of the case: German

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

---

[1] OJ C 272, 25.10.2008.

Order of the General Court of 24 March 2010 — Berenschot Groep v Commission

(Case T-428/09) [1]

(2010/C 134/83)

Language of the case: English

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

---

[1] OJ C 11, 16.1.2010.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Judgment of the Civil Service Tribunal (First Chamber) of 23 February 2010 — Faria v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case F-7/09) [1]

(Staff cases — Officials — Reports — Evaluation report — 2006/2007 evaluation period — Application for annulment of the evaluation report — Manifest error of assessment — Compensation for non-material damage)

(2010/C 134/84)

Language of the case: French

Parties

Applicant: Marie-Hélène Faria (Muchamiel, Spain) (represented by: L. Levi, lawyer)

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

Re:

Annulment of the evaluation report in respect of the period from 1 October 2006 to 30 September 2007, and an order that the defendant pay compensation for the loss suffered by the applicant.

Operative part of the judgment

The Tribunal:

1. *Annuls Ms Faria's evaluation report, drawn up by the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) in respect of the period from 1 October 2006 to 30 September 2007;*

2. *For the rest, dismisses the action;*

3. *Orders OHIM to bear its own costs and to pay three quarters of Ms Faria's costs;*

4. *Orders Ms Faria to bear one quarter of her own costs.*

[1] OJ C 69 of 21.03.2009, p. 55.

Judgment of the Civil Service Tribunal (First Chamber) of 9 March 2010 — N v Parliament

(Case F-26/09) [1]

(Staff cases — Officials — Action for damages — Admissibility — Psychological harassment — Duty of care — Non-material damage)

(2010/C 134/85)

Language of the case: French

Parties

Applicant: N (Brussels, Belgium) (represented by: É. Boigelot, lawyer)

Defendant: European Parliament (represented by: K. Zejdová and R. Ignătescu, Agents)

Re:

An order that the Parliament pay the applicant the sum of EUR 12 000 by way of compensation for the harm suffered, first, on account of the psychological and professional harassment to which she was subject and, secondly, on account of there being no internal administrative investigation by an independent body.

Operative part of the judgment

The Tribunal:

1. *Orders the European Parliament to pay N compensation in the amount of EUR 2 000;*

2. *For the rest, dismisses the action;*

3. *Orders the European Parliament to bear its own costs and to pay three quarters of N's cost*

4. *Orders N to bear one quarter of her own costs.*

[1] OJ C 153 of 04. 07. 2009, p. 51.

Judgment of the Civil Service Tribunal (First Chamber) of 9 March 2010 — Tzvetanova v Commission

(Case F-33/09) ([1])

(Staff cases — Temporary staff — Remuneration — Expatriation allowance — Conditions laid down in Article 4 of Annex VII to the Staff Regulations — Habitual residence before entering the service — Stay as a student in the place of employment — Training periods outside the place of employment during the reference period — Account taken of actual residence)

(2010/C 134/86)

Language of the case: French

Parties

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

Defendant: European Commission (represented by: D. Martin and J. Baquero Cruz, Agents, later by J. Currall and J. Baquero Cruz, Agents)

Re:

Annulment of the decision of the Commission to refuse the applicant the benefit of the expatriation allowance provided for in Article 4(1)(a) of Annex VII to the Staff Regulations.

Operative part of the judgment

The Tribunal:

1. *Annuls the decision of the European Commission of 10 July 2008 refusing Ms Tzvetanova the benefit of the expatriation allowance provided for in Article 4 of Annex VII to the Staff Regulations;*

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

([1]) OJ C 129 of 06. 06. 2009, p. 22.

Order of the Civil Service Tribunal (Second Chamber) of 25 March 2010 — Buschak v EFILWC

(Case F-47/08) ([1])

(Staff cases — European Foundation for the Improvement of Living and Working Conditions — Job description of the post of deputy director — Action for annulment — Action for damages — Interest in bringing proceedings — Manifestly inadmissible)

(2010/C 134/87)

Language of the case: French

Parties

Applicant: Willy Buschak (Bonn, Germany) (represented by: L. Levy and C. Ronzi, lawyers, later by L. Levy, lawyer)

Defendant: European Foundation for the Improvement of Living and Working Conditions (represented by: C. Callanan, Solicitor)

Re:

Staff cases — Annulment of the decision amending the applicant's job description and an order that the defendant pay him a sum by way of compensation for the material and non-material harm suffered.

Operative part of the order

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

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

([1]) OJ C 171 of 5.07.2008, p. 52.

Action brought on 8 December 2009 — Papathanasiou v OHIM

(Case F-99/09)

(2010/C 134/88)

Language of the case: German

Parties

Applicant: Elisavet Papathanasiou (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

Application, first, for a declaration of invalidity of the clause in the applicant's contract providing for the automatic termination of the employment contract in the event that the applicant is not selected in an external selection procedure for OHIM and, second, for a declaration that selection procedures OHIM/AD/01/07, OHIM/AD/02/07, OHIM/AST/01/07 and OHIM/AST/02/02 have no effect on the applicant's contract. In addition, application for damages.

Form of order sought

— Set aside the letter from OHIM of 12 March 2009 and annul the decisions of OHIM contained in it, according to which the applicant's employment relationship is terminated with eight months' notice from 16 March 2009, and declare that the applicant's employment relationship with OHIM is ongoing and has not been terminated. To the extent that the Tribunal considers it necessary, the applicant claims that the Tribunal should also set aside further letters from OHIM of 3 August 2009 (three-month suspension of notice period) and 9 October 2009 (rejection of complaint), classified by the applicant as related;

— set aside or declare invalid the cancellation clause in Article 5 of the applicant's employment contract with OHIM, and in the alternative,

declare that the applicant's contract of employment cannot in future be terminated on the basis of the cancellation clause in her employment contract;

in the further alternative, declare that, in any event, the selection procedures referred to in OHIM's letter of 12 March 2009 were not capable of entailing negative consequences on the basis of the cancellation clause;

— order OHIM to pay the applicant compensation of an appropriate amount at the discretion of the Tribunal for the non-material damage arising from the decisions referred to in the first paragraph of the application;

— in the event that, owing to OHIM's unlawful conduct, the applicant's actual employment has already ended at the date of the Tribunal's decision and/or payment of the remuneration owed to the applicant by OHIM, notwithstanding the continuation of the employment relationship:

declare that OHIM is under an obligation to continue to employ the applicant under the same conditions as hitherto and to reinstate her, and order OHIM to compensate the applicant fully for the material damage suffered by her, in particular by paying any outstanding salary and all other expenses incurred by the applicant as a result of OHIM's unlawful conduct (after deduction of unemployment benefit received);

in the alternative, in the event that, in the present situation, for legal or practical reasons the applicant is not reinstated or re-employed under the same conditions as hitherto, order OHIM to pay the applicant compensation for the material damage arising from the unlawful termination of her employment corresponding to the difference between her actual anticipated lifetime earnings and the lifetime earnings the applicant would have achieved if the contract had remained in force, taking into account pension benefits and other entitlements;

— order OHIM to pay the costs.

Action brought on 12 February 2010 — Nicola v EIB

(Case F-13/10)

(2010/C 134/89)

Language of the case: Italian

Parties

Applicant: Carlo De Nicola (Strassen, Luxembourg) (represented by: L. Isola, lawyer)

Defendant: European Investment Bank

Subject-matter and description of the proceedings

Application for annulment of the staff report for 2008, both as regards the part relating to objectives and the part relating to assessment, and of the promotions decided upon on 18 March 2009. In addition, an order that the defendant pay compensation for the material and non-material damage caused to the applicant.

Form of order sought

— Annul the provision of 23 September 2009, in so far as the Appeals Committee rejected the applicant's appeal against the staff report for 2008.

— Annul the staff report for 2008, both as regards the part relating to objectives and the part relating to assessment.

— Annul all related, consequent and prior measures, including the guidelines issued by the HR Directorate for summarising the appraisal by using one of the first letters of the alphabet and the quantitative limits imposed in awarding the mark A or B+, and the promotions decided upon on 18 March 2009, given that, in the light of the view expressed by the applicant's superiors, the EIB failed to take him into consideration under the heading 'Promotions from Function E to D'.

— Order the EIB to pay compensation for the material and non-material damage suffered and to pay the costs of the proceedings, together with interest, currency revaluation to be taken into account in fixing the amount awarded.

Action brought on 25 February 2010 — Marcuccio v Commission

(Case F-14/10)

(2010/C 134/90)

Language of the case: Italian

Parties

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

Defendant: European Commission

Subject-matter and description of the proceedings

Application for a declaration that a procedure for recognition of partial invalidity was of excessive duration and an order that the defendant pay compensation for the damage suffered by the applicant.

Form of order sought

— Annul the Commission's decision rejecting the request of 30 January 2009.

— Annul the measure rejecting the complaint of 20 July 2009 against the decision rejecting the request of 30 January 2009.

— In so far as necessary, annul note ADMIN.B.2/MB/ls D(09) 29562 of 6 November 2009 received by the applicant on 16 December 2009.

— In so far as necessary, confirm that the procedure for ensuring that the applicant was afforded the legal guarantees under Article 73 of the Staff Regulations of Officials of the European Communities in connection with an accident sustained by him on 12 September 2003 continued for over five years.

— In so far as necessary, declare that the duration of the procedure in question was unreasonable.

— Order the Commission to pay compensation for the material and non-material damage unjustly suffered by the applicant in connection with the unreasonable duration of the procedure in question, in the sum of EUR 10 000, or such greater or lesser sum as the Tribunal may consider just and equitable.

— Order the Commission to pay to the applicant, with effect from the date following that on which the request of 30 January 2009 was received by the Commission until actual payment of the sum of EUR 10 000, interest on that sum at the rate of 10 % per annum, with annual capitalisation.

— Order the Commission to pay the costs.

Action brought on 26 February 2010 — Andres and Others v ECB

(Case F-15/10)

(2010/C 134/91)

Language of the case: French

Parties

Applicants: Carlos Andres and Others (Frankfurt-am-Main, Germany) (represented by: M. Vandenbussche and L. Levy, lawyers)

Defendant: European Central Bank

Subject-matter and description of the proceedings

First, annulment of the applicants' payslips for June 2009 and all earlier or later payslips in so far as those payslips constitute implementation of the reform of the pension scheme decided on 4 May 2009. Second, compensation for the damage suffered by the applicants.

Form of order sought

— Annul the payslips for June 2009 in so far as those payslips constitute the initial implementation in regard to the applicants of the reform of the pension scheme decided by the Governing Council on 4 May 2009 and annul, to the same extent, all subsequent payslips and all future pension statements;

— To the extent necessary, annul the decisions rejecting the applications for administrative review and complaints brought under the grievance procedure dated 28 August and 17 December 2009 respectively;

— Consequently, order the defendant to pay the difference between the salary and pension resulting from the decision of the Governing Council of 4 May 2009 and that paid in application of the preceding pension scheme, that difference to be increased by interest for late payment with effect from 15 June 2009 and then on the 15th nof each month until the difference has been completely made up, the rate of interest being the ECB rate, increased by three points;

— Order the defendant to pay damages for the loss suffered by reason of the loss of purchasing power, that loss to be assessed *ex aequo et bono*, and, on a provisional basis, at 1 % of the monthly salary of each applicant.

— Order the European Central Bank to pay the costs.

Action brought on 10 March 2010 — M. Almeida Campos and Others v Council

(Case F-16/10)

(2010/C 134/92)

Language of the case: French

Parties

Applicants: M. Almeida Campos and Others (Brussels, Belgium) (represented by: S. Orlandi, A. Coolen, J.-N. Louis and É. Marchal, lawyers)

Defendant: Council of the European Union

Subject-matter and description of the proceedings

Annulment of the decisions not to promote the applicants to grade AD 12 in the 2009 promotion procedure and, in so far as necessary, of the decisions to promote to that grade in the same promotion procedure the officials whose names appear in the lists of persons promoted published in CP no 97/09 of 27 April 2009 and CP no 93/09 of 13 May 2009.

Form of order sought

— Annul the decisions not to promote the applicants to grade AD 12 in the 2009 promotion procedure;

— in so far as necessary, annul the decisions to promote to grade AD 12 in the 2009 promotion procedure the officials whose names appear in the lists of persons promoted published in CP no 97/09 of 27 April 2009 and CP no 93/09 of 13 May 2009;

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

Action brought on 15 March 2010 — Daake v OHIM

(Case F-17/10)

(2010/C 134/93)

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 OHIM's decision of 4 December 2009 rejecting the applicant's claims for compensation

Form of order sought

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

on the one hand, her actual salary according to her formal classification as a member of the contract staff under Article 3a of the Conditions of Employment of other Servants ('CEOS') 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 was entitled as a member of the temporary staff under Article 2(a) of the CEOS from 1 November 2005 until 31 October 2008 and the unemployment benefits to which she was entitled from 1 November 2008 until today, calculated according to her salary for October 2008 under Article 2(a) of the CEOS –

together with 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,

and — to the extent required in order for the compensation applied for to be granted — annul the decisions of OHIM of 6 May 2009 and 4 December 2009;

— 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 determined by the Tribunal;

— order OHIM to pay the costs.

Action brought on 18 March 2010 — Capidis v Commission

(Case F-18/10)

(2010/C 134/94)

Language of the case: French

Parties

Applicant: Georges Capidis (Zellik, Belgium) (represented by: S. Orlandi, A. Coolen, J.-N. Louis and É. Marchal, lawyers)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the decision imposing a disciplinary sanction on the applicant in the form of downgrading.

Form of order sought

— Annul the decision imposing a disciplinary sanction on the applicant in the form of downgrading by one grade, as provided for in Article 9(1)(f) of Annex IX o the Staff Regulations;

— Order the European Commission to pay the costs.

EN

2010 SUBSCRIPTION PRICES (excluding VAT, including normal transport charges)

EU Official Journal, L + C series, paper edition only	22 official EU languages	EUR 1 100 per year
EU Official Journal, L + C series, paper + annual CD-ROM	22 official EU languages	EUR 1 200 per year
EU Official Journal, L series, paper edition only	22 official EU languages	EUR 770 per year
EU Official Journal, L + C series, monthly CD-ROM (cumulative)	22 official EU languages	EUR 400 per year
Supplement to the Official Journal (S series), tendering procedures for public contracts, CD-ROM, two editions per week	multilingual: 23 official EU languages	EUR 300 per year
EU Official Journal, C series — recruitment competitions	Language(s) according to competition(s)	EUR 50 per year

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

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

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

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

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

CD-Rom formats will be replaced by DVD formats during 2010.

Sales and subscriptions

Subscriptions to various priced periodicals, such as the subscription to the *Official Journal of the European Union*, are available from our commercial distributors. The list of commercial distributors is available at:

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

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

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

Publications Office of the European Union
2985 Luxembourg
LUXEMBOURG

EN