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IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COURT OF JUSTICE OF THE EUROPEAN UNION

(2010/C 346/01)

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

OJ C 328, 4.12.2010

Past publications

OJ C 317, 20.11.2010

OJ C 301, 6.11.2010

OJ C 288, 23.10.2010

OJ C 274, 9.10.2010

OJ C 260, 25.9.2010

OJ C 246, 11.9.2010

These texts are available on:

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

GENERAL COURT

Taking of the oath by a new Member of the General Court

(2010/C 346/02)

Following his appointment as a Judge at the General Court of the European Union for the period from 26 November 2010 to 31 August 2016 by decision of the Representatives of the Governments of the Member States of the European Union of 18 November 2010, [1] Mr Andrei Popescu took the oath before the Court of Justice on 26 November 2010.

Assignment of Mr Popescu to Chambers

(2010/C 346/03)

On 29 November 2010, the Plenary Meeting of the General Court decided, following Mr Popescu's taking up of his duties as a Judge, to amend as follows the decision of the Plenary Meeting of 20 September 2010 on the assignment of Judges to Chambers, as amended by the decision of 26 October 2010.

For the period from 29 November 2010 until the date on which the Bulgarian Judge takes up his/her duties, the following assignments are made:

Second Chamber (Extended Composition), sitting with five Judges:

Mr Forwood, President of the Chamber, Mr Dehousse, Ms Wiszniewska-Białecka, Mr Prek, Mr Schwarcz and Mr Popescu, Judges.

Second Chamber, sitting with three Judges:

Mr Forwood, President of the Chamber

(a) Mr Dehousse and Mr Popescu, Judges;

(b) Mr Dehousse and Mr Schwarcz, Judges;

(c) Mr Schwarcz and Mr Popescu, Judges.

Seventh Chamber (Extended Composition), sitting with five Judges:

Mr Dittrich, President of the Chamber, Mr Dehousse, Ms Wiszniewska-Białecka, Mr Prek, Mr Schwarcz and Mr Popescu, Judges.

[1] OJ L 306 of 23.11.2010, p. 76.

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Second Chamber) of 14 October 2010 — European Commission v Republic of Austria

(Case C-535/07) [1]

(Failure of a Member State to fulfil obligations — Directives 79/409/EEC and 92/43/EEC — Conservation of wild birds — Incorrect designation and inadequate legal protection of special protection areas)

(2010/C 346/04)

Language of the case: German

Parties

Applicant: European Commission (represented by: R. Sauer and D. Recchia, Agents)

Defendant: Republic of Austria (represented by: E. Riedl, E. Pürgy and K. Drechsel, Agents)

Intervener in support of the defendant: Federal Republic of Germany (represented by: M. Lumma and J. Möller, Agents)

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 4(1) and (2) of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (OJ 1979 L 103, p. 1) and of Article 6(2), in conjunction with Article 7, of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7) — Failure to designate, as a special protection area, an area appropriate for the conservation of bird species ('Hanság') and incorrect delimitation of another area ('Niedere Tauern') — Failure to ensure that the special protection areas already designated enjoy legal protection in accordance with the requirements of Community law

Operative part of the judgment

The Court:

1. *Declares that:*

   — *by failing to classify the Hanság site in the Province of Burgenland as a special protection area, and to delimit the Niedere Tauern special protection area in the Province of Styria, correctly in accordance with ornithological criteria, under Article 4(1) of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds, and*

   — *by failing to provide legal protection in accordance with the requirements of Article 4 of Directive 79/409 and Article 6(2), read in conjunction with Article 7, of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora for the Maltsch, Wiesengebiete im Freiwald, Pfeifer Anger, Oberes Donautal and Untere Traun special protection areas in the Province of Upper Austria and the Verwall special protection area in the Province of Vorarlberg,*

   the Republic of Austria has failed to fulfil its obligations under those provisions;

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

3. *Orders the European Commission, the Republic of Austria and the Federal Republic of Germany to bear their own costs.*

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[1] OJ C 51, 23.2.2008.

Judgment of the Court (Third Chamber) of 21 October 2010 (reference for a preliminary ruling from the Rechtbank 's-Gravenhage (Netherlands)) — Latchways plc, Eurosafe Solutions BV v Kedge Safety Systems BV, Consolidated Nederland BV

(Case C-185/08) [1]

(Directive 89/106/EEC — Construction products — Directive 89/686/EEC — Personal protective equipment — Decision 93/465/EEC — CE marking — Anchor devices for protection against falls from a height when working on roofs — Standard EN 795)

(2010/C 346/05)

Language of the case: Dutch

Referring court

Rechtbank 's-Gravenhage

Parties to the main proceedings

Applicants: Latchways plc, Eurosafe Solutions BV

Defendants: Kedge Safety Systems BV, Consolidated Nederland BV

Re:

Reference for a preliminary ruling — Rechtbank 's-Gravenhage — Interpretation of Council Directive 89/106/EEC of 21 December 1988 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products (OJ 1989 L 40, p. 12), Council Directive 89/686/EEC of 21 December 1989 on the approximation of the laws of the Member States relating to personal protective equipment (OJ 1989 L 399, p. 18) and the Council Decision of 22 July 1993 concerning the modules for the various phases of the conformity assessment procedures and the rules for the affixing and use of the CE conformity marking, which are intended to be used in the technical harmonisation directives (OJ 1993 L 220, p. 23) — Permanent anchor devices for protection from falls from a height in the construction industry — European standard EN 795

Operative part of the judgment

1. *The provisions of EN 795 relating to Class A 1 anchor devices are not covered by Council Directive 89/686/EEC of 21 December 1989 on the approximation of the laws of the Member States relating to personal protective equipment, as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council of 29 September 2003; they do not, therefore, fall within the framework of European Union law and, accordingly, it is not within the jurisdiction of the Court of Justice to interpret them.*

2. *Anchor devices, such as those at issue in the main proceedings, which are not intended to be held or worn by their user are not covered by Directive 89/686, as amended by Regulation No 1882/2003, either in themselves or on account of the fact that they are intended to be connected to personal protective equipment.*

3. *Anchor devices, such as those at issue in the main proceedings, which are part of the construction work to which they are secured in order to ensure the safety in use or in the functioning (operation) of the roof of that work are covered by Council Directive 89/106/EEC of 21 December 1988 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products, as amended by Regulation No 1882/2003.*

4. *Council Decision 93/465/EEC of 22 July 1993 concerning the modules for the various phases of the conformity assessment procedures and the rules for the affixing and use of the CE conformity marking, which are intended to be used in the technical harmonisation directives, precludes the option of affixing the CE marking to a product that does not fall within the scope of the directive under which it is affixed, even if that product satisfies the technical requirements defined by that directive.*

([1]) OJ C 197, 2.8.2008.

Judgment of the Court (Second Chamber) of 14 October 2010 — Deutsche Telekom AG v European Commission, Vodafone D2 GmbH, formerly Vodafone AG & Co. KG, formerly Arcor AG & Co. KG and Others

(Case C-280/08 P) ([1])

(Appeal — Competition — Article 82 EC — Markets for telecommunications services — Access to the fixed network of the incumbent operator — Wholesale charges for local loop access services to competitors — Retail charges for access services to end-users — Pricing practices of a dominant undertaking — Margin squeeze — Charges approved by the national regulatory authority — Leeway of the dominant undertaking — Attributability of the infringement — Meaning of 'abuse' — As-efficient-competitor test — Calculation of the margin squeeze — Effects of the abuse — Amount of the fine)

(2010/C 346/06)

Language of the case: German

Parties

Appellant: Deutsche Telekom AG (represented by: U. Quack, S. Ohlhoff and M. Hutschneider, Rechtsanwälte)

Other parties to the proceedings: European Commission (represented by: K. Mojzesowicz, W. Mölls and O. Weber, Agents), Vodafone D2 GmbH, formerly Vodafone AG & Co. KG, formerly Arcor AG & Co. KG (represented by: M. Klusmann, Rechtsanwalt), Versatel NRW GmbH, formerly Tropolys NRW GmbH, formerly CityKom Münster GmbH Telekommunikationsservice, EWE TEL GmbH, HanseNet Telekommunikation GmbH, Versatel Nord GmbH, formerly Versatel Nord-Deutschland GmbH, formerly KomTel Gesellschaft für Kommunikations- und Informationsdienste mbH, NetCologne Gesellschaft für Telekommunikation mbH, Versatel Süd GmbH, formerly Versatel Süd-Deutschland GmbH, formerly tesion Telekommunikation GmbH, Versatel West GmbH, formerly Versatel West-Deutschland GmbH, formerly Versatel Deutschland GmbH & Co. KG (represented by: N. Nolte, Rechtsanwalt)

Re:

Appeal brought against the judgment of the Court of First Instance (Fifth Chamber, Extended Composition) of 10 April 2008 in Case T-271/03 *Deutsche Telekom* v *Commission*, by which the Court of First Instance dismissed the application for annulment of Commission Decision 2003/707/EC of 21 May 2003 relating to a proceeding under Article 82 EC (Case COMP/C-1/37.451, 37.578, 37.579 — Deutsche Telekom AG) (OJ 2003 L 263, p. 9), and, in the alternative, reduction of the fine imposed on the applicant — Abuse of a dominant position — Charges for access to the fixed-line telecommunications network in Germany — Abusive nature of pricing practices of a dominant undertaking charging its competitors tariffs for wholesale access to the local loop that are higher than the prices it charges for retail access to the local network

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Deutsche Telekom AG to pay the costs.*

([1]) OJ C 223, 30.8.2008.

Judgment of the Court (First Chamber) of 28 October 2010 — European Commission v Republic of Lithuania

(Case C-350/08) ([1])

(Failure of a Member State to fulfil obligations — 2003 Act of Accession — Obligations of the accession States — Acquis communautaire — Directives 2001/83/EC and 2003/63/EC — Regulation (EEC) No 2309/93 and Regulation (EC) No 726/2004 — Medicinal products for human use — Similar biological medicinal products from biotechnical processes — National marketing authorisation granted before accession)

(2010/C 346/07)

Language of the case: Lithuanian

Parties

Applicant: European Commission (represented by: A. Steiblytė and M. Šimerdová, acting as Agents)

Defendant: Republic of Lithuania (represented by: D. Kriaučiūnas and R. Mackevičienė, acting as Agents)

Re:

Failure of a Member State to fulfil obligations — Breach of Article 6(1) of and Section 4 of Part II of Annex I to Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ 2001 L 311, p. 67), as amended by Directive 2003/63/EC, and of Article 3(1) of Council Regulation (EEC) No 2309/93 of 22 July 1993 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Agency for the Evaluation of Medicinal Products (OJ 1993 L 214, p. 1) and Article 3(1) of Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency (OJ 2004 L 136, p. 1) — Maintenance of the national marketing authorisation for the similar biological medicinal product 'Grasalva'

Operative part of the judgment

The Court:

1. *Declares that, by maintaining in force the national marketing authorisation for the medicinal product Grasalva, the Republic of Lithuania has failed to fulfil its obligations under Article 6(1) of Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use, as amended by Commission Directive 2003/63/EC of 25 June 2003, under Article 3(1) of Council Regulation (EEC) No 2309/93 of 22 July 1993 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Agency for the Evaluation of Medicinal Products, and under Article 3(1) of Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency;*

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

([1]) OJ C 247, 27.9.2008.

Judgment of the Court (Third Chamber) of 21 October 2010 (reference for a preliminary ruling from the Audiencia Provincial de Barcelona — Spain) — PADAWAN SL v Sociedad General de Autores y Editores (SGAE)

(Case C-467/08) ([1])

(Approximation of laws — Copyright and related rights — Directive 2001/29/EC — Reproduction right — Exceptions and limitations — Private copying exception — Definition of 'fair compensation' — Uniform interpretation — Implementation by the Member States — Criteria — Limits — Private copying levy applied to digital reproduction equipment, devices and media)

(2010/C 346/08)

Language of the case: Spanish

Referring court

Audiencia Provincial de Barcelona

Parties to the main proceedings

Applicant: PADAWAN SL

Defendant: Sociedad General de Autores y Editores (SGAE)

In the presence of: Entidad de Gestión de Derechos de los Productores Audiovisuales (EGEDA), Asociación de Artistas Intérpretes o Ejecutantes — Sociedad de Gestión de España (AIE), Asociación de Gestión de Derechos Intelectuales (AGEDI), Centro Español de Derechos Reprográficos (CEDRO),

Re:

Reference for a preliminary ruling — Audiencia Provincial de Barcelona — Interpretation of Article 5(2)(b) of Directive 2001/29/EC of the European Parliament and the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ 2009 L 167, p. 10) — Reproduction right — Exceptions and limitations — Fair compensation — Private copying levy system applied to digital equipment, devices and media

Operative part of the judgment

1. *The concept of 'fair compensation', within the meaning of Article 5(2)(b) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, is an autonomous concept of European Union law which must be interpreted uniformly in all the Member States that have introduced a private copying exception, irrespective of the power conferred on the Member States to determine, within the limits imposed by European Union law in particular by that directive, the form, detailed arrangements for financing and collection, and the level of that fair compensation.*

2. *Article 5(2)(b) of Directive 2001/29 must be interpreted as meaning that the 'fair balance' between the persons concerned means that fair compensation must be calculated on the basis of the criterion of the harm caused to authors of protected works by the introduction of the private copying exception. It is consistent with the requirements of that 'fair balance' to provide that persons who have digital reproduction equipment, devices and media and who on that basis, in law or in fact, make that equipment available to private users or provide them with copying services are the persons liable to finance the fair compensation, inasmuch as they are able to pass on to private users the actual burden of financing it.*

3. *Article 5(2)(b) of Directive 2001/29 must be interpreted as meaning that a link is necessary between the application of the levy intended to finance fair compensation with respect to digital reproduction equipment, devices and media and the deemed use of them for the purposes of private copying. Consequently, the indiscriminate application of the private copying levy, in particular with respect to digital reproduction equipment, devices and media not made available to private users and clearly reserved for uses other than private copying, is incompatible with Directive 2001/29.*

([1]) OJ C 19, 24.1.2009, p. 12.

Judgment of the Court (Grand Chamber) of 26 October 2010 — United Kingdom of Great Britain and Northern Ireland v Council of the European Union

(Case C-482/08) ([1])

(Action for annulment — Decision 2008/633/JHA — Access for consultation of the Visa Information System (VIS) by designated authorities of Member States and by the European Police Office (Europol) for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences — Development of provisions of the Schengen acquis — Exclusion of the United Kingdom from the procedure for adopting the decision — Validity)

(2010/C 346/09)

Language of the case: English

Parties

Applicant: United Kingdom of Great Britain and Northern Ireland (represented by: V. Jackson and I. Rao, Agents and by T. Ward, barrister)

Defendant: Council of the European Union (represented by: J. Schutte and R. Szostak, Agents)

Interveners in support of the defendant: Kingdom of Spain (represented by J.M. Rodríguez Cárcamo, Agent), European Commission (represented by M. Wilderspin and B.D. Simon, Agents)

Re:

Article 35(6) EU — Annulment of Council Decision 2008/633/JHA of 23 June 2008 concerning access for consultation of the Visa Information System (VIS) by designated authorities of Member States and by Europol for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences (OJ 2008 L 218, p. 129) — Exclusion of the United Kingdom from the procedure for adopting that decision — Infringement of essential procedural requirement

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

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

(1) OJ C 32, 7.2.2009.

Judgment of the Court (Grand Chamber) of 12 October 2010 (reference for a preliminary ruling from the Vestre Landsret (Denmark)) — Ingeniørforeningen i Danmark, acting on behalf of Ole Andersen v Region Syddanmark

(Case C-499/08) (1)

(Directive 2000/78/EC — Equal treatment in employment and occupation — Prohibition of discrimination on grounds of age — Non-payment of a severance allowance to workers who are entitled to an old-age pension)

(2010/C 346/10)

Language of the case: Danish

Referring court

Vestre Landsret

Parties to the main proceedings

Applicant: Ingeniørforeningen i Danmark, acting on behalf of Ole Andersen

Defendant: Region Syddanmark

Re:

Reference for a preliminary ruling — Vestre Landsret — Interpretation of Articles 2 and 6 of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16) — National legislation providing for the payment of a severance allowance for dismissed employees who have been employed for a certain number of consecutive years with the same employer, except where they have reached an age where they are entitled to an old-age pension to which the employer has contributed — Direct or indirect discrimination on grounds of age

Operative part of the judgment

Articles 2 and 6(1) of Council Directive 2000/78 of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as precluding national legislation pursuant to which workers who are eligible for an old-age pension from their employer under a pension scheme which they have joined before attaining the age of 50 years cannot, on that ground alone, claim a severance allowance aimed at assisting workers with more than 12 years of service in the undertaking in finding new employment.

(1) OJ C 19, 24.1.2009.

Judgment of the Court (Second Chamber) of 28 October 2010 — European Commission v Republic of Malta

(Case C-508/08) (1)

(Failure of a Member State to fulfil obligations — Freedom to provide maritime transport services — Regulation (EEC) No 3577/92 — Articles 1 and 4 — Cabotage services within a Member State — Obligation to conclude public service contracts on a non-discriminatory basis — Conclusion of an exclusive contract, without a prior call for tenders, before the date of accession of a Member State to the European Union)

(2010/C 346/11)

Language of the case: Maltese

Parties

Applicant: European Commission (represented by: J. Aquilina and K. Simonsson, Agents)

Defendant: Republic of Malta (represented by: S. Camilleri, L. Spiteri and A. Fenech, Agents)

Re:

Failure of a Member State to fulfil obligations — Infringement 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) — Conclusion of an exclusive contract, without a prior call for tenders, for the provision of maritime transport between Malta and Gozo

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

(1) OJ C 32, 7.2.2009.

Judgment of the Court (Third Chamber) of 21 October 2010 (reference for a preliminary ruling from the Anotato Dikastirio tis Kipriakis Dimokratias (Cyprus)) — Simvoulio Apokhetefseon Lefkosias v Anatheoritiki Arkhi Prosforon

(Case C-570/08) [1]

(Public contracts — Directive 89/665/EEC — Article 2(8) — Body responsible for review procedures that is not judicial in character — Annulment of the contracting authority's decision to accept a tender — Possibility for the contracting authority to appeal against that annulment before a judicial body)

(2010/C 346/12)

Language of the case: Greek

Referring court

Anotato Dikastirio tis Kipriakis Dimokratias

Parties to the main proceedings

Applicant: Simvoulio Apokhetefseon Lefkosias

Defendant: Anatheoritiki Arkhi Prosforon

Re:

Reference for a preliminary ruling — Anotato Dikastirio Kiprou (Cyprus) — Interpretation of Article 2(8) of Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (OJ 1989 L 395, p. 33) — Right of a contracting authority to judicial review of decisions of a responsible body, within the meaning of that provision, which is not judicial in character

Operative part of the judgment

Article 2(8) of Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts, as amended by Council Directive 92/50/EEC of 18 June 1992, must be interpreted as not requiring the Member States to provide, also for contracting authorities, a right to seek judicial review of the decisions of non-judicial bodies responsible for review procedures concerning the award of public contracts. However, that provision does not prevent the Member States from providing, in their legal systems, such a review procedure in favour of contracting authorities.

[1] OJ C 55, 7.3.2009.

Judgment of the Court (Second Chamber) of 14 October 2010 (reference for a preliminary ruling from the Bundesfinanzhof (Germany)) — Gudrun Schwemmer v Agentur für Arbeit Villingen-Schwenningen — Familienkasse

(Case C-16/09) [1]

(Social security — Regulations (EEC) Nos 1408/71 and 574/72 — Family benefits — 'Anti-overlap' rules — Article 76(2) of Regulation No 1408/71 — Article 10(1)(a) of Regulation No 574/72 — Children residing in a Member State with their mother who fulfils the conditions for drawing family benefits there, and the father of whom, working in Switzerland and fulfilling, at first sight, the conditions for drawing family benefits of the same type under Swiss legislation, refrains from applying for the grant of those benefits)

(2010/C 346/13)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Gudrun Schwemmer

Defendant: Agentur für Arbeit Villingen-Schwenningen — Familienkasse

Re:

Reference for a preliminary ruling — Bundesfinanzhof — Interpretation of Article 76(2) of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (OJ English Special Edition 1971 (II), p. 416), as amended, and of Article 10(1)(a) of Regulation (EEC) No 574/72 of the Council of 21 March 1972 fixing the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons and their families moving within the Community (OJ English Special Edition 1972 (I), p. 159), as amended — Determination of the State required to grant family benefits — Rules against overlapping — Children residing in one Member State with their mother, who satisfies the conditions governing entitlement to family allowances, and whose father, resident in Switzerland and satisfying the conditions governing receipt of similar family allowances under Swiss law, intentionally refrains from seeking payment of those allowances in order to adversely affect his divorced wife — Kindergeld

Operative part of the judgment

On a proper interpretation of Article 76 of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community, and Article 10 of Council Regulation (EEC) No. 574/72 laying down the procedure for implementing Regulation

No. 1408/71, in the versions of those regulations as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, as amended by European Parliament and Council Regulation (EC) No 647/2005 of 13 April 2005, a right, which is not subject to conditions of insurance, employment or self-employment, to benefits under the legislation of a Member State in which one parent resides with the children in favour of which those benefits are granted cannot be partially suspended in a situation, such as that at issue in the main proceedings, in which the former spouse, who is the other parent of the children concerned, would in principle be entitled to family benefits under the legislation of the State in which he is employed, either simply by virtue of the national legislation of that State, or in application of Article 73 of the said Regulation No 1408/71, but does not actually draw those benefits because he has not made an application for them.

([1]) OJ C 90, 18.4.2009.

Judgment of the Court (Grand Chamber) of 12 October 2010 (reference for a preliminary ruling from the Arbeitsgericht Hamburg (Germany)) — Gisela Rosenbladt v Oellerking Gebäudereinigungsges.mbH

(Case C-45/09) ([1])

(Directive 2000/78/EC — Discrimination on the grounds of age — Termination of employment contract on reaching retirement age)

(2010/C 346/14)

Language of the case: German

Referring court

Arbeitsgericht Hamburg

Parties to the main proceedings

Applicant: Gisela Rosenbladt

Defendant: Oellerking Gebäudereinigungsges.mbH

Re:

Reference for a preliminary ruling — Arbeitsgericht Hamburg — Interpretation of Articles 1 and 2(1) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16) — Prohibition of discrimination based on age — Provision of a collective agreement declared generally applicable, providing for the automatic termination of the employment contract on the employee's attaining the age of 65 years, irrespective of the economic, social or demographic situation or the actual situation on the employment market

Operative part of the judgment

1. *Article 6(1) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as meaning that it does not preclude a national provision such as Paragraph 10(5) of the General Law on equal treatment (Allgemeines Gleichbehandlungsgesetz), under which clauses on automatic termination of employment contracts on the ground that the employee has reached the age of retirement are considered to be valid, in so far as, first, that provision is objectively and reasonably justified by a legitimate aim relating to employment policy and the labour market and, second, the means of achieving that aim are appropriate and necessary. The implementation of that authorisation by means of a collective agreement is not, as such, exempt from any review by the courts but, in accordance with the requirements of Article 6(1) of that directive, must itself pursue a legitimate aim in an appropriate and necessary manner;*

2. *Article 6(1) of Directive 2000/78 must be interpreted as meaning that it does not preclude a measure such as the automatic termination of employment contracts of employees who have reached retirement age, set at 65, provided for by Paragraph 19(8) of the framework collective agreement for employees in the commercial cleaning sector (Allgemeingültiger Rahmentarifvertrag für die gewerblichen Beschäftigten in der Gebäudereinigung);*

3. *Articles 1 and 2 of Directive 2000/78 must be interpreted as meaning that they do not preclude a Member State from declaring a collective agreement containing a clause on the automatic termination of employment contracts, like that at issue in the main proceedings, to be of general application, provided that it does not deprive employees who have reached retirement age of the protection from discrimination on grounds of age conferred on them by those provisions.*

([1]) OJ C 102, 1.5.2009.

Judgment of the Court (Third Chamber) of 28 October 2010 — European Commission v Republic of Poland

(Case C-49/09) ([1])

(Failure of a Member State to fulfil obligations — Value added tax — Directive 2006/112/EC — Later accession of Member States — Transitional provisions — Temporal application — Application of a reduced rate — Clothing and clothing accessories for babies and children's footwear)

(2010/C 346/15)

Language of the case: Polish

Parties

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

Defendant: Republic of Poland (represented by: M. Szpunar, M. Dowgielewicz, M. Jarosz and A. Rutkowska, acting as Agents)

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 98 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1), in conjunction with Annex III thereto — Application of a reduced rate of VAT to clothing and clothing accessories for babies and children's footwear

Operative part of the judgment

The Court:

1. *Declares that, by applying a reduced value added tax rate of 7 % to supplies, import and intra-Community acquisition of clothing and clothing accessories for babies and of children's footwear, the Republic of Poland has failed to fulfil its obligations under Article 98 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, in conjunction with Annex III thereto;*

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

([1]) OJ C 102, 1.5.2009.

Judgment of the Court (First Chamber) of 14 October 2010 (reference for a preliminary ruling from the Oberverwaltungsgericht Rheinland-Pfalz (Germany)) — Landkreis Bad Dürkheim v Aufsichts- und Dienstleistungsdirektion

(Case C-61/09) ([1])

(Common agricultural policy — Integrated administration and control system for certain aid schemes — Regulation (EC) No 1782/2003 — Single payment scheme — Common rules for direct support schemes — Concept of 'eligible hectare' — Non-agricultural activities — Conditions for allocation of an agricultural area to a holding)

(2010/C 346/16)

Language of the case: German

Referring court

Oberverwaltungsgericht Rheinland-Pfalz

Parties to the main proceedings

Applicant: Landkreis Bad Dürkheim

Defendant: Aufsichts- und Dienstleistungsdirektion

Re:

Reference for a preliminary ruling — Oberverwaltungsgericht Rheinland-Pfalz — Interpretation of Article 44(2) of Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 (OJ 2003 L 270, p. 1) — Interpretation of the terms 'agricultural area' and 'non-agricultural activity' with regard to a situation in which the objective of environmental protection takes precedence over the objective of agricultural production — Conditions for allocation of an agricultural area to a holding

Operative part of the judgment

1. *Article 44(2) of Council Regulation (EC) 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) No 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001, as amended by Council Regulation (EC) No 2013/2006 of 19 December 2006, must be interpreted as not precluding an area from being eligible for aid where, while it is admittedly also used for agricultural purposes, the overriding objective is landscape management and nature conservation. In addition, the fact that the farmer is subject to the instructions of the nature conservation authority does not deprive an activity which meets the definition referred to in Article 2(c) of that regulation of its agricultural character.*

2. *Article 44(2) of Regulation No 1782/2003, as amended, must be interpreted as meaning that:*

   — *it is not necessary, for an agricultural area to be considered as allocated to the farmer's holding, that it be at his disposal against payment on the basis of a lease or another similar type of contract to let;*

   — *the allocation of an agricultural area to a holding is not precluded by the fact that the area is placed at the farmer's disposal free of charge, the farmer being obliged only to take over the contributions to a trade association, for a specific use and for a limited period of time in accordance with the objectives of nature conservation, on condition that the farmer is able to use that area with a degree of autonomy sufficient for his agricultural activities for a period of at least 10 months; and that*

— *it is without prejudice to the allocation of the area in question to the farmer's holding that the farmer is obliged to carry out certain tasks for a third party in return for payment, provided that the area is also used by the farmer for his own agricultural activities in his name and on his own behalf.*

(1) OJ C 113, 16.5.2009.

Judgment of the Court (First Chamber) of 14 October 2010 — Nuova Agricast Srl, Cofra Srl v European Commission

(Case C-67/09 P) (1)

(Appeal — State aid — Aid scheme for investment in the less-favoured regions of Italy — Commission decision declaring that scheme compatible with the common market — Actions for damages in respect of the losses allegedly suffered as a result of the adoption of that decision — Transitional measures between that scheme and the previous scheme — Temporal scope of application of the Commission's decision not to object to the previous scheme — Principles of legal certainty, protection of legitimate expectations and equal treatment)

(2010/C 346/17)

Language of the case: Italian

Parties

Appellant: Nuova Agricast Srl, Cofra Srl (represented by: A. Calabrese, avvocato)

Other party to the proceedings: European Commission (represented by: V. Di Bucci and E. Righini, Agents)

Re:

Appeal against the judgment delivered by the Court of First Instance (First Chamber) on 2 December 2008 in Cases T-362/05 and T-363/05 *Nuova Agricast* v *Commission* by which the Court of First Instance rejected the claims for damages for the loss allegedly suffered by the appellants as a result of the adoption by the Commission of the Decision of 12 July 2000 declaring compatible with the common market an aid scheme for investment in the less-favoured regions of Italy (State aid No 715/1999 — Italy (SG 2000 D/105754)) and as a result of the Commission's conduct during the procedure which preceded the adoption of that decision.

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Nuova Agricast Srl and Cofra Srl to pay the costs.*

(1) OJ C 90, 18.4.2009.

Judgment of the Court (Third Chamber) of 28 October 2010 (reference for a preliminary ruling from the Cour de cassation — France) — Établissements Rimbaud SA v Directeur général des impôts, Directeur des services fiscaux d'Aix-en-Provence

(Case C-72/09) (1)

(Direct taxation — Free movement of capital — Legal persons established in a non-member State belonging to the European Economic Area — Ownership of immovable property located in a Member State — Tax on the market value of that property — Refusal of exemption — Combating tax evasion — Assessment in the light of the EEA Agreement)

(2010/C 346/18)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Applicant: Établissements Rimbaud SA

Defendants: Directeur général des impôts, Directeur des services fiscaux d'Aix-en-Provence

Re:

Reference for a preliminary ruling — Cour de cassation (Court of Cassation) (France) — Interpretation of Article 40 of the Agreement on the European Economic Area (OJ 1994 L 1, p. 3) of 2 May 1992 — Tax on the commercial value of immoveable property situated in France — Exemption for legal persons established in France or in a State within the European Economic Area conditional on France having concluded with that State a convention on administrative assistance for the purposes of combating tax evasion and avoidance or on the fact that, under a treaty containing a clause prohibiting discrimination, those legal persons are not to be taxed more heavily than companies established in France — Refusal of tax exemption to a company established in Liechtenstein

Operative part of the judgment

Article 40 of the Agreement on the European Economic Area of 2 May 1992 does not preclude national legislation such as that at issue in the main proceedings, which exempts from the tax on the market value of immovable property located in a Member State of the European Union companies which have their seat in that Member State and which, in respect of a company which has its seat in a country belonging to the European Economic Area which is not a Member State of the European Union, makes that exemption conditional either on the existence of a convention on administrative assistance between the Member State and the non-member State for the purposes of combating tax evasion and avoidance or on the fact that, pursuant to a treaty containing a clause prohibiting discrimination on grounds of nationality, those legal persons must not be taxed more heavily than companies established in that Member State.

([1]) OJ C 102, 1.5.2009, p. 12.

Judgment of the Court (Second Chamber) of 21 October 2010 (reference for a preliminary ruling from the Simvoulio tis Epikratias (Greece)) — Idrima Tipou AE v Ipourgos Tipou kai Meson Mazikis Enimerosis

(Case C-81/09) ([1])

(Freedom of establishment — Free movement of capital — Company law — First Directive 68/151/EEC — Public limited company in the press and television sector — Company and shareholder holding more than 2,5 % of the shares — Administrative fine imposed jointly and severally)

(2010/C 346/19)

Language of the case: Greek

Referring court

Simvoulio tis Epikratias

Parties to the main proceedings

Applicant: Idrima Tipou AE

Defendant: Ipourgos Tipou kai Meson Mazikis Enimerosis

Re:

Reference for a preliminary ruling — Simvoulio tis Epikratias — Interpretation of Article 1 of First Council Directive 68/151/EEC of 9 March 1968 on co-ordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community (OJ, English Special Edition 1968 (I), p. 41) — National provision establishing joint and several liability of a public limited company in the press and television sector and its shareholders holding more than 2.5% of its share capital for payment of administrative fines imposed as a result of such a company's activities

Operative part of the judgment

1. *First Council Directive 68/151/EEC of 9 March 1968 on co-ordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community, must be interpreted as not precluding national legislation such as Article 4(3) of Law No 2328/1995 'Legal regime governing private television and local radio, regulation of issues relating to the broadcasting market and other provisions', as amended by Law No 2644/1998 'on the provision of subscription radio and television services', according to which the fines provided for in the preceding paragraphs of that article for infringement of the legislation and rules of good conduct governing the operation of television stations are imposed jointly and severally, not only on the company which holds the licence to found and operate the television station but also on all shareholders with a holding of over 2,5 %.*

2. *Articles 49 TFEU and 63 TFEU must be interpreted as precluding such national legislation.*

([1]) OJ C 102, 1.5.2009.

Judgment of the Court (Grand Chamber) of 26 October 2010 (reference for a preliminary ruling from the Unabhängiger Finanzsenat, Außenstelle Wien (Austria)) — Ingrid Schmelz v Finanzamt Waldviertel

(Case C-97/09) ([1])

(Sixth VAT Directive — Articles 24(3) and 28i — Directive 2006/112/EC — Article 283(1)(c) — Validity — Articles 12 EC, 43 EC and 49 EC — Principle of equal treatment — Special scheme for small undertakings — Exemption from VAT — Benefit of the exemption refused to taxable persons established in other Member States — Definition of 'annual turnover')

(2010/C 346/20)

Language of the case: German

Referring court

Unabhängiger Finanzsenat, Außenstelle Wien

Parties to the main proceedings

Applicant: Ingrid Schmelz

Defendant: Finanzamt Waldviertel

Re:

Reference for a preliminary ruling — Unabhängiger Finanzsenat, Außenstelle Wien — Validity of a certain wording in Articles 24(3) and 28i of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1), as amended by Council Directive 92/111/EEC of 14 December 1992 amending Directive 77/388/EEC and introducing simplification measures with regard to value added tax, and of a certain wording in Article 283(1)(c) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) — Special VAT scheme for small undertakings permitting a tax exemption except in the case of supplies of goods and services by a taxable person who is not established in the territory of the country — Refusal to grant an exemption, by virtue of those provisions, to a person established in another EU Member State — Compatibility of that scheme with Articles 12, 43 and 49 EC and with the general principles of Community law — If the wording in question is invalid, interpretation of the expression 'annual turnover' contained in Article 24 of Directive 77/388/EEC and point 2(c) of Annex XV, Title IX Taxation, of the Act concerning the conditions of accession of the Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded (OJ 1994 C 241, p. 335), and also in Article 287 of Directive 2006/112/EC

Operative part of the judgment

1. *Consideration of the questions has disclosed no factor of such a kind as to affect the validity, with regard to Article 49 EC, of Articles 24(3) and 28i of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, as amended by Council Directive 2006/18/EC of 14 February 2006, or of Article 283(1)(c) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax.*

2. *Articles 24 and 24a of Directive 77/388, as amended by Directive 2006/18, and Articles 284 to 287 of Directive 2006/112 must be interpreted as meaning that the term 'annual turnover' refers to the turnover generated by an undertaking in one year in the Member State in which it is established.*

([1]) OJ C 129, 6.6.2009.

Judgment of the Court (Third Chamber) of 28 October 2010 (reference for a preliminary ruling from the Court of Appeal (United Kingdom)) — Commissioners for Her Majesty's Revenue and Customs v AXA UK PLC

(Case C-175/09) ([1])

(Sixth VAT Directive — Exemption — Article 13B(d)(3) — Transactions concerning payments or transfers — Debt collection and factoring — Payment plans for dental care — Service of collecting and processing payments for the account of the service supplier's clients)

(2010/C 346/21)

Language of the case: English

Referring court

Court of Appeal

Parties to the main proceedings

Appellant: Commissioners for Her Majesty's Revenue and Customs

Respondent: AXA UK PLC

Re:

Reference for a preliminary ruling — Court of Appeal — Interpretation of Article 13B(d)(3) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) — Exemptions — Scope — Meaning of 'service that has the effect of transferring funds and entail[ing] changes in the legal and financial situation' — Collection, processing and onward payment services for traders' credits from customers — Payment plans for dental care

Operative part of the judgment

Article 13B(d)(3) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment is to be interpreted as meaning that the exemption from VAT provided for by that provision does not cover a supply of services which consist, in essence, in requesting a third party's bank to transfer to the service supplier's account, via the direct debit system, a sum due from that party to the service supplier's client, in sending to the client a statement of the sums received, in making contact with the third parties from whom the service supplier has not received

payment and, finally, in giving instructions to the service supplier's bank to transfer the payments received, less the service supplier's remuneration, to the client's bank account.

(1) OJ C 153, 04.07.2009.

Judgment of the Court (First Chamber) of 28 October 2010 (reference for a preliminary ruling from the Bundesgerichtshof, Germany) — Volvo Car Company GmbH v Autohof Weidensdorf GmbH

(Case C-203/09) (1)

(Directive 86/653/EEC — Self-employed commercial agents — Termination of the agency contract by the principal — Agent's entitlement to an indemnity)

(2010/C 346/22)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Volvo Car Company GmbH

Defendant: Autohof Weidensdorf GmbH

Re:

Reference for a preliminary ruling — Bundesgerichtshof — Interpretation of Article 18(a) of Council Directive 86/653/EEC of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents (OJ 1986 L 382, p. 17) — Termination of agency contract by the principal — Agent's entitlement to indemnity — National legislation providing for loss of that entitlement in the event of default by the agent justifying immediate termination of the contract, even where the default occurs after termination of the agency contract but before the end of that contract and the principal became aware of the default only after the expiry of the contract

Operative part of the judgment

Article 18(a) of Council Directive 86/653/EEC of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents precludes a self-employed commercial agent from being deprived of his goodwill indemnity where the principal establishes a default by that agent which occurred after notice of termination of the contract was given but before the contract expired and which was such as to justify immediate termination of the contract in question

(1) OJ C 180, 01.08.2009.

Judgment of the Court (Second Chamber) of 21 October 2010 (reference for a preliminary ruling from the Szombathelyi Városi Bíróság (Hungary)) — Criminal proceedings against Emil Eredics, Mária Vassné Sápi

(Case C-205/09) (1)

(Police and judicial cooperation in criminal matters — Framework Decision 2001/220/JHA — Standing of victims in criminal proceedings — Meaning of 'victim' — Legal persons — Mediation in criminal proceedings — Detailed rules of application)

(2010/C 346/23)

Language of the case: Hungarian

Referring court

Szombathelyi Városi Bíróság

Parties in the main proceedings

Emil Eredics, Mária Vassné Sápi

Re:

Reference for a preliminary ruling — Szombathelyi Városi Bíróság — Interpretation of Article 1(a) and Article 10 of Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings — Criminal proceedings in which the victim is a legal person and in which mediation in criminal cases is excluded by national law — Concept of 'victim' in the framework decision — Inclusion, as regards the provisions on mediation in criminal cases, of persons other than natural persons? — Conditions for the application of mediation in criminal proceedings

Operative part of the judgment

The Court hereby rules:

1. *Articles 1(a) and 10 of Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings must be interpreted as meaning that the concept of 'victim' does not extend to legal persons for the purposes of the promotion of mediation in criminal proceedings in Article 10(1).*

2. *Article 10 of the Framework Decision 2001/220 must be interpreted as not requiring Member States to make recourse to mediation possible for all offences the substantive components of which, as defined by national legislation, correspond essentially to those of offences for which mediation is expressly provided by that legislation.*

(1) OJ 2009 C 205, 29.08.2009.

Judgment of the Court (Second Chamber) of 21 October 2010 (reference for a preliminary ruling from the Tribunale ordinario di Torino (Italy)) — Antonio Accardo and Others v Comune di Torino

(Case C-227/09) [1]

(Social policy — Protection of the safety and health of workers — Organisation of working time — Municipal police officers — Directive 93/104/EC — Directive 93/104/EC as amended by Directive 2000/34/EC — Directive 2003/88/EC — Articles 5, 17 and 18 — Maximum weekly working time — Collective agreements or agreements concluded between the two sides of industry at national or regional level — Derogations relating to deferred weekly rest periods and compensatory rest — Direct effect — Interpretation in conformity with European Union law)

(2010/C 346/24)

Language of the case: Italian

Referring court

Tribunale ordinario di Torino

Parties to the main proceedings

Applicants: Antonino Accardo, Viola Acella, Antonio Acuto, Domenico Ambrisi, Paolo Battaglino, Riccardo Bevilacqua, Fabrizio Bolla, Daniela Bottazzi, Roberto Brossa, Luigi Calabro′, Roberto Cammardella, Michelangelo Capaldi, Giorgio Castellaro, Davide Cauda, Tatiana Chiampo, Alessia Ciaravino, Alessandro Cicero, Paolo Curtabbi, Paolo Dabbene, Mauro D'Angelo, Giancarlo Destefanis, Mario Di Brita, Bianca Di Capua, Michele Di Chio, Marina Ferrero, Gino Forlani, Giovanni Galvagno, Sonia Genisio, Laura Dora Genovese, Sonia Gili, Maria Gualtieri, Gaetano La Spina, Maurizio Loggia, Giovanni Lucchetta, Sandra Magoga, Manuela Manfredi, Fabrizio Maschio, Sonia Mignone, Daniela Minissale, Domenico Mondello, Veronnica Mossa, Plinio Paduano, Barbaro Pallavidino, Monica Palumbo, Michele Paschetto, Frederica, Peinetti, Nadia Pizzimenti, Gianluca Ponzo, Enrico Pozzato, Gaetano Puccio, Danilo Ranzani, Pergianni Risso, Luisa Rossi, Paola Sabia, Renzo Sangiano, Davide Scagno, Paola Settia, Raffaella Sottoriva, Rossana Trancuccio, Fulvia Varotto, Giampiero Zucca, Fabrizio Lacognata, Guido Mandia, Luigi Rigon, Daniele Sgavetti

Defendant: Comune di Torino

Re:

Reference for a preliminary ruling — Tribunale ordinario di Torino — Interpretation of Articles 5, 17 and 18 of Council Directive 93/104/CE of 23 November 1993 concerning certain aspects of the organisation of working time (JO 1993 L 307, p. 18) — Derogations relating to deferred weekly rest periods and compensatory rest — Applicability to members of the municipal police force

Operative part of the judgment

1. *Article 17(3) of Council Directive 93/104/EC of 23 November 2003 concerning certain aspects of the organization of working time, in both its original version and in the version amended by Directive 2000/34/EC of the European Parliament and of the Council of 22 June 2000, is independent in scope in relation to Article 17(2) thereof, so that the fact that a profession is not listed in Article 17(2) does not mean that it may not be covered by the derogation provided for in Article 17(3) in either of those versions of Directive 93/104.*

2. *In circumstances such as those in the main proceedings, the optional derogations provided for in Article 17 of Directive 93/104 and Directive 93/104 as amended by Directive 2000/34 and, where relevant, Articles 17 and/or 18 of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organization of working time, cannot be relied on against individuals such as the applicants in the main proceedings. Moreover, those provisions cannot be interpreted as permitting or precluding the application of collective agreements such as those at issue in the main proceedings, since whether such agreements apply is a matter for domestic law.*

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[1] OJ C 205, 29.8.2009.

Judgment of the Court (Third Chamber) of 21 October 2010 (reference for a preliminary ruling from the Gerechtshof te Amsterdam (Netherlands)) — Albron Catering BV v FNV Bondgenoten, John Roest

(Case C-242/09) [1]

(Social policy — Transfers of undertakings — Directive 2001/23/EC — Safeguarding of employees' rights — Group of companies in which staff employed by an 'employer' company and assigned on a permanent basis to an 'operating' company — Transfer of an operating company)

(2010/C 346/25)

Language of the case: Dutch

Referring court

Gerechtshof te Amsterdam

Parties to the main proceedings

Applicant: Albron Catering BV

Defendant: FNV Bondgenoten, John Roest

Re:

Reference for a preliminary ruling — Gerechtshof te Amsterdam — Interpretation of Article 3(1) of Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (OJ 2001 L 82, p. 16) — Company with all the personnel of a group of companies which makes it available to operating companies of the group according to their needs — Transfer of the activity of an operating company outside the group — Classification

Operative part of the judgment

In the event of a transfer within the meaning of Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, of an undertaking belonging to a group to an undertaking outside that group, it is also possible to regard as a 'transferor', within the meaning of Article 2(1)(a) of that directive, the group company to which the employees were assigned on a permanent basis without however being linked to the latter by a contract of employment, even though there exists within that group an undertaking with which the employees concerned were linked by such a contract of employment.

([1]) OJ C 220, 12.9.2009, p. 21.

Judgment of the Court (Second Chamber) of 14 October 2010 (reference for a preliminary ruling from the Verwaltungsgericht Halle (Germany)) — Günter Fuß v Stadt Halle

(Case C-243/09) ([1])

(Social policy — Protection of the safety and health of workers — Directive 2003/88/EC — Organisation of working time — Fire fighters employed in the public sector — Operational service — Article 6(b) and Article 22(1)(b) — Maximum weekly working time — Refusal to work longer than that time — Compulsory transfer to another service — Direct effect — Consequence for national courts)

(2010/C 346/26)

Language of the case: German

Referring court

Verwaltungsgericht Halle

Parties to the main proceedings

Applicant: Günter Fuß

Defendant: Stadt Halle

Re:

Reference for a preliminary ruling — Verwaltungsgericht Halle — Interpretation of Article 22(1)(b) of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (OJ 2003 L 299, p. 9) — National legislation providing, in breach of that directive, for working time of more than 48 hours during a seven-day period for officials working as on-call professional firefighters — Compulsory transfer of an official who refused to work such hours to a post at the same grade in the administration — Concept of 'detriment'

Operative part of the judgment

Article 6(b) of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time must be interpreted as precluding national rules, such as those at issue in the main proceedings, which allow a public-sector employer to transfer compulsorily to another service a worker employed as a fire fighter in an operational service on the ground that that worker has requested compliance, within the latter service, with the maximum average weekly working time laid down in that provision. The fact that such a worker suffers no specific detriment by reason of that transfer, other than that resulting from the infringement of Article 6(b) of Directive 2003/88, is irrelevant in that regard.

([1]) OJ C 233, 26.9.2009.

Judgment of the Court (Fourth Chamber) of 21 October 2010 (reference for a preliminary ruling from the Cour constitutionnelle (Belgium)) — Execution of a European arrest warrant issued in respect of I.B.

(Case C-306/09) ([1])

(Police and judicial cooperation in criminal matters — Framework Decision 2002/584/JHA — European arrest warrant and the surrender procedures between Member States — Article 4 — Grounds for optional non-execution — Article 4(6) — Arrest warrant issued for the purposes of execution of a sentence — Article 5 — Guarantees to be provided by the issuing Member State — Article 5(1) — Sentence imposed in absentia — Article 5(3) — Arrest warrant issued for the purposes of criminal prosecution — Surrender subject to the condition that the requested person be returned to the Member State of execution — Joint application of Article 5(1) and Article 5(3) — Compatibility)

(2010/C 346/27)

Language of the case: French

Referring court

Cour constitutionnelle

Party to the main proceedings

I.B.

Re:

Reference for a preliminary ruling — Cour constitutionnelle (Belgium) — Interpretation of Articles 4(6) and 5(3) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1) and of Article 6(2) of the EU Treaty — Grounds for optional non-execution of the European arrest warrant and guarantees to be given by the issuing Member State — Possibility for the executing Member State to make the surrender of a person residing on its territory subject to the condition that that person, after having been heard in the issuing Member State, be returned to

the executing Member State in order to serve there the custodial sentence or detention order that may have been imposed on him in the issuing Member State — Particular situation of a person already sentenced in the issuing Member State but under a decision made *in absentia* against which that person still has a remedy — Possible effect on the decision to be taken by the judicial authorities of the executing Member State, arising from a risk of infringement of the fundamental rights of the person concerned and, in particular, of his right to a private and family life

Operative part of the judgment

Articles 4(6) and 5(3) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States must be interpreted as meaning that, where the executing Member State has implemented Articles 5(1) and Article 5(3) of that framework decision in its domestic legal system, the execution of a European arrest warrant issued for the purposes of execution of a sentence imposed in absentia within the meaning of Article 5(1) of the framework decision, may be subject to the condition that the person concerned, a national or resident of the executing Member State, should be returned to the executing State in order, as the case may be, to serve there the sentence passed against him, following a new trial organised in his presence in the issuing Member State.

([1]) OJ C 233, 26.9.2009, p. 11.

Judgment of the Court (Second Chamber) of 14 October 2010 (reference for a preliminary ruling from the Centrale Raad van Beroep (Netherlands)) — J.A. van Delft, J.C. Ramaer, J.M. van Willigen, J.F. van der Nat, C.M. Janssen, O. Fokkens v College voor zorgverzekeringen

(Case C-345/09) ([1])

(Social security — Regulation (EEC) No 1408/71 — Title III, Chapter 1 — Articles 28, 28a and 33 — Regulation (EEC) No 574/72 — Article 29 — Freedom of movement for persons — Articles 21 TFEU and 45 TFEU — Sickness insurance benefits — Recipients of old-age pensions or pensions for incapacity for work — Residence in a Member State other than the State responsible for payment of the pension — Provision of benefits in kind in the State of residence with the cost borne by the State responsible for payment of the pension — No registration in the State of residence — Obligation to pay contributions in the State responsible for payment of the pension — Amendment to the national legislation of the State responsible for payment of the pension — Continuity of sickness insurance — Different treatment of residents and non-residents)

(2010/C 346/28)

Language of the case: Dutch

Referring court

Centrale Raad van Beroep

Parties to the main proceedings

Applicants: J.A. van Delft, J.C. Ramaer, J.M. van Willigen, J.F. van der Nat, C.M. Janssen, O. Fokkens

Defendant: College voor zorgverzekeringen

Re:

Reference for a preliminary ruling — Centrale Raad van Beroep — Interpretation of the EC Treaty, Articles 28, 28a, 33, and Annex VI, R, (1)(a) and (b), of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community (OJ, English Special Edition 1971 (II), p. 416), and Article 29 of Council Regulation (EEC) No 574/72 of 21 March 1972 laying down the procedure for implementing Regulation (EEC) No 1408/71 (OJ, English Special Edition 1972 (I), p. 159) — Recipients of pensions — Obligation to register with the healthcare insurance board in the Netherlands — Obligation to pay a contribution

Operative part of the judgment

1. *Articles 28, 28a and 33 of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended by Regulation (EC) No 1992/2006 of the European Parliament and of the Council of 18 December 2006, in conjunction with Article 29 of Council Regulation (EEC) No 574/72 of 21 March 1972 laying down the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended by Commission Regulation (EC) No 311/2007 of 19 March 2007, must be interpreted as not precluding legislation of a Member State, such as that at issue in the main proceedings, under which recipients of pensions payable under the legislation of that State who reside in another Member State in which they are entitled under Articles 28 and 28a of Regulation No 1408/71 to the sickness benefits in kind provided by the competent institution of the latter Member State must pay, in the form of a deduction from their pension, a contribution in respect of those benefits even if they are not registered with the competent institution of their Member State of residence.*

2. *Article 21 TFEU must be interpreted as not precluding legislation of a Member State, such as that at issue in the main proceedings, under which recipients of pensions payable under the legislation of that State who reside in another Member State in which they are entitled under Articles 28 and 28a of Regulation No 1408/71, as amended by Regulation No 1992/2006, to the sickness benefits in kind provided by the competent institution of the latter Member State must pay, in the form of a deduction from their pension, a contribution in respect of those benefits even if they are not registered with the competent institution of their Member State of residence.*

On the other hand, Article 21 TFEU must be interpreted as precluding such national legislation in so far as it induces or provides for — this being for the national court to ascertain — an unjustified difference of treatment between residents and non-residents as regards ensuring the continuity of the overall protection against the risk of sickness enjoyed by them under insurance contracts concluded before the entry into force of that legislation.

([1]) OJ C 11, 16.1.2010.

Judgment of the Court (Fourth Chamber) of 28 October 2010 (reference for a preliminary ruling from the Hof van beroep te Antwerpen — Belgium) — Belgisch Interventie- en Restitutiebureau v SGS Belgium NV, Firme Derwa NV, Centraal Beheer Achmea NV

(Case C-367/09) ([1])

(Preliminary ruling — Act detrimental to the financial interests of the European Union — Regulation (EC, Euratom) No 2988/95 — Article 1, Article 3(1), third subparagraph, and Articles 5 and 7 — Regulation (EEC) No 3665/87 — Articles 11 and 18(2)(c) — Meaning of 'economic operator' — Persons who have taken part in the irregularity — Persons under a duty to take responsibility for the irregularity or to ensure that it is not committed — Administrative penalty — Direct effect — Limitation period for proceedings — Interruption)

(2010/C 346/29)

Language of the case: Dutch

Referring court

Hof van beroep te Antwerpen

Parties to the main proceedings

Applicant: Belgisch Interventie- en Restitutiebureau

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

Re:

Reference for a preliminary ruling — Hof van beroep te Antwerpen — Interpretation of Article 1, Article 3(1), third subparagraph, and Articles 5 and 7 of 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; corrigendum in OJ 1998 L 36, p. 16) and of Article 18(1)(c) 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) — Meaning of 'economic operator' — Persons who have taken part in the irregularity and persons who are under a duty to take responsibility for the irregularity or to ensure that it is not committed — Limitation period for legal proceedings — Interruption

Operative part of the judgment

1. *Articles 5 and 7 of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests do not apply in such a way that an administrative penalty may be imposed on the basis of those provisions alone since, if, in connection with the protection of the European Union's financial interests, an administrative penalty is to be applied to a category of persons, a necessary precondition is that, prior to commission of the irregularity in question, either the European Union legislature has adopted sectoral rules laying down such a penalty and the conditions for its application to that category of persons or, where such rules have not yet been adopted at European Union level, the law of the Member State where the irregularity was committed has provided for the imposition of an administrative penalty on that category of persons.*

2. *In circumstances such as those in issue in the main proceedings, in which European Union sectoral rules did not yet require Member States to provide for effective penalties in cases in which an international control and supervisory agency approved by a Member State has issued false certificates, Article 7 of Regulation No 2988/95 does not prevent Member States from applying a penalty to that agency in its capacity as a person who has 'taken part in the irregularity' or as a person who is 'under a duty to take responsibility' for the irregularity within the meaning of Article 7, provided, however, that the application of such a penalty rests on a clear and unambiguous legal basis, a matter which falls to be determined by the referring court.*

3. *In circumstances such as those in issue in the main proceedings, the communication, to an international control and supervisory agency which has issued a certificate for release for consumption in respect of a specific export operation, of an investigative report drawing attention to an irregularity in connection with that operation, the presentation to that agency of a request to produce additional documents for the purpose of checking whether the release for consumption actually took place and the sending of a registered letter imposing a penalty on that agency for having taken part in an irregularity within the meaning of Article 1(2) of Regulation No 2988/95 constitute acts, notified to the person in question and relating to investigation or legal proceedings concerning the irregularity, which are sufficiently specific to interrupt the limitation period for proceedings within the meaning of the third subparagraph of Article 3(1) of Regulation No 2988/95.*

([1]) OJ C 297, 5.12.2009.

Judgment of the Court (Third Chamber) of 21 October 2010 (reference for a preliminary ruling from the Mokestinių ginčų komisija prie Lietuvos Respublikos vyriausybės (Lithuania)) — Nidera Handelscompagnie BV v Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos

(Case C-385/09) [1]

(Directive 2006/112/EC — Right of deduction of input VAT — National legislation excluding the right of deduction in respect of goods sold on before identification of the taxable person for VAT purposes)

(2010/C 346/30)

Language of the case: Lithuanian

Referring court

Mokestinių ginčų komisija prie Lietuvos Respublikos vyriausybės

Parties to the main proceedings

Applicant: Nidera Handelscompagnie BV

Defendant: Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos

Re:

Reference for a preliminary ruling — Mokestinių ginčų komisija prie Lietuvos Respublikos vyriausybės — Interpretation of Articles 167, 168(1)(a) and 178(1)(a) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) — National legislation reserving the right to deduct VAT to taxable persons registered for VAT in that Member State — Right to deduct VAT excluded for goods and services acquired by the taxable person before his registration for VAT in the Member State concerned if those goods and services have already been used for the purposes of the taxable person's transactions

Operative part of the judgment

Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as precluding a taxable person for VAT purposes who meets the substantive conditions for the right of deduction, in accordance with the provisions of that directive, and who identifies himself as a taxable person for VAT purposes within a reasonable period following the completion of transactions giving rise to that right of deduction, from being denied the possibility of exercising that right by national legislation which prohibits the deduction of VAT paid on the purchase of goods if the taxpayer was not identified as a taxable person for VAT purposes before using those goods in his taxable activity.

[1] OJ C 312, 19.12.2009.

Judgment of the Court (Fifth Chamber) of 28 October 2010 (reference for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands)) — Staatssecretaris van Financiën v X BV

(Case C-423/09) [1]

(Common Customs Tariff — Tariff classification — Combined Nomenclature — Dried vegetables (garlic bulbs) from which not all moisture has been removed)

(2010/C 346/31)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: Staatssecretaris van Financiën

Defendant: X BV

Re:

Reference for a preliminary ruling — Hoge Raad der Nederlanden — Interpretation of Commission Regulation (EC) No 1789/2003 of 11 September 2003 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 2003 L 281, p. 1) and of Commission Regulation (EC) No 1810/2004 of 7 September 2004 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 2004 L 327, p. 1) — Tariff classification of dried vegetables (garlic bulbs), from which not all of the moisture has been removed and which are imported in a chilled state

Operative part of the judgment

The Combined Nomenclature in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended by Commission Regulation (EC) No 1810/2004 of 7 September 2004, must be interpreted as meaning that garlic which has undergone an intensive drying process in accordance with a specific treatment as a result of which all, or almost all, of the moisture in the product is removed comes under tariff subheading 0712 90 90 of the Combined Nomenclature, but that partially dried garlic which retains the properties and characteristics of fresh garlic comes under tariff subheading 0703 20 00 of the Combined Nomenclature.

[1] OJ C 24, 30.1.2010.

Judgment of the Court (Second Chamber) of 14 October 2010 (reference for a preliminary ruling from the Conseil d'État (France)) — Union syndicale Solidaires Isère v Premier ministre, Ministère du Travail, des Relations sociales, de la Famille, de la Solidarité et de la Ville, Ministère de la Santé et des Sports

(Case C-428/09) [1]

(Social policy — Protection of the safety and health of workers — Directive 2003/88/EC — Organisation of working time — Articles 1, 3 and 17 — Scope — Casual and seasonal activity of persons employed under an 'educational commitment contract' — Restriction on the working time of such staff in holiday and leisure centres to 80 days per annum — National legislation not providing, for such staff, a minimum daily rest period — Derogations from Article 17 — Conditions — Ensuring an equivalent period of compensatory rest or, in exceptional cases, appropriate protection)

(2010/C 346/32)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicant: Union syndicale Solidaires Isère

Defendants: Premier ministre, Ministère du Travail, des Relations sociales, de la Famille, de la Solidarité et de la Ville, Ministère de la Santé et des Sports

Re:

Reference for a preliminary ruling — Conseil d'État (France) — Interpretation of Article 17(1),(2) and (3)(b) of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (OJ 2003 L 299, p. 9), in conjunction with Article 1(1) of the same directive — Casual and seasonal activity of persons with educational commitment contracts — Compatibility with the directive of national rules restricting the working time of such persons in holiday and leisure centres to 80 days per annum but not ensuring minimum daily rest periods — Concepts of 'equivalent periods of compensatory rest' and 'appropriate protection to be afforded to the workers concerned'

Operative part of the judgment

1. *Persons employed under contracts such as the educational commitment contracts at issue in the main proceedings, carrying out casual and seasonal activities in holiday and leisure centres, and completing a maximum of 80 working days per annum, are within the scope of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time;*

2. *Persons employed under contracts such as the educational commitment contracts at issue in the main proceedings, carrying out casual and seasonal activities at holiday and leisure centres, fall within the scope of the derogation in Article 17(3)(b) and/or 17(3)(c) of Directive 2003/88.*

   National legislation which restricts the activity carried out under such contracts to 80 days per annum does not satisfy the conditions set out in Article 17(2) of that directive which govern the application of that derogation, to the effect that the workers concerned are to be afforded equivalent periods of compensatory rest or, in exceptional cases where the granting of such periods is not possible for objective reasons, appropriate protection.

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[1] OJ 2010 C 24, 30.1.2010.

Judgment of the Court (Eighth Chamber) of 28 October 2010 — European Commission v Hellenic Republic

(Case C-500/09) [1]

(Failure of a Member State to fulfil obligations — Postal services — Directive 97/67/EC — National restrictions — Express courier undertakings — National licensing system)

(2010/C 346/33)

Language of the case: Greek

Parties

Applicant: European Commission (represented by: L. Lozano Palacios and D. Triantafyllou, acting as Agents)

Defendant: Hellenic Republic (represented by: P. Mylonopoulos and D. Tsagkaraki, acting as Agents)

Re:

Failure of a Member State to fulfil obligations — Breach of Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service (OJ 1998 L 15, p. 14)

Operative part of the judgment

The Court:

1. *Declares that, by continuing to apply Ministerial Decree No A1/44351/3608 of 12 October 2005, the Hellenic Republic has failed to fulfil its obligations under Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service, as amended by Directive 2002/39/EC of the European Parliament and of the Council of 10 June 2002, and in particular Article 9(1) and (2) thereof;*

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

(1) OJ C 37, 13.2.2010.

Judgment of the Court (Eighth Chamber) of 28 October 2010 — European Commission v Kingdom of Belgium

(Case C-41/10) (1)

(Failure of a Member State to fulfil obligations — Direct insurance other than life assurance — Directives 73/239/EEC and 92/49/EEC — Mutual societies active in the supplementary sickness insurance market — Incorrect or incomplete transposition)

(2010/C 346/34)

Language of the case: French

Parties

Applicant: European Commission (represented by: G. Rozet and N. Yerrell, acting as Agents)

Defendant: Kingdom of Belgium (represented by: M. Jacobs and L. Van den Broeck, acting as Agents)

Re:

Failure of Member States to fulfil obligations — Incorrect and incomplete transposition of Articles 6, 8, 15, 16 and 17 of Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance (OJ 1973 L 228, p. 3) and of Articles 20, 21 and 22 of Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life insurance Directive) (OJ 1992 L 228, p. 1)

Operative part of the judgment

The Court:

1. *Declares that, by its incorrect and incomplete transposition of First Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance, as amended by Directive 2002/13/EC of the European Parliament and of the Council of 5 March 2002, and Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life insurance Directive), the Kingdom of Belgium has failed to fulfil its obligations under, in particular, Articles 6, 8, 15, 16 and 17 of Directive 73/129, as amended by Directive 2002/13, and Articles 20, 21 and 22 of Directive 92/49;*

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

(1) OJ C 80, 27.3.2010.

Order of the Court of 24 June 2010 — Kronoply GmbH & Co. KG v European Commission

(Case C-117/09 P) (1)

(Appeal — State aid — Application for aid intended to amend aid previously granted to the recipient undertaking and notified to the Commission after the investment project had been fully completed — Criteria of the incentive effect and of necessity)

(2010/C 346/35)

Language of the case: German

Parties

Appellant: Kronoply GmbH & Co. KG (represented by: R. Nierer and L. Gordalla, Rechtsanwälte)

Other party to the proceedings: European Commission (represented by: K. Gross, V. Kreuschitz and T. Scharf, acting as Agents)

Re:

Appeal against the judgment of the Court of First Instance (Fifth Chamber) of 14 January 2009 in Case T-162/06 *Kronoply* v *Commission* by which the Court dismissed the application for annulment of Commission Decision 2006/262/EC of 21 September 2005 declaring State aid which Germany is planning to implement for the appellant to be incompatible with the common market (OJ 2006 L 94, p. 50) — Proposed aid intended to amend aid previously granted to the recipient undertaking notified to the Commission after the investment project had been fully completed by means of the aid initially approved — Incorrect assessment of the incentive effect and of the necessity of the aid at issue

Operative part of the order

1. *The appeal is dismissed.*

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

(1) OJ C 141, 20.6.2009.

Order of the Court (Seventh Chamber) of 15 September 2010 (reference for a preliminary ruling from the Cour du travail de Bruxelles (Belgium)) — Jhonny Briot v Randstad Interim, Sodexho SA, Council of the European Union

(Case C-386/09) ([1])

(Article 104(3), second subparagraph, of the Rules of Procedure — Directive 2001/23/EC — Transfer of undertakings — Safeguarding of employees' rights — Non-renewal of a fixed-term contract of employment of a temporary worker)

(2010/C 346/36)

Language of the case: French

Referring court

Cour du travail de Bruxelles

Parties to the main proceedings

Applicant: Jhonny Briot

Defendants: Randstad Interim, Sodexho SA, Council of the European Union

Re:

Reference for a preliminary ruling — Cour du travail de Bruxelles — Interpretation of Articles 1(1), 2(1)(a) and (2)(c), 3(1) and 4(1) of Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (OJ 2001 L 82, p. 16) — Non-renewal of a fixed-term employment contract of a temporary agency worker on account of transfer of an undertaking — Possibility of treating a temporary employment agency or, failing that, a Community institution using the services of temporary agency workers like an 'employer-transferor' — Possible exclusion of temporary agency workers from the safeguards afforded by the Directive — Obligation or option on the part of the transferee of maintaining the employment relationship

Operative part of the order

In circumstances such as those of the main proceedings, where the fixed-term employment contract of a temporary worker has ended, due to expiry of the agreed term, on a date prior to that of the transfer of the activity to which he was assigned, the non-renewal of this contract because of that transfer does not disregard the prohibition set out in Article 4(1) of Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses. Thus, that temporary worker must not be regarded as still being available to the user company on the date of the transfer.

([1]) OJ C 312, 19.12.2009.

Order of the Court of 2 September 2010 — Mehmet Salih Bayramoglu v European Parliament, Council of the European Union

(Case C-28/10 P) ([1])

(Appeals — Article 119 of the Rules of Procedure — Irregular form of order sought — Clear inadmissibility)

(2010/C 346/37)

Language of the case: English

Parties

Appellant: Mehmet Salih Bayramoglu (represented by: A. Riza QC)

Other parties to the proceedings: European Parliament (represented by: C. Karamarcos and N. Görlitz, Agents), Council of the European Union (represented by: M. Balta and E. Finnegan, Agents)

Re:

Appeal brought against the order of the Court of First Instance (Second Chamber) of 24 September 2009 in Case T-110/09 *Bayramoglu* v *Parliament and Council*, in which the Court of First Instance dismissed as manifestly inadmissible an action for annulment of Council Decision 2004/511/EC of 10 June 2004 concerning the representation of the people of Cyprus in the European Parliament in case of a settlement of the Cyprus problem — Action brought out of time

Operative part of the order

1. *The appeal is dismissed.*

2. *Mr Bayramoglu shall pay the costs.*

([1]) OJ C 80, 27.3.2010.

Reference for a preliminary ruling from the Landgericht Regensburg (Regional Court, Regensburg) lodged on 11 June 2010 — Cornelia Buschmann v Cornelius de Visser

(Case C-292/10)

(2010/C 346/38)

Language of the case: German

Referring court

Landgericht Regensburg

Parties to the main proceedings

Applicant: Cornelia Buschmann

Defendant: Cornelius de Visser

Questions referred

(a) Does the first half-sentence of the first subparagraph of Article 6(1) of the Treaty on European Union as amended by the Treaty of Lisbon ('TEU'), in conjunction with the first sentence of the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union ('CEU'), or other European legislation preclude 'service by public notice' under national law (pursuant to Paragraphs 185 to 188 of the German Zivilprozessordnung (Code of Civil Procedure), through the posting for one month of the notification of the service on the notice board of the court ordering the notification) if the opponent in a civil action (in its very early stages) gives an address in the territory of the European Union ('Union territory') on his website, but service is not possible because the defendant's whereabouts in the Union territory are not known and it cannot otherwise be established where he is currently residing?

(b) If the answer to Question 2(a) is in the affirmative:

Must the national court refuse, in accordance with past case-law of the Court (most recently Case C-341/06 …), to apply national rules permitting service by public notice even if national law grants such power of rejection only to the (German) Bundesverfassungsgericht (Federal Constitutional Court)?

and

Should the applicant communicate to the court a new address at which a further attempt can be made to serve the application on the defendant to enable her to assert her rights, since under national law the trial could not be conducted without service by public notice and without knowledge of the defendant's whereabouts?

(c) If the answer to Question 2(a) is in the negative: Is, in the present case, a default judgment pursuant to Paragraph 331 of the Zivilprozessordnung, that is an enforcement order for uncontested claims within the meaning of Regulation (EC) No 805/2004 of the European Parliament and of the Council creating a European Enforcement Order for uncontested claims ('Regulation No 805/2004'), precluded by Article 26(2) 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 No 44/2001'), in so far as an order is sought for the payment of compensation for pain and suffering amounting to at least EUR 20 000,00 plus interest and legal costs of EUR 1 419,19 plus interest?

The following questions are referred subject to the condition that it is possible for the applicant to continue the action in accordance with the Court's answers to Questions 2(a) to 2(c):

(d) Having regard to Article 4(1) and Article 5(3) of Regulation No 44/2001, is that Regulation also applicable in cases in which the whereabouts of the defendant in a civil action, who has been sued for an injunction, information and compensation for pain and suffering because of the operation of a website, who is (presumed to be) a Union citizen within the meaning of the second sentence of Article 9 TEU, are unknown, it therefore being conceivable, but by no means certain, that he is currently residing outside the Union territory and also outside the residual treaty area governed by the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters, done at Lugano on 16 September 1988 ('Lugano Convention'), and the precise location of the server on which the website is stored is also unknown, although it seems logical to assume that it is in the Union territory?

(e) If Regulation No 44/2001 is applicable in this case, is the phrase 'the place where the harmful event … may occur' in Article 5(3) of that Regulation to be interpreted as meaning, in the event of (possible) infringements of personality by means of content on an Internet website,

that the person concerned ('applicant') may also bring an action for an injunction, for information and for compensation for pain and suffering against the operator of the website ('defendant'), irrespective of where the defendant is established (in or outside the Union territory), in the courts of any Member State in which the website may be accessed,

or

is it necessary, in order for the courts of a Member State in which the defendant is not established or there are no indications that he is resident to have jurisdiction, that there be a special connection between the contested content of the website and the State of the court seised (domestic connecting factor) going beyond technically possible accessibility?

(f) 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 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 of her right to protection of personality and the operator's interest in the design of his website — may actually have occurred or may occur in the State of the court seised or has occurred, in that one or more acquaintances of the person whose right to protection of personality has been infringed have taken note of the content of the website?

(g) 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?

(h) If the referring court has jurisdiction for the action according to the above questions: Do the legal principles laid down in the Court's judgment in Case C-68/93 … also apply in the case described above?

(i) 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 or has occurred, in that one of more acquaintances of the person whose right to protection of personality has been infringed have taken note of the content of the website, 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, or Regulation No 44/2001 is in no way applicable to the present case:

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 also they 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?

(j) 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?

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

Must the designation of the place of establishment of the service provider be geared to his (presumed) current whereabouts, his whereabouts when the publication of the photographs of the applicant first began or the (presumed) location of the server on which the website is stored?

Reference for a preliminary ruling from the Tribunale Amministrativo Regionale per la Lombardia — Sezione Terza (Italy) lodged on 5 July 2010 — Enipower Spa v Autorità per l'Energia Elettrica e il Gas

(Case C-328/10)

(2010/C 346/39)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per la Lombardia — Sezione Terza

Parties to the main proceedings

Applicant: Enipower Spa

Defendant: Autorità per l'Energia Elettrica e il Gas

Question referred

Do Articles 23, 43, 49 and 56 of the Treaty and Article 11(2) and (6) and Article 24 of Directive 54/03/EC [1] preclude national legislation which, without the European Commission having been notified, requires on a permanent basis certain electricity producers which are, in certain circumstances, essential for the purpose of meeting the requirements of the demand for dispatching services, to submit bids on the energy exchange markets, in accordance with programmes determined by the network operator in accordance with external rules, and which prevents producers from freely determining the remuneration for such bids by linking the remuneration to criteria that have not been pre-determined according to transparent, non-discriminatory and market-based procedures?

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[1] OJ 2003 L 176, p. 37

Reference for a preliminary ruling from the Tribunale Amministrativo Regionale per la Lombardia — Sezione Terza (Italy) lodged on 5 July 2010 — ENI SpA v Autorità Per l'Energia Elettrica e il Gas e Cassa Conguaglio Per il Settore Elettrico

(Case C-329/10)

(2010/C 346/40)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per la Lombardia — Sezione Terza

Parties to the main proceedings

Applicant: ENI SpA

Defendant: Autorità Per l'Energia Elettrica e il Gas e Cassa Conguaglio Per il Settore Elettrico

Question referred

Do Articles 23, 43, 49 and 56 of the Treaty and Article 11(2) and (6) and Article 24 of Directive 54/03/EC [1] preclude national legislation which, without the European Commission having been notified, requires on a permanent basis certain electricity producers which are, in certain circumstances, essential for the purpose of meeting the requirements of the demand for dispatching services, to submit bids on the energy exchange markets, in accordance with programmes determined by the network operator in accordance with external rules, and which prevents producers from freely determining the remuneration for such bids by linking the remuneration to criteria that have not been pre-determined according to transparent, non-discriminatory and market-based procedures?

[1] OJ 2003 L 176, p. 37

Reference for a preliminary ruling from the Tribunale Amministrativo Regionale per la Lombardia — Sezione Terza (Italy) lodged on 5 July 2010 — Edison Trading SpA v Autorità Per l'Energia Elettrica e il Gas

(Case C-330/10)

(2010/C 346/41)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per la Lombardia — Sezione Terza

Parties to the main proceedings

Applicant: Edison Trading SpA

Defendant: Autorità Per l'Energia Elettrica e il Gas

Question referred

Do Articles 23, 43, 49 and 56 of the Treaty and Article 11(2) and (6) and Article 24 of Directive 54/03/EC [1] preclude national legislation which, without the European Commission having been notified, requires on a permanent basis certain electricity producers which are, in certain circumstances, essential for the purpose of meeting the requirements of the demand for dispatching services, to submit bids on the energy exchange markets, in accordance with programmes determined by the network operator in accordance with external rules, and which prevents producers from freely determining the remuneration for such bids by linking the remuneration to criteria that have not been pre-determined according to transparent, non-discriminatory and market-based procedures?

[1] OJ 2003 L 176, p. 37

Reference for a preliminary ruling from the Tribunale Amministrativo Regionale per la Lombardia — Sezione Terza (Italy) lodged on 5 July 2010 — E.On Produzione SpA v Autorità Per l'Energia Elettrica e il Gas

(Case C-331/10)

(2010/C 346/42)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per la Lombardia — Sezione Terza

Parties to the main proceedings

Applicant: E.On Produzione SpA

Defendant: Autorità Per l'Energia Elettrica e il Gas

Question referred

Do Articles 23, 43, 49 and 56 of the Treaty and Article 11(2) and (6) and Article 24 of Directive 54/03/EC [1] preclude national legislation which, without the European Commission having been notified, requires on a permanent basis certain electricity producers which are, in certain circumstances, essential for the purpose of meeting the requirements of the demand for dispatching services, to submit bids on the energy exchange markets, in accordance with programmes determined by the network operator in accordance with external rules, and which prevents producers from freely determining the remuneration for such bids by linking the remuneration to criteria that have not been pre-determined according to transparent, non-discriminatory and market-based procedures?

[1] OJ 2003 L 176, p. 37

Reference for a preliminary ruling from the Tribunale Amministrativo Regionale per la Lombardia — Sezione Terza (Italy) lodged on 5 July 2010 — Edipower SpA v Autorità Per l'Energia Elettrica e il Gas

(Case C-332/10)

(2010/C 346/43)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per la Lombardia — Sezione Terza

Parties to the main proceedings

Applicant: Edipower SpA

Defendant: Autorità Per l'Energia Elettrica e il Gas

Question referred

Do Articles 23, 43, 49 and 56 of the Treaty and Article 11(2) and (6) and Article 24 of Directive 54/03/EC [1] preclude national legislation which, without the European Commission having been notified, requires on a permanent basis certain electricity producers which are, in certain circumstances, essential for the purpose of meeting the requirements of the demand for dispatching services, to submit bids on the energy exchange markets, in accordance with programmes determined by the network operator in accordance with external rules, and which prevents producers from freely determining the remuneration for such bids by linking the remuneration to criteria that have not been pre-determined according to transparent, non-discriminatory and market-based procedures?

[1] OJ 2003 L 176, p. 37

Reference for a preliminary ruling from the Tribunale Amministrativo Regionale per la Lombardia Sezione Terza (Italy) lodged on 5 July 2010 — E.On Energy Trading SpA v Autorità Per l'Energia Elettrica e il Gas

(Case C-333/10)

(2010/C 346/44)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per la Lombardia — Sezione Terza

Parties to the main proceedings

Applicant: E.On Energy Trading SpA

Defendant: Autorità Per l'Energia Elettrica e il Gas

Question referred

Do Articles 23, 43, 49 and 56 of the Treaty and Article 11(2) and (6) and Article 24 of Directive 54/03/EC [1] preclude national legislation which, without the European Commission having been notified, requires on a permanent basis certain electricity producers which are, in certain circumstances, essential for the purpose of meeting the requirements of the demand for dispatching services, to submit bids on the energy exchange markets, in accordance with programmes determined by the network operator in accordance with external rules, and which prevents producers from freely determining the remuneration for such bids by linking the remuneration to criteria that have not been pre-determined according to transparent, non-discriminatory and market-based procedures?

[1] OJ 2003 L 176, p. 37

Reference for a preliminary ruling from High Court of Justice (Chancery Division) (England and Wales) made on 11 August 2010 — SAS Institute Inc. v World Programming Ltd

(Case C-406/10)

(2010/C 346/45)

Language of the case: English

Referring court

High Court of Justice (Chancery Division)

Parties to the main proceedings

Applicant: SAS Institute Inc.

Defendant: World Programming Ltd

Questions referred

A. ***On the interpretation of Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs*** [1] ***and of Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 (codified version)*** [2]:

1. Where a computer program ('the First Program') is protected by copyright as a literary work, is Article 1(2) to be interpreted as meaning that it is not an infringement of the copyright in the First Program for a competitor of the right-holder without access to the source code of the First Program, either directly or via a process such as decompilation of the object code, to create another program ('the Second Program') which replicates the functions of the First Program?

2. Is the answer to question 1 affected by any of the following factors:

   (a) the nature and/or extent of the functionality of the First Program;

   (b) the nature and/or extent of the skill, judgment and labour which has been expended by the author of the First Program in devising the functionality of the First Program;

   (c) the level of detail to which the functionality of the First Program has been reproduced in the Second Program;

   (d) if the source code for the Second Program reproduces aspects of the source code of the First Program to an extent which goes beyond that which was strictly necessary in order to produce the same functionality as the First Program?

3. Where the First Program interprets and executes application programs written by users of the First Program in a programming language devised by the author of the First Program which comprises keywords devised or selected by the author of the First Program and a syntax devised by the author of the First Program, is Article 1(2) to be interpreted as meaning that it is not an infringement of the copyright in the First Program for the Second Program to be written so as to interpret and execute such application programs using the same keywords and the same syntax?

4. Where the First Program reads from and writes to data files in a particular format devised by the author of the First Program, is Article 1(2) to be interpreted as meaning that it is not an infringement of the copyright in the First Program for the Second Program to be written so as to read from and write to data files in the same format?

5. Does it make any difference to the answer to questions 1, 3 and 4 if the author of the Second Program created the Second Program by:

   (a) observing, studying and testing the functioning of the First Program; or

   (b) reading a manual created and published by the author of the First Program which describes the functions of the First Program ('the Manual'); or

   (c) both (a) and (b)?

6. Where a person has the right to use a copy of the First Program under a licence, is Article 5(3) to be interpreting as meaning that the licensee is entitled, without the authorisation of the rightholder, to perform acts of loading, running and storing the program in order to observe, test or study the functioning of the First Program so as to determine the ideas and principles which underlie any element of the program, if the licence permits the licensee to perform acts of loading, running and storing the First Program when using it for the particular purpose permitted by the licence, but the acts done in order to observe, study or test the First Program extend outside the scope of the purpose permitted by the licence?

7. Is Article 5(3) to be interpreted as meaning that acts of observing, testing or studying of the functioning of the First Program are to be regarded as being done in order to determine the ideas or principles which underlie any element of the First Program where they are done:

   (a) to ascertain the way in which the First Program functions, in particular details which are not described in the Manual, for the purpose of writing the Second Program in the manner referred to in question 1 above;

   (b) to ascertain how the First Program interprets and executes statements written in the programming language which it interprets and executes (see question 3 above);

   (c) to ascertain the formats of data Files which are written to or read by the First Program (see question 4 above);

   (d) to compare the performance of the Second Program with the First Program for the purpose of investigating reasons why their performances differ and to improve the performance of the Second Program;

   (e) to conduct parallel tests of the First Program and the Second Program in order to compare their outputs in the course of developing the Second Program, in particular by running the same test scripts through both the First Program and the Second Program;

   (f) to ascertain the output of the log file generated by the First Program in order to produce a log file which is identical or similar in appearance;

   (g) to cause the First Program to output data (in fact, data correlating zip codes to States of the USA) for the purpose of ascertaining whether or not it corresponds with official databases of such data, and if it does not so correspond, to program the Second Program so that it will respond in the same way as the First Program to the same input data.

B. ***On the interpretation of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society*** [3]:

8. Where the Manual is protected by copyright as a literary work, is Article 2(a) to be interpreted as meaning that it is an infringement of the copyright in the Manual for the author of the Second Program to reproduce or substantially reproduce in the Second Program any of the following matters described in the Manual:

   (a) the selection of statistical operations which have been implemented in the First Program;.

(b) the mathematical formulae used in the Manual to describe those operations;

(c) the particular commands or combinations of commands by which those operations may be invoked;

(d) the options which the author of the First Program has provide in respect of various commands;

(e) the keywords and syntax recognised by the First Program;.

(f) the defaults which the author of the First Program has chosen to implement in the event that a particular command or option is not specified by the user;

(g) the number of iterations which the First Program will perform in certain circumstances?

9. Is Article 2(a) to be interpreted as meaning that it is an infringement of the copyright in the Manual for the author of the Second Program to reproduce or substantially reproduce in a manual describing the Second Program the keywords and syntax recognised by the First Program?

([1]) OJ L 122, p. 42

([2]) Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs (Codified version) (Text with EEA relevance), OJ L 111, p. 16

([3]) OJ L 167, p. 10

Appeal brought on 26 August 2010 by Bell & Ross BV against the order of the General Court (Sixth Chamber) delivered on 18 June 2010 in Case T-51/10 *Bell & Ross BV v OHIM*

(Case C-426/10 P)

(2010/C 346/46)

Language of the case: French

Parties

Appellant: Bell & Ross BV (represented by: S. Guerlain, lawyer)

Other parties to the proceedings: Office for Harmonization in the Internal Market (trade marks and designs), Klockgrossisten i Norden AB

Form of order sought

— annul the contested order;

— declare that the action brought by the applicant for annulment of a decision of the Office for Harmonization in the Internal Market (trade marks and designs) (OHMI) (T-51/10) is admissible and, consequently, refer the case back to the General Court to rule on the substance of that action for annulment;

— order OHIM to pay the costs of the appeal and of the proceedings at first instance.

Pleas in law and main arguments

The applicant relies on six grounds in support of its appeal.

By its first ground of appeal, Bell & Ross claims that the General Court infringed Article 111 of its Rules of Procedure in that the General Court held that the action was manifestly inadmissible without first having heard the Advocate General.

By its second ground of appeal, the applicant alleges that the General Court infringed Article 43(1) of its Rules of Procedure, in that the General Court ruled that the original texts of the application received by the Registry on 1 February 2010 were not original, and that solely the text received on 5 February 2010, and therefore out of time, could be regarded as an original text, but did not however explain how the originals can be distinguished from the copies. Article 43 does not specify what rules apply to the lawyer's signature which must be appended to the original of a pleading.

By its third ground of appeal, Bell & Ross complains that the General Court did not allow it to put in order, in accordance with Article 57(b) of the Practice Directions to parties and Article 7.1 of the Instructions to the registrar of the General Court, the formal irregularity attributed to it. In accordance with those provisions, it is the duty of the Registrar to allow the applicant a period of time to make good the discovered irregularity.

By its fourth ground of appeal, Bell & Ross relies on excusable error, since the confusion regarding the identification of the original text was caused by exceptional circumstances which were not under the applicant's control. The facts that the large number of copies required the assistance of an external service provider, that the excellent quality of the paper copies made it impossible to recognise the original and that the signature was appended all of the texts sent to the registry within the time prescribed, constitute circumstances which allow a finding of excusable error to be made in this case.

By its fifth ground of appeal, the applicant relies on the fact that the circumstances were exceptional, abnormal and not under the trader's control, evidence of unforeseeable circumstances or force majeure.

Finally, by its sixth and last ground of appeal, Bell & Ross claims that the General Court infringed the principles of proportionality and protection of legitimate expectations since, first, seven texts bearing a signature and one fax copy were received at the registry of the General Court and, second, the abovementioned provisions provide for the possibility of regularisation of the application.

Reference for a preliminary ruling from Court of Appeal (England & Wales) (Civil Division) made on 13 September 2010 — Churchill Insurance Company Limited, Tracy Evans v Benjamin Wilkinson, by his father and litigation friend Steven Wilkinson, Equity Claims Limited

(Case C-442/10)

(2010/C 346/47)

Language of the case: English

Referring court

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

Parties to the main proceedings

Applicants: Churchill Insurance Company Limited, Tracy Evans

Defendants: Benjamin Wilkinson, by his father and litigation friend Steven Wilkinson, Equity Claims Limited

Questions referred

1. Are Articles 12(1) and 13(1) of the 2009 Directive [1] to be interpreted as precluding national provisions the effect of which, as a matter of the relevant national law, is to exclude from the benefit of insurance a victim of a road traffic accident, in circumstances where:

   (a) that accident was caused by an uninsured driver; and

   (b) that uninsured driver had been given permission to drive the vehicle by the victim; and

   (c) that victim was a passenger in the vehicle at the time of the accident; and

   (d) that victim was insured to drive the vehicle in question?

   In particular:

   (i) is such a national provision one which 'excludes from insurance' within the meaning of Article 13(1) of the 2009 Directive?

   (ii) in circumstances such as arising in the present case, is permission given by the insurer to the non-insured 'express or implied authorization' within the meaning of Article 13(1)(a) of the 2009 Directive?

   (iii) is the answer to this question affected by the fact that, pursuant to Article 10 of the 2009 Directive national bodies charged with providing compensation in the case of damage caused by unidentified or uninsured vehicles may exclude the payment of compensation in respect of persons who voluntarily enter the vehicle which caused the damage or injury when the body can prove that those persons know that the vehicle was uninsured?

2. Does the answer to question 1 depend on whether the permission in question (a) was based on actual knowledge that the driver in question was uninsured or (b) was based on a belief that the driver was insured or (c) where the permission in question was granted by the insured person who had not turned his/her mind to the issue?

[1] Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability (Text with EEA relevance)
OJ L 263, p. 11

Action brought on 17 September 2010 — European Commission v Grand Duchy of Luxembourg

(Case C-458/10)

(2010/C 346/48)

Language of the case: French

Parties

Applicant: European Commission (represented by: S. Pardo Quintillán and O. Beynet, acting as Agents)

Defendant: Grand Duchy of Luxembourg

Form of order sought

— Declare that by failing to transpose fully and correctly Article 9(3)(b),(c) and (e) of Directive 98/83/EC, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 9(3)(b),(c) and (e) of Directive 98/83/EC;

— order the Grand Duchy of Luxembourg to pay the costs.

Pleas in law and main arguments

The Commission bases its action on two grounds of complaint.

By its first ground of complaint, the Commission maintains that the transposition of points (b) and (c) of Article 9(3) of Directive 98/83 [1] is incomplete. The national legislation does not provide that the derogation must contain 'previous relevant monitoring results' and does not refer to 'the quantity of water supplied each day', 'the population concerned' and 'whether or not any relevant food-production undertaking would be affected'.

By its second ground of complaint, the Commission claims that the transposition of point (e) of Article 9(3) of Directive 98/83 is incomplete and incorrect, since the Luxembourg authorities claim, inter alia, that, given that it is the party requesting a derogation who is responsible for defining and implementing remedial measures, it is that party who should provide a 'summary of the plan', a 'timetable for the work' and an 'estimate of the cost' of the measures, and not the party making the decision to grant the derogation, as required by the directive.

(1) Council Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption (OJ 1998 L 330, p. 32)

Reference for a preliminary ruling from the Cour d'appel de Mons (Belgium) lodged on 24 September 2010 — Belgian State v Maître Pierre Henfling, Maître Raphaël Davin, Maître Koenraad Tanghe (acting as trustees in bankruptcy of Tiercé Franco-Belge SA)

(Case C-464/10)

(2010/C 346/49)

Language of the case: French

Referring court

Cour d'appel de Mons

Parties to the main proceedings

Applicant: Belgian State

Defendants: Maître Pierre Henfling, Maître Raphaël Davin, Maître Koenraad Tanghe (acting as trustees in bankruptcy of Tiercé Franco-Belge SA)

Question referred

Must Articles 6(4) and 13(B)(f), of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, be interpreted as precluding tax exemption in respect of services supplied by a commission agent acting in its own name, but on behalf of a principal who organises supply of services referred to in Article 13(B)(f)?

Reference for a preliminary ruling from the Conseil d'État (France) lodged on 27 September 2010 — Ministre de l'Intérieur, de l'Outre-mer et des Collectivités territoriales v Chambre de commerce et d'industrie de l'Indre

(Case C-465/10)

(2010/C 346/50)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicant: Ministre de l'Intérieur, de l'Outre-mer et des Collectivités territoriales

Defendant: Chambre de commerce et d'industrie (CCI) de l'Indre

Questions referred

1. Concerning the existence of a legal basis creating an obligation to recover the aid paid to the CCI:

   Where an awarding authority that receives subsidies paid from the ERDF has failed to comply with one or more public procurement rules in the implementation of the subsidised project, when it is not otherwise disputed that that project is eligible for that fund and that it has been implemented, is there a provision of Community law, in particular in Council Regulation (EEC) No 2052/88 (1) of 24 June 1988 and Council Regulation (EEC) No 4253/88 (2) of 19 December 1988, that creates an obligation to recover subsidies? If such an obligation exists does it apply to any failure to comply with the public procurement rules, or only to some of them? In the latter case, which?

2. If the answer to the first question is at least partly affirmative:

   (a) Does the failure, by an awarding authority entitled to aid from the ERDF, to observe one or more rules relating to public procurement for the choice of a service provider responsible for implementing the subsidised project constitute an irregularity within the meaning of Regulation No 2988/95 (3)? Does the fact that the competent national authority could not have been unaware, at the time when it decided to grant the aid applied for from the ERDF, that the recipient operator had failed to comply with the public procurement rules in recruiting, before the aid had even been allocated, the provider responsible for implementing the project financed by the authority affect the characterisation as an irregularity within the meaning of Regulation No 2988/95?

(b) In case of an affirmative answer to question 2(a), and, given that, as the Court of Justice held in Joined Cases C-278/07 to C-280/07 *Hauptzollamt Hamburg-Jonas* v *Josef Vosding Schlacht, Kühl- und Zerlegebetrieb GmbH & Co* [2009] ECR I-457, the limitation period referred to in Article 3 of Regulation No 2988/95 is applicable to administrative measures such as the recovery of aid wrongly received by an operator as a result of irregularities it committed:

— Should the starting point for the limitation period be set at the date of payment of the aid to the recipient or at that of the recipient's use of the subsidy received to pay the provider recruited in disregard of one or more of the public procurement rules?

— Should that period be regarded as interrupted by the transmission, by the competent national authority to the recipient of the subsidy, of an auditor's report finding that there was a failure to comply with the public procurement rules and recommending, as a result, that the national authority obtain repayment of the sums paid?

— When a Member State makes use of the possibility afforded by Article 3(3) of Regulation No 2988/95 to apply a longer limitation period for proceedings, in particular where, in France, the ordinary limitation period at the time of the facts at issue is applicable, as set out at Article 2262 of the Code Civil which provides that 'All actions, both in rem and in personam, are time-barred after 30 years …', must the compatibility of such a limitation period with Community law, in particular with the principle of proportionality, be determined in the light of the maximum limitation period for proceedings according to the national legislation providing the legal basis for the national administration's demand for recovery or in the light of the period in fact applied in the particular case?

(c) In case of a negative answer to question 2(a), with regard to payment of aid such as that at issue in the main proceedings, do the financial interests of the Community prevent the judge from applying the national rules relating to the withdrawal of decisions creating rights, according to which, except in cases of non-existence, acquisition by fraud or the recipient's request, the administration may withdraw an individual decision creating rights, if it is illegal, only within a period of four months following the date that decision was taken, an administrative decision being nonetheless capable, in particular when it concerns payment of aid, of being coupled with conditions subsequent, the fulfilment of which allows the withdrawal of the aid in question without any limitation condition — the Conseil d'État having held that that national rule must be interpreted to the effect that it could not be relied on by the recipient of an aid wrongly attributed in application of Community legislation unless it was in good faith?

([1]) Council Regulation (EEC) No 2052/88 of 24 June 1988 on the tasks of the Structural Funds and their effectiveness and on coordination of their activities between themselves and with the operations of the European Investment Bank and the other existing financial instruments (OJ 1988 L 185, p. 9).

([2]) 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).

([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).

Reference for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 28 September 2010 — Asociación Nacional de Establecimientos Financieros de Crédito (ASNEF) v Administración del Estado

(Case C-468/10)

(2010/C 346/51)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Applicant: Asociación Nacional de Establecimientos Financieros de Crédito (ASNEF)

Defendant: Administración del Estado

Questions referred

1. Must Article 7(f) of Directive 95/46/EC ([1]) of the European Parliament and of the Council of 24 October 1995, on the protection of individuals with regard to the processing of personal data and on the free movement of such data be interpreted as precluding the application of national rules which, in the absence of the interested party's consent, and to allow processing of his personal data that is necessary to pursue a legitimate interest of the controller or of third parties to whom the data will be disclosed, not only require fundamental rights and freedoms not to be prejudiced, but also require the data to appear in public sources?

2. Are the conditions for conferring on it direct effect, set out in the case-law of the Court of Justice of the European Union, met by the above-mentioned Article 7(f)?

([1]) OJ 1995 L 281, p. 31.

Reference for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 28 September 2010 — Federación de Comercio Electrónico y Marketing Directo (FECEMD) v Administración del Estado

(Case C-469/10)

(2010/C 346/52)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Applicant: Federación de Comercio Electrónico y Marketing Directo (FECEMD)

Defendant: Administración del Estado

Questions referred

1. Must Article 7(f) of Directive 95/46/EC [1] of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data be interpreted as precluding the application of national rules which, in the absence of the interested party's consent, and in order to allow processing of his personal data that is necessary to satisfy a legitimate interest of the controller or of third parties to whom the data will be disclosed, not only require fundamental rights and freedoms not to be prejudiced, but also require the data to appear in public sources?

2. Are the conditions for conferring on it direct effect, set out in the case-law of the Court of Justice of the European Union, met by the above-mentioned Article 7(f)?

[1] OJ 1995 L 281, p. 31.

Reference for a preliminary ruling from the Pest Megyei Bíróság (Hungary) lodged on 29 September 2010 — Nemzeti Fogyasztóvédelmi Hatóság v Invitel Távközlési Zrt.

(Case C-472/10)

(2010/C 346/53)

Language of the case: Hungarian

Referring court

Pest Megyei Bíróság

Parties to the main proceedings

Applicant: Nemzeti Fogyasztóvédelmi Hatóság

Defendant: Invitel Távközlési Zrt.

Questions referred

1. May Article 6(1) of Council Directive 93/13/EEC [1] of 5 April 1993 on unfair terms in consumer contracts be interpreted as meaning that an unfair contract term is not binding on any consumer where a body appointed by law and competent for that purpose seeks a declaration of the invalidity of that unfair term which has become part of a consumer contract on behalf of consumers in an action in the public interest (*popularis actio*)?

   May Article 6(1) of that directive be interpreted, where an order which benefits consumers who are not party to the proceedings is made, or the application of an unfair standard contract term is prohibited, in an action in the public interest, as meaning that an unfair term which has become part of a consumer contract is not binding on all consumers or as regards the future, so that the court has to apply the consequences in law thereof of its own motion?

2. May Article 3(1) of Directive 93/13, in conjunction with points 1(j) and 2(d) of the annex applicable by virtue of Article 3(3) of that Directive, be interpreted as meaning that where a seller or supplier provides for a unilateral amendment of a contract term without explicitly describing the method by which prices vary or giving valid reasons in the contract, that contract term is unfair *ipso jure*?

[1] Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).

Reference for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 7 October 2010 — Asociación para la Calidad de los Forjados (ASCAFOR), Asociación de Importadores y Distribuidores del Acero para la Construcción (ASIDAC) v Administración del Estado, Calidad Siderúrgica SL, Colegio de Ingenieros Técnicos Industriales, Asociación Española de Normalización y Certificación (AENOR), Consejo General de Colegios Oficiales de Aparejadores y Arquitectos Técnicos, Asociación de Investigación de las Industrias de la Construcción (AIDICO) Instituto Tecnológico de la Construcción, Asociación Nacional Española de Fabricantes de Hormigón Preparado (ANEFHOP), Ferrovial Agromán SA, Agrupación de Fabricantes de Cemento de España (OFICEMEN), Asociación de Aceros Corrugados Reglamentarios y su Tecnología y Calidad (ACERTEQ)

(Case C-484/10)

(2010/C 346/54)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Applicants: Asociación para la Calidad de los Forjados (ASCAFOR), Asociación de Importadores y Distribuidores del Acero para la Construcción (ASIDAC)

Defendants: Administración del Estado, Calidad Siderúrgica SL, Colegio de Ingenieros Técnicos Industriales, Asociación Española de Normalización y Certificación (AENOR), Consejo General de Colegios Oficiales de Aparejadores y Arquitectos Técnicos, Asociación de Investigación de las Industrias de la Construcción (AIDICO) Instituto Tecnológico de la Construcción, Asociación Nacional Española de Fabricantes de Hormigón Preparado (ANEFHOP), Ferrovial Agromán SA, Agrupación de Fabricantes de Cemento de España (OFICEMEN), Asociación de Aceros Corrugados Reglamentarios y su Tecnología y Calidad (ACERTEQ)

Question referred

Can the exhaustive provisions contained in Annex 19 to Royal Decree No 1247/08 of 18 July 2008, in conjunction with Article 81 thereof, relating to the granting of official recognition of labels of quality be considered to be excessive and disproportionate to the objective pursued and to involve an unjustified restriction which renders the recognition of the equivalence of certificates more difficult and to be an obstacle to or a restriction of the marketing of imported products contrary to Articles 28 and 30 EC?

Reference for a preliminary ruling from the Tribunal Administratif de Rennes (France) lodged on 11 October 2010 — L'Océane Immobilière SAS v Direction de contrôle fiscal Ouest

(Case C-487/10)

(2010/C 346/55)

Language of the case: French

Referring court

Tribunal Administratif de Rennes

Parties to the main proceedings

Applicant: L'Océane Immobilière SAS

Defendant: Direction de contrôle fiscal Ouest

Question referred

Does Article 5 of the Sixth Council Directive 77/388/EEC of 17 May 1977 [1] allow a Member State to maintain in force or establish a provision imposing value added tax on the supply by a taxable person to itself of property for the use of its business, although that supply gives rise to a right to deduct the value added tax thereby levied immediately and in full?

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[1] 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).

Reference for a preliminary ruling from the Juzgado de lo Mercantil No 1 de Alicante (Spain) lodged on 11 October 2010 — Celaya Emparanza y Galdos Internacional S.A. v Proyectos Integrales de Balizamientos S.L.

(Case C-488/10)

(2010/C 346/56)

Language of the case: Spanish

Referring court

Juzgado de lo Mercantil

Parties to the main proceedings

Applicant: Celaya Emparanza y Galdos Internacional S.A.

Defendant: Proyectos Integrales de Balizamientos S.L.

Questions referred

1. In proceedings for infringement of the exclusive right conferred by a registered Community design, does the right to prevent the use thereof by third parties provided for in Article 19(1) of Council Regulation (EC) No 6/2002 [1] of 12 December 2001 on Community designs extend to any third party who uses another design that does not produce on informed users a different overall impression or, on the contrary, is a third party who uses a subsequent Community design registered in his name excluded until such time as that design is declared invalid?

2. Is the answer to the first question unconnected with the intention of the third party or does it depend on his conduct, a decisive point being whether the third party applied for and registered the later Community design after receiving an extra-judicial demand from the proprietor of the earlier Community design calling on him to cease marketing the product on the ground that it infringes rights deriving from that earlier design?

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[1] OJ 2002 L 3, p. 1

Reference for a preliminary ruling from the Oberlandesgericht Celle (Germany) lodged on 15 October 2010 — Joseba Andoni Aguirre Zarraga v Simone Pelz

(Case C-491/10)

(2010/C 346/57)

Language of the case: German

Referring court

Oberlandesgericht Celle

Parties to the main proceedings

Applicant: Joseba Andoni Aguirre Zarraga

Defendant: Simone Pelz

Questions referred

1. Where the judgment to be enforced issued in the Member State of origin contains a serious infringement of fundamental rights, does the court of the Member State of enforcement exceptionally itself enjoy a power to examine the matter, pursuant to an interpretation of Article 42 of the Brussels IIa Regulation [1] in conformity with the Charter on Fundamental Rights?

2. Is the court of the Member State of enforcement obliged to enforce notwithstanding the fact that, according to the case-file, the certificate issued by the court of the Member State of origin under Article 42 of the Brussels IIa Regulation is clearly inaccurate?

[1] Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000; OJ L 338, 23.12.2003, p. 1

Reference for a preliminary ruling from the Ufficio del Giudice di Pace di Venafro (Italy) lodged on 15 October 2010 — Criminal proceedings against Aldo Patriciello

(Case C-496/10)

(2010/C 346/58)

Language of the case: Italian

Referring court

Ufficio del Giudice di Pace di Venafro

Party to the main proceedings

Aldo Patriciello

Question referred

Do the facts construed in abstracto as a criminal offence committed by Aldo Patriciello (a Member of the European Parliament, described in the indictment and in favour of whom the European Parliament adopted a decision on 5 May 2009 to defend immunity), categorised as insulting behaviour under Article 594 of the Penal Code, correspond to the expression of an opinion in the performance of parliamentary duties for the purposes of Article 9 of the Protocol?

Reference for a preliminary ruling from the Commissione Tributaria Centrale — Sezione di Bologna (Italy) lodged on 19 October 2010 — Ufficio IVA di Piacenza v Belvedere Costruzioni Srl

(Case C-500/10)

(2010/C 346/59)

Language of the case: Italian

Referring court

Commissione Tributaria Centrale — Sezione di Bologna

Parties to the main proceedings

Applicant: Ufficio IVA di Piacenza

Defendant: Belvedere Costruzioni Srl

Question referred

Does Article 10 of the EC Treaty, now Article 4 of the Treaty on European Union, read in conjunction with Articles 2 and 22 of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes, preclude [legislation such as] the legislation of the Italian State laid down in Article 3(2a) of Decree-Law No 40 of 25 March 2010, converted into Law No 73 of 22 May 2010, under which the court with jurisdiction in tax matters may not rule on the existence of an alleged tax debt which the Tax Authority has sought, in due time, to recover by appealing against an unfavourable decision and which thus in effect provides for the VAT debt at issue to be wholly waived in cases where the courts have ruled both at first instance and at the first level of appeal that such a debt does not exist, without the taxable person in favour of whom the waiver has operated having to pay even a fraction of the debt at issue?

Reference for a preliminary ruling from the Tribunale di Santa Maria Capua Vetere (Italy) lodged on 19 October 2010 — Public Prosecutor's Office v Raffaele Russo

(Case C-501/10)

(2010/C 346/60)

Language of the case: Italian

Referring court

Tribunale di Santa Maria Capua Vetere

Parties to the main proceedings

Applicant: Public Prosecutor's Office

Defendant: Raffaele Russo

Questions referred

Can freedom of establishment and freedom to provide services be restricted in a national system founded on the grant of a limited number of licences and consequently of police authorisations which, inter alia:

1. tends generally to protect holders of licences issued at an earlier period following a tendering procedure which unlawfully excluded some operators;

2. actually safeguards acquired rights (prohibiting new licensees from locating their kiosks within a specified distance of those already in existence);

3. provides that the licence may lapse, including where the licence holder carries on, even indirectly, cross-border gaming activities analogous to those under the licence, with the consequent forfeiture of appreciable guarantee deposits?

Reference for a preliminary ruling from the Raad van State (Netherlands) lodged on 20 October 2010 — Staatssecretaris van Justitie v M. Singh

(Case C-502/10)

(2010/C 346/61)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Appellant: Staatssecretaris van Justitie

Other party: M. Singh

Question referred

Is the concept of formally limited residence permit within the meaning of Article 3(2)(e) of Council Directive 2003/109/EC [1] of 25 November 2003 concerning the status of third-country nationals who are long-term residents to be interpreted as including a fixed-period residence permit which, under Netherlands law, does not offer any prospect of a residence permit of indefinite duration, even if, under Netherlands law, the period of validity of the fixed-period residence permit can in principle be extended indefinitely and also if a particular group of people, such as spiritual leaders and religious teachers, are thereby excluded from the application of the Directive?

[1] OJ 2004 L 16, p. 44.

Reference for a preliminary ruling from the Varhoven administrativen sad (Bulgaria) lodged on 20 October 2010 — Evroetil AD v Direktor na Agentsia 'Mitnitsi'

(Case C-503/10)

(2010/C 346/62)

Language of the case: Bulgarian

Referring court

Varhoven administrativen sad

Parties to the main proceedings

Applicant: Evroetil AD

Defendant: Direktor na Agentsia 'Mitnitsi'

Questions referred

1. Is Article 2(2)(a) of Directive 2003/30/EC of the European Parliament and of the Council of 8 May 2003 on the promotion of the use of biofuels or other renewable fuels for transport [1] to be interpreted as meaning that the definition of bioethanol refers to products such as that in question (covers products such as that in question), which has the following characteristics and qualities:

   — it is produced from biomass,

   — the production takes place by means of a special technology, which is described in the technical specifications for the production of bioethanol drafted by the appellant Evroetil AD, and which differs from the technology for the production of agricultural ethyl alcohol according to the technical specifications drafted by that producer,

   — it contains more than 98.5 % alcohol and the following substances, which render it unsuitable for consumption: higher alcohols — 714.49 to 8 311 mg/dm^3; aldehyde — 238.16 to 411 mg/dm^3; ester (ethyl acetate) — 1 014 to 8 929 mg/dm^3,

   — it complies with the requirements of the European standard prEN 15376 for biothanol as fuel,

   — it is intended for use as fuel and is, by its addition to A95-petrol, actually used as fuel and sold at petrol stations,

   — it is not denatured in a special denaturing procedure.

2. Is Article 2(2)(a) of Directive 2003/30 to be interpreted as meaning that the product in question can be classified as bioethanol only where it is actually used as biofuel, or is it sufficient that it is intended for use as biofuel and/or is actually suitable for use as biofuel?

3. If, on the basis of the answers to questions 1 and 2, it is to be assumed that the product in question or a corresponding part thereof is bioethanol, under which heading of the Combined Nomenclature (CN) in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended by Commission Regulation (EEC) No 2587/91 of 26 July 1991 ([2]), is the product in question then to be classified:

   3.1 Are the provisions of Chapter 22 of the CN and specifically heading 2207 to be interpreted as meaning that they cover bioethanol?

   3.2 If the answer to question 3.1 is in the affirmative, should then the classification of bioethanol and specifically the product in question take account of whether the product has been denatured (in accordance with the procedure set out in Commission Regulation (EC) No 3199/93 of 22 November 1993 on the mutual recognition of procedures for the complete denaturing of alcohol for the purposes of exemption from excise duty or in accordance with other admissible procedures) ([3])?

   3.3 If the answer to question 3.2 is in the affirmative, are then the provisions of the CN concerning heading 2207 to be interpreted as meaning that only denatured bioethanol is to be classified under code 2207 20 000 of the CN?

   3.4 If the answer to question 3.3 is in the affirmative, are then the provisions of the CN concerning heading 2207 to be interpreted as meaning that bioethanol that has not been denatured is to be classified under code 2207 10 000 of the CN?

   3.5 If the answer to question 3.1 is in the affirmative and the answer to question 3.2 is in the negative, under which of the two subheadings — 2207 10 000 or 2207 20 000 — is then the product in question to be classified?

   3.6 If the answer to question 3.1 is in the negative, is bioethanol then to be classified under one of the CN codes stated in Article 2(1) of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity ([4]), and under which one?

4. If, on the basis of the answers to questions 1 and 2, it is to be assumed that the product in question or a corresponding part thereof is not bioethanol, is then the product in question, which has the characteristics and qualities stated in question 1, to be classified as ethyl alcohol within the meaning of the first indent of Article 20(1) of Council Directive 92/83/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on alcohol and alcoholic beverages ([5])?

([1]) OJ 2003 L 123, p. 42
([2]) OJ 1992 L 328, p. 50
([3]) OJ 1993 L 288, p. 12
([4]) OJ 2003 L 283, p. 51
([5]) OJ 1992 L 316, p. 21

Reference for a preliminary ruling from the Østre Landsret (Denmark), lodged on 25 October 2010 — DR and TV2 Danmark A/S v NCB

(Case C-510/10)

(2010/C 346/63)

Language of the case: Danish

Referring court

Østre Landsret

Parties to the main proceedings

Applicants: 1. DR

2. TV2 Danmark A/S

Defendant: NCB

Questions referred

1. Should the terms 'by means of their own facilities' in Article 5(2)(d) of Directive 2001/29/EC ([1]) and 'on behalf of and under the responsibility of the broadcasting organisation' in recital 41 in the preamble to that directive be interpreted with reference to national law or to Community law?

2. Should it be assumed that the wording of Article 5(2)(d) of Directive 2001/29/EC, as, for example, in the Danish, English and French versions of that provision, is to mean 'on behalf of and under the responsibility of the broadcasting organisation' or, as, for example, in the German version, is to mean 'on behalf of or under the responsibility of the broadcasting organisation'?

3. On the assumption that the terms cited in Question 1 are to be interpreted with reference to Community law, the following question is asked: What criteria should national courts apply to a specific assessment as to whether a recording made by a third party (the 'Producer') for use in a broadcasting organisation's transmissions was made 'by means of their own facilities', and 'on behalf of [and/or] under the responsibility of the broadcasting organisation', such that the recording is covered by the exception laid down in Article 5(2)(d)?

In connection with the answer to Question 3, answers are sought in particular to the following questions:

(a) Should the concept of 'own facilities' in Article 5(2)(d) of Directive 2001/29/EC be understood to mean that a recording made by the Producer for use in a broadcasting organisation's transmissions is covered by the exception laid down in Article 5(2)(d) only if the broadcasting organisation is liable towards third parties for the Producer's acts and omissions in relation to the recording, as if the broadcasting organisation had itself carried out those acts and omissions?

(b) Is the condition that the recording must be made 'on behalf of [and/or] under the responsibility of the broadcasting organisation' satisfied where a broadcasting organisation has commissioned the Producer to make the recording in order that that broadcasting organisation can transmit the recording in question, and on the assumption that the broadcasting organisation concerned has the right to transmit the recording in question?

Clarification is sought as to whether the following situations may or must be taken into consideration for the purpose of answering Question 3(b), and if so, what weight should be given to them:

(i) Whether it is the broadcasting organisation or the Producer which has the final and conclusive artistic/editorial decision on the content of the commissioned programme under agreements between those parties.

(ii) Whether the broadcasting organisation is liable towards third parties in respect of the Producer's obligations in relation to the recording, as if the broadcasting organisation itself had carried out those acts and omissions.

(iii) Whether the Producer is contractually obliged by the agreement with the broadcasting organisation to deliver the programme in question to the broadcasting organisation for a specified price and has to meet, out of this price, all expenses that may be associated with the recording.

(iv) Whether it is the broadcasting organisation or the Producer which assumes liability for the recording in question vis-à-vis third parties.

(c) Is the condition that the recording must be made 'on behalf of [and/or] under the responsibility of the broadcasting organisation' satisfied in the case where a broadcasting organisation has commissioned the Producer to make the recording in order for the broadcasting organisation to be able to transmit the recording in question, and on the assumption that the broadcasting organisation in question has the right to transmit the recording, where the Producer, in the agreement with the broadcasting organisation relating to the recording, has assumed the financial and legal responsibility for (i) meeting all the expenses associated with the recording in return for payment of an amount fixed in advance; (ii) the purchase of rights; and (iii) unforeseen circumstances, including any delay in the recording and breach of contract, but without the broadcasting organisation being liable towards third parties in respect of the Producer's obligations in relation to the recording as if the broadcasting organisation had itself carried out those acts and omissions?

([1]) OJ 2001 L 167, p. 10.

Order of the President of the Court of 8 October 2010 (reference for a preliminary ruling from the Landesgericht Ried im Innkreis (Austria)) — Criminal proceedings against Roland Langer

(Case C-235/08) ([1])

(2010/C 346/64)

Language of the case: German

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

([1]) OJ C 223, 30.8.2008.

Order of the President of the Court of 1 July 2010 — European Commission v Ireland

(Case C-95/09) ([1])

(2010/C 346/65)

Language of the case: English

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

([1]) OJ C 113, 16.5.2009.

Order of the President of the First Chamber of the Court of 3 June 2010 (reference for a preliminary ruling from the High Court of Justice in Northern Ireland, Queen's Bench Division — United Kingdom) — Seaport (NI) Ltd v Department of the Environment for Northern Ireland

(Case C-182/09) ([1])

(2010/C 346/66)

Language of the case: English

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

([1]) OJ C 193, 15.8.2009.

Order of the President of the Court of 2 September 2010 — European Commission v Ireland

(Case C-355/09) [1]

(2010/C 346/67)

Language of the case: English

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

[1] OJ C 256, 24.10.2009.

Order of the President of the Fifth Chamber of the Court of 22 June 2010 — European Commission v United Kingdom of Great Britain and Northern Ireland

(Case C-394/09) [1]

(2010/C 346/68)

Language of the case: English

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

[1] OJ C 282, 21.11.2009.

Order of the President of the Court of 9 June 2010 — European Commission v French Republic

(Case C-510/09) [1]

(2010/C 346/69)

Language of the case: French

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

[1] OJ C 37, 13.2.2010.

Order of the President of the Court of 1 September 2010 — European Commission v Portuguese Republic

(Case C-531/09) [1]

(2010/C 346/70)

Language of the case: Portuguese

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

[1] OJ C 51, 27.2.2010.

Order of the President of the Court of 24 September 2010 (reference for a preliminary ruling from the Giudice di Pace di Varese — Italy) — Mohammed Mohiuddin Siddiquee v Azienda Sanitaria Locale della Provincia di Varese

(Case C-541/09) [1]

(2010/C 346/71)

Language of the case: Italian

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

[1] OJ C 63, 13.3.2010.

Order of the President of the Court of 19 October 2010 — European Commission v Kingdom of Spain

(Case C-192/10) [1]

(2010/C 346/72)

Language of the case: Spanish

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

[1] OJ C 195, 17.7.2010.

Order of the President of the Court of 1 September 2010 — European Commission v Republic of Austria

(Case C-223/10) [1]

(2010/C 346/73)

Language of the case: German

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

[1] OJ C 195, 17.7.2010.

Order of the President of the Court of 19 October 2010 (reference for a preliminary ruling from the Înalta Curte de Casație și Justiție — Romania) — Criminal proceedings v Gheorghe Kita

(Case C-264/10) [1]

(2010/C 346/74)

Language of the case: Romanian

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

[1] OJ C 209, 31.7.2010.

GENERAL COURT

Judgment of the General Court of 27 October 2010 — Alliance One International and Others v Commission

(Case T-24/05) [1]

(Competition — Agreements, decisions and concerted practices — Spanish market for the purchase and first processing of raw tobacco — Decision finding an infringement of Article 81 EC — Price-fixing and market-sharing — Obligation to state the reasons on which the decision is based — Attributability of the unlawful conduct — Equal treatment)

(2010/C 346/75)

Language of the case: English

Parties

Applicants: Alliance One International, Inc., formerly Standard Commercial Corp. (Danville, Virginia, United States); Standard Commercial Tobacco Co., Inc. (Wilson, North Carolina, United States) and Trans-Continental Leaf Tobacco Corp. Ltd, (Vaduz, Liechtenstein), (represented initially by M. Odriozola Alén, M. Marañon Hermoso and A. Emch, and subsequently by M. Odriozola Alén, M. Barrantes Díaz and A. João Vide, lawyers)

Defendant: European Commission (represented by: F. Castillo de la Torre and É. Gippini Fournier, Agents)

Re:

Application for the annulment of Commission Decision C(2004) 4030 final of 20 October 2004 relating to a proceeding under Article 81(1) [EC] (Case COMP/C.38.238/B.2 — Raw tobacco — Spain)

Operative part of the judgment

The Court:

1. *Annuls Commission Decision C(2004) 4030 final of 20 October 2004 relating to a proceeding under Article 81(1) [EC] (Case COMP/C.38.238/B.2 — Raw tobacco — Spain) in so far as it relates to Trans-Continental Leaf Tobacco Corp. Ltd.;*

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

3. *Orders Alliance One International, Inc., Standard Commercial Tobacco Co., Inc. and Trans-Continental Leaf Tobacco to bear two-thirds of their own costs and to pay two-thirds of the costs incurred by the European Commission, and the European Commission to bear one-third of its own costs and to pay one-third of those incurred by the applicants.*

[1] OJ C 82, 2.4.2005.

Judgment of the General Court of 28 October 2010 — Spain v Commission

(Case T-227/07) [1]

(EAGGF — Guarantee Section — Expenditure excluded from Community financing — Production aid intended for tomato processors — Spot checks over sufficient periods — Proportionality)

(2010/C 346/76)

Language of the case: Spanish

Parties

Applicant: Kingdom of Spain (represented by: M. Muñoz Pérez, lawyer)

Defendant: European Commission (represented by: initially T. van Rijn and then F. Jimeno Fernández, Agents)

Re:

Action for annulment, in part, of Commission Decision 2007/243/EC of 18 April 2007 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ 2007 L 106, p. 55).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

[1] OJ C 211, 8.9.2007.

Judgment of the General Court of 26 October 2010 — Federal Republic of Germany v Commission

(Case T-236/07) [1]

(EAGGF — Guarantee Section — Clearance of accounts — 2006 Financial year — Date of application of the first subparagraph of Article 32(5) of Regulation (EC) No 1290/2005 — Binding force of a unilateral declaration by the Commission annexed to the minutes of a Coreper meeting)

(2010/C 346/77)

Language of the case: German

Parties

Applicant: Federal Republic of Germany (represented initially by M. Lumma and J. Möller, and subsequently by J. Möller and N. Graf Vitzthum, Agents)

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

Re:

APPLICATION for the partial annulment of Commission Decision 2007/327/EC of 27 April 2007 on the clearance of the accounts of the paying agencies of Member States concerning expenditure financed by the European Agricultural Guidance and Guarantee Fund (EAGGF), Guarantee Section, for the 2006 financial year (OJ 2007 L 122, p. 51)

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the Federal Republic of Germany to pay the costs.*

([1]) OJ C 211, 8.9.2007.

Judgment of the General Court of 26 October 2010 — CNOP and CCG v Commission

(Case T-23/09) ([1])

(Competition — Administrative procedure — Decision ordering an inspection — Article 20(4) of Regulation (EC) No 1/2003 — Absence of legal personality of an addressee — Obligation to state the reasons on which the decision is based — Concepts of undertaking and association of undertakings)

(2010/C 346/78)

Language of the case: French

Parties

Applicants: Conseil national de l'Ordre des pharmaciens (CNOP) (Paris, France); and Conseil central de la section G de l'Ordre national des pharmaciens (CCG) (Paris) (represented initially by Y. R. Guillou, H. Speyart van Woerden, T. Verstraeten and C. van Sasse van Ysselt, and subsequently by Y. R.Guillou, L. Defalque and C. Robert, lawyers)

Defendant: European Commission (represented by: A. Bouquet and É. Gippini Fournier, Agents)

Re:

Application for annulment of Commission Decision C(2008) 6494 of 29 October 2008 in Case COMP/39510 ordering the Ordre national des pharmaciens (ONP), the CNOP and the CCG to submit to an inspection pursuant to Article 20(4) of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 [EC] and 82 [EC] (OJ 2003 L 1, p. 1).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the Conseil national de l'Ordre des pharmaciens (CNOP) and the Conseil central de la section G de l'Ordre national des pharmaciens (CCG) to pay the costs.*

([1]) OJ C 55, 7.3.2009.

Judgment of the General Court of 27 October 2010 — Reali v Commission

(Case T-65/09 P) ([1])

(Appeal — Civil service — Contract staff — Recruitment — Classification in grade — Experience — Qualifications — Equivalence)

(2010/C 346/79)

Language of the case: English

Parties

Appellant: Enzo Reali (Florence, Italy) (represented by: S. Pappas)

Other party to the proceedings: European Commission (represented by: J. Currall and B. Eggers, Agents)

Re:

Appeal against the judgment of the European Union Civil Service Tribunal (Second Chamber) of 11 December 2008, in Case F-136/06 *Reali* v *Commission* [2008] ECR-SC I-A-1-0000 and II-A-1-0000, seeking to have that judgment set aside.

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Mr Enzo Reali to bear his own costs and to pay those incurred by the European Commission on the appeal.*

([1]) OJ C 102, 1.5.2009.

Judgment of the General Court of 28 October 2010 — Farmeco v OHIM — Allergan (BOTUMAX)

(Case T-131/09) ([1])

(Community trade mark — Opposition proceedings — Application for the Community word mark BOTUMAX — Earlier Community word and figurative marks BOTOX — Relative grounds for refusal — Likelihood of confusion — Damage to reputation — Article 8(1)(b) and (5) of Regulation (EC) No 40/94 (now Article 8(1)(b) and (5) of Regulation (EC) No 207/2009))

(2010/C 346/80)

Language of the case: English

Parties

Applicant: Farmeco AE Dermokallyntika (Athens, Greece) (represented by: N. Lymperis, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Allergan Inc. (Irvine, California, United States)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 2 February 2009 (Case R 60/2008-4), relating to opposition proceedings between Allergan Inc. and Farmeco AE Dermokallyntika.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Farmeco AE Dermokallyntika to pay the costs.*

([1]) OJ C 129, 6.6.2009.

Judgment of the General Court of 27 October 2010 — Michalakopoulou Ktimatiki Touristiki v OHIM — Free (FREE)

(Case T-365/09) ([1])

(Community trade mark — Opposition proceedings — Application for the Community word mark FREE — Earlier national word mark FREE and earlier national figurative mark free LA LIBERTÉ N'A PAS DE PRIX — Relative ground for refusal — Likelihood of confusion — Similarity of the signs — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2010/C 346/81)

Language of the case: English

Parties

Applicant: Michalakopoulou Ktimatiki Touristiki AE (Athens, Greece) (represented by: K. Papadiamantis and A. Koliothomas, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervening before the General Court: Free SAS (Paris, France) (represented by: Y. Coursin, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 11 June 2009 (Case R 1346/2008-1) relating to opposition proceedings between Free SAS and Eidikes Ekdoseis AE

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Michalakopoulou Ktimatiki Touristiki AE to bear its own costs and to pay those incurred by the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) and Free SAS in the proceedings before the Court.*

([1]) OJ C 267, 7.11.2009.

Order of the General Court of 28 October 2010 — Marcuccio v Commission

(Case T-32/09 P) ([1])

(Appeal — Civil service — Officials — Pre-litigation procedure — Appeal clearly unfounded — Cross-appeal limited to costs)

(2010/C 346/82)

Language of the case: Italian

Parties

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

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

Re:

Appeal against the order of the Civil Service Tribunal of the European Union (First Chamber) of 4 November 2008 in Case F-18/07 *Marcuccio* v *Commission*, not published in the ECR, seeking the annulment of that order.

Operative part of the order

1. *The appeal is dismissed as clearly unfounded.*

2. *The cross-appeal is dismissed as clearly inadmissible.*

3. *Mr Luigi Marcuccio is ordered to bear, in addition to his own costs, the costs incurred by the Commission in the appeal.*

4. *Each party is ordered to bear its own costs in the cross-appeal.*

([1]) OJ C 69,21.3.2009.

Order of the General Court of 18 October 2010 — Marcuccio v Commission

(Case T-515/09 P) ([1])

(Appeal — Civil service — Officials — Refusal of an institution to translate a decision — Appeal in part manifestly inadmissible and in part manifestly unfounded)

(2010/C 346/83)

Language of the case: Italian

Parties

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

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

Re:

Appeal against the order of the Civil Service Tribunal of the European Union (First Chamber) of 7 October 2009 in Case F-3/08 *Marcuccio* v *Commission* ECR SC-0000 seeking the annulment of that order.

Operative part of the order

1. *The appeal is dismissed.*

2. *Mr Luigi Marcuccio is ordered to bear his own costs and to pay the costs incurred by the European Commission in the present proceedings.*

([1]) OJ C 51, 27.2.2010.

Order of the General Court of 18 October 2010 — Marcuccio v Commission

(Case T-516/09 P) ([1])

(Appeal — Civil service — Officials — Rejection of a request for investigation — Refusal of an institution to translate a decision — Appeal in part manifestly inadmissible and in part manifestly unfounded)

(2010/C 346/84)

Language of the case: Italian

Parties

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

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

Re:

Appeal against the order of the Civil Service Tribunal of the European Union (First Chamber) of 7 October 2009 in Case F-122/07 *Marcuccio* v *Commission* ECR-SC 0000 seeking the annulment of that order.

Operative part of the order

1. *The appeal is dismissed.*

2. *Mr Luigi Marcuccio is ordered to bear his own costs and to pay the costs incurred by the European Commission in the present proceedings.*

([1]) OJ C 51, 27.2.2010.

Order of the General Court of 25 October 2010 — Inuit Tapiriit Kanatami and Others v Parliament and Council

(Case T-18/10 R II)

(Applications for interim measures — Regulation (EC) No 1007/2009 — Trade in seal products — Ban on import and sale — Exception in favour of Inuit communities — Second application for suspension of operation of a measure — New facts — No urgency)

(2010/C 346/85)

Language of the case: English

Parties

Applicants: Inuit Tapiriit Kanatami (Ottawa, Canada), Nativak Hunters and Trappers Association (Qikiqtarjuaq, Canada), Pangnirtung Hunters' and Trappers' Association (Pangnirtung, Canada), Jaypootie Moesesie (Qikiqtarjuaq), Allen Kooneeliusie (Qikiqtarjuaq), Toomasie Newkingnak (Qikiqtarjuaq), David Kuptana (Ulukhaktok, Canada), Karliin Aariak (Iqaluit, Canada), Canadian Seal Marketing Group (Quebec, Canada), Ta Ma Su Seal Products (Cap-aux-Meules, Canada), Fur Institute of Canada (Ottawa), NuTan Furs, Inc. (Catalina, Canada), GC Rieber Skinn AS (Bergen, Norway), Inuit Circumpolar Conference Greenland (ICC) (Nuuk, Greenland, Denmark), Johannes Egede (Nuuk), Kalaallit Nunaanni Aalisartut Piniartullu Kattuffiat (KNAPK) (Nuuk) (represented by: J. Bouckaert and H. Viaene, lawyers)

Defendants: European Parliament (represented by: I. Anagnostopoulou and L. Visaggio, acting as Agents); and Council of the European Union (represented by: M. Moore and K. Michoel, acting as Agents)

Interveners in support of the defendants: European Commission (represented by: É. White, P. Oliver and K. Mifsud-Bonnici, acting as Agents); and Kingdom of the Netherlands (represented by: C. Wissels, Y. de Vries, J. Langer and M. Noort, acting as Agents)

Re:

Application for suspension of the operation of Regulation (EC) No 1007/2009 of the European Parliament and of the Council of 16 September 2009 on trade in seal products (OJ 2009 L 286, p. 36).

Operative part of the order

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

2. *The order of the President of the General Court of 19 August 2010 in Case T-18/10 R II Inuit Tapiriit Kanatami and Others v Parliament and Council, not published in the ECR, is cancelled.*

3. *The costs are reserved.*

Order of the President of the General Court of 25 October 2010 — Lito Maieftiko Gynaikologiko kai Cheirourgiko Kentro v Commission

(Case T-353/10 R)

(Application for interim measures — Financial assistance — Debit note for recovery of financial assistance — Application for suspension of execution — Failure to have regard to formal requirements — Inadmissibility)

(2010/C 346/86)

Language of the case: Greek

Parties

Applicant: Lito Maieftiko Gynaikologiko kai Cheirourgiko Kentro AE (Athens, Greece) (represented by: E. Tzannini, lawyer)

Defendant: European Commission (represented by: D. Triantafyllou and A. Sauka, Agents)

Re:

Application for suspension of execution of a debit note issued by the Commission on 22 July 2010 for the recovery of the sum of EUR 109 415,20 paid in the context of financial assistance in support of a medical research project.

Operative part of the order

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

2. *Costs are reserved.*

Action brought on 17 September 2010 — IEM Erga — Erevnes Meletes Perivallontos & Khorotaxias v Commission

(Case T-435/10)

(2010/C 346/87)

Language of the case: Greek

Parties

Applicant: IEM Erga — Erevnes Meletes Perivallontos & Khorotaxias A.E. (Athens, Greece) (represented by: N. Sofokleous, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the preparatory act of the European Commission's Directorate-General for Research of 7 May 2010 notifying the applicant of the decision to issue it with a demand for payment;

— annul demand for payment (debit note) No 3241004968 of the European Commission;

— order the Commission to pay the costs.

Pleas in law and main arguments

By the present action, the applicant seeks the annulment of the preparatory act of the European Commission's Directorate-General for Research of 7 May 2010 notifying it of the decision to issue it with a demand for payment and the annulment of demand for payment (debit note) No 3241004968 of 14 July 2010 which was issued under Contract FAIR-CT98-9544.

In support of its pleas, the applicant puts forward the following grounds:

— lack of lawful basis and lack of competence inasmuch as the contested measures, which were adopted in the context of Contract FAIR-CT98-9544, are administrative measures adopted without a lawful basis and without competence, because that contract, which is governed, pursuant to Article 10 thereof, exclusively by Greek law, does not grant the Commission the right to determine unilaterally and recover autonomously its claims arising from the contract;

— lack of lawful reasoning, lack of proof and denial of the Commission's assertions inasmuch as, as is shown by the General Court's judgment in Case T-7/05 and the invoices issued by the applicant for the supply of services, the sums which the applicant received from Parthenon A.E. in respect of those invoices constituted part of its remuneration for the supply of the services set out in the invoices and not an advance payment which Parthenon A.E. had received from the Commission as the applicant's representative;

— conrtradictory reasoning in the contested measures;

— lack of lawful reasoning and lack of proof inasmuch as the arguments by which the Commission justifies the contested measures are not demonstrated either by the grounds of the General Court's judgment in Case T-7/05 *Commission* v *Parthenon A.E.* or by the invoices adduced before the General Court or the other evidence.

Action brought on 17 September 2010 — Dow AgroSciences and Dintec Agroquímica — Produtos Químicos v Commission

(Case T-446/10)

(2010/C 346/88)

Language of the case: English

Parties

Applicants: Dow AgroSciences Ltd (Hitchin, United Kingdom) and Dintec Agroquímica — Produtos Químicos, Lda (Funchal, Portugal) (represented by: K. Van Maldegem and C. Mereu, lawyers)

Defendant: European Commission

Form of order sought

— declare the application admissible and well-founded;

— annul Decision 2010/355/EU;

— order the Commission to pay the costs of the proceedings,

— take such other or further measures as justice may require.

Pleas in law and main arguments

By means of this application the applicants seek the annulment of the Commission Decision 2010/355/EU of 25 June 2010 concerning the non-inclusion of trifluralin in Annex I to Council Directive 91/414/EEC ([1]).

The applicants put forward two pleas in law in support of their claims.

First, they argue that the contested decision is unlawful since it is based on, and exists only because, of an unlawful decision. That other decision ([2]), 2007/629/EC ([3]), is the original non-inclusion decision for trifluralin which resulted from the Article 8(2) of Directive 91/414 ([4]) review of the substance. Had decision 2007/629/EC not been adopted unlawfully, the contested decision would not exist.

Second, the applicants submit that the contested act is itself unlawful for self-standing reasons. They contend that the Commission has erred as a matter of law in justifying the contested act on the grounds of the alleged concerns regarding:

— potential long-range transport; in this regard, the applicants claim that the Commission failed to take into account data (lack of scientific justification) and violated the principle of sound administration and right of defence. Moreover, the approach adopted by the Commission with regard to long-range transport is, in the applicants' view, discriminatory and disproportionate;

— fish toxicity; in this regard, the applicants claim that the scientific justification does not support the finding. Moreover, in their opinion, the contested act is disproportionate in the way it approaches the alleged chronic toxic concern.

([1]) Notified under document C(2010) 4199, OJ 2010 L 160, p. 30
([2]) Contested by the applicants in the framework of Case T-475/07, *Dow Agrociences and Others* v *Commission,* OJ 2008 C 51, p. 54
([3]) Commission Decision of 20 September 2007 concerning the non-inclusion of trifluralin in Annex I to Council Directive 91/414/EEC and the withdrawal of authorisations for plant protection products containing that substance (notified under document number C(2007) 4282), OJ 2007 L 255, p. 42
([4]) Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market, OJ 1991 L 230, p. 1

Action brought on 21 September 2010 — Evropaïki Dynamiki v Court of justice

(Case T-447/10)

(2010/C 346/89)

Language of the case: English

Parties

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

Defendant: Court of justice

Form of order sought

— annul the defendant's decision to reject the bids of the applicant, filed in response to the open call for tenders CJ 7/09 "Public contracts for the provision of information technology services" ([1]), and all further related decisions of the defendant including the one to award the respective contracts to the successful contractors;

— order the defendant to pay the applicant's damages suffered on account of the tendering procedure in question for an amount of EUR 5 000 000

— order the defendant to pay the applicant's damages suffered on account of the loss of opportunity and damage to its reputation and credibility of the amount of EUR 500 000;

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

Pleas in law and main arguments

In the present case the applicant seeks the annulment of the defendant's decision of 12 July 2010 to reject its bids submitted in response to a call for an open tender CJ 7/09 for the services of information technology and to award the contracts to the successful contractors. The applicant further requests compensation for the alleged damages in account of the tender procedure.

In support of its claims the applicant puts forward the following grounds.

First, the applicant argues that the contracting authority failed to observe the principle of non discrimination of candidate tenderers since several of the winning tenderers did not comply with the exclusion criteria and thus has infringed Articles 93 and 94 of the financial regulation ([2]), Article 133 of the implementing rules as well as the principle of good administration.

Further, the applicant submits that the defendant infringed the provisions of Article 100(2) of the financial regulation in the context of both lots, i.e. the obligation to state reasons by refusing to provide sufficient justification or explanation to the applicant. Especially, the characteristics and relative advantages of the tender selected were not adequately provided. Only a simple technical mark on the applicant's offer under each criterion as well as vague terms were provided, while for the winning tenderers it was only mentioned that its offer was considered as of higher quality.

Third, the applicant argues that the defendant did not ensure a fair treatment to all tenderers when inviting them to visit its premises since this exercise did not allow them to compete in a fair manner against the contractor who finally won this call for tenders.

Finally, the applicant contends that by using criteria other than those allowed for in Article 138 of the financial regulation and by processing data which were not proposed by the applicant itself for award and by mixing selection and award criteria and not using criteria linked to the economic advantage of the offer, the defendant infringed Article 97 of the financial regulation and Article 138 of the implementing rules.

([1]) OJ 2009/S 217-312293

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

Action brought on 20 September 2010 — ClientEarth and Others v Commission

(Case T-449/10)

(2010/C 346/90)

Language of the case: English

Parties

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

Defendant: European Commission

Form of order sought

— annul the contested decision of 20 July 2010, the statutory negative reply under Article 8(3) of Regulation No 1049/2001 ([1]), by which the Commission withheld from the applicant certain documents containing environmental information;

— order the Commission to provide access to all requested documents identified in the course of its review of the 2 April 2010 application and in the confirmatory application of 8 June 2010 unless protected under absolute exception in Article 4(1) of Regulation No 1049/2001, without delay or redaction; and

— order the defendant to pay the applicant's costs, pursuant to Article 87 of the Rules of procedure of the General Court, including the costs of any intervening party.

Pleas in law and main arguments

By means of the present application, the applicants seek, pursuant to Article 263 TFUE, the annulment of the Commission's implied decision, rejecting the applicants' request of the access to certain documents containing environmental information relating to greenhouse gas emissions resulting of production of biofuels as established or held by the Commission in the framework of the elaborating of a report foreseen in Article 19(6) of Directive 2009/28/EC ([2]).

In support of their application the applicants put forward the following pleas in law.

First, they argue that the Commission has infringed Articles 7(3) and 8(2) of Regulation No 1049/2001 since it has failed to provide detailed reasons for requesting the extensions as granted on 27 April 2010 and 29 June 2010.

Second, the applicants submit that the Commission has infringed Articles 7(1) and 8(1) of Regulation No 1049/2001 since it has failed to provide detailed reasons for withholding each document. On 20 July 2010, the date of expiration of the time-limit prescribed in the regulation, the Commission refused to release the responsive documents and provided no detailed reasons for withholding them as required under the regulation and case-law.

Third, the applicants contend that the defendant has violated Article 4 of Regulation (EC) No 1049/2001 since it has failed to carry out a concrete, individual assessment of the content of each document. On or before 20 July 2010, the date of expiration of the time-limit prescribed in the regulation, the Commission failed to perform, or make known, a concrete, individual assessment and determine whether the documents or any portion thereof fall under an exception to the general rule that all documents should be made accessible.

Fourth, they claim that the Commission has acted in violation of Articles 7 and 8 of Regulation No 1049/2001 and in violation of Article 6 of Regulation No 1367/2006 ([3]) as it has failed to fulfil legal obligations during the two-stage administrative procedure. The applicants submit that the Commission refused to release the documents or claim exceptions to justify their withholding.

([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]) 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, OJ 2009 L 140, p. 16

([3]) 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 2006 L 264, p. 13.

Action brought on 1 October 2010 — Timab Industries and CFPR v Commission

(Case T-456/10)

(2010/C 346/91)

Language of the case: French

Parties

Applicants: Timab Industries (Dinard, France) and Cie financière et de participations Roullier (CFPR) (Saint-Malo, France) (represented by: N. Lenoir, lawyer)

Defendant: European Commission

Form of order sought

— principally, annul the decision;

— in the alternative, annul Article 1 of the Decision in particular in so far as it states that CFPR and Timab participated in practices relating to sales conditions and a compensation system;

— in any event, amend Article 2 of the Decision and reduce substantially the fine imposed jointly and severally on CFPR and Timab;

— order the Commission to pay all the costs.

Pleas in law and main arguments

The applicants seek, principally, annulment of Commission Decision C(2010) 5001 final of 20 July 2010 relating to a proceeding under Article 101 TFEU and Article 53 of the Agreement on the European Economic Area ('EEA') (Case COMP/38.866 — Animal feed phosphates) concerning a cartel in the European animal feed phosphates market relating to the allocation of sales quotas, the coordination of prices and sales conditions and the exchange of commercially sensitive information.

The applicants put forward eight pleas in support of their action:

— infringement of the rights of the defence, the principle of the protection of legitimate expectations and the principle of sound administration, and of Regulation No 773/2004 ([1]) and the Notice on the conduct of settlement procedures ([2]) on account of the fact that the applicants were penalised for the fact that they withdrew from settlement discussions under Article 10a of Regulation No 773/2004, in so far as the likely fine that the Commission had set at the stage of the settlement discussions was subsequently increased by 25 %, whereas (i) the likely fine must not increase by more than 10 % following discontinuation of participation in the settlement procedure and (ii) the duration of the infringement was reduced by 60 %;

— inadequate and contradictory grounds and infringement of the rights of the defence and the burden of proof inasmuch as practices in which the applicants did not participate were imputed to them, although the Commission possessed no evidence of such participation;

— infringement of the principle of non-retroactivity of the more punitive law and infringement of the principles of the protection of legitimate expectations, equal treatment and legal certainty, since the amount of the fine was determined pursuant to the 2006 Guidelines, ([3]) whereas the infringement imputed took place before the publication of those guidelines; that retroactive application of the 2006 Guidelines increased the amount of the fine;

— infringement of Article 23 of Regulation No 1/2003, ([4]) the principle of proportionality, the principle that penalties must fit the offence and the principle of equal treatment, since the fine imposed does not reflect either the duration or the gravity of the practices;

— a manifest error of assessment of the gravity of the practices alleged against the applicants and infringement of the principle of equal treatment, the principle of proportionality and the principle that penalties must fit the offence when the basic amount is set, since the Commission failed to take account of the fact that the infringement had no significant effects and that Timab participated in the cartel to a lesser extent than the other participants;

— an error of assessment and infringement of the principle that penalties must fit the offence and the principle of equal treatment inasmuch as the Commission refused to grant the applicants the benefit of any attenuating circumstances despite their dependence on one of the other cartel participants and despite Timab's competitive conduct;

— infringement of the rights of the defence, the principle of equal treatment and the Leniency Notice, ([5]) in so far as the reduction of the fine granted to the applicants in respect of leniency at the stage of the settlement discussions was considerably reduced after the applicants withdrew from those discussions;

— a manifest error of assessment of the applicants' ability to pay and infringement of the principle of equal treatment and the combined provisions of Article 3 TEU and Protocol No 17 annexed to the Treaty of Lisbon inasmuch as the Commission applied the provisions of the 2006 Guidelines on the applicants'ability to pay without taking account either of the exceptional circumstances arising from the crisis afflicting European agriculture or of the economic and social constraints specific to the applicants.

(1) Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles [101 TFEU] and [102 TFEU] (OJ 2004 L 123, p. 18).
(2) Commission Notice on the conduct of settlement procedures in view of the adoption of Decisions pursuant to Article 7 and Article 23 of Council Regulation (EC) No 1/2003 in cartel cases (OJ 2008 C 167, p. 1).
(3) Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003 (OJ 2006 C 210, p. 2).
(4) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101 TFEU] and [102 TFEU] (OJ 2003 L 1, p. 1).
(5) Commission notice on immunity from fines and reduction of fines in cartel cases (OJ 2002 C 45, p. 3).

Action brought on 26 September 2010 — Evropaïki Dynamiki v Commission

(Case T-457/10)

(2010/C 346/92)

Language of the case: English

Parties

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

Defendant: European Commission

Form of order sought

— annul DIGIT's decision to select the bid of the applicant, filed in response to the open call for tenders DIGIT/R2/PO/2009/045 "External service provision for development, studies and information systems" (OJEU 2009/S 198-283663), for Lot 2 "Off-site development projects", for the award of the above procurement contract as third contractor in the cascade mechanism instead of first contractor and all the related decisions of DIGIT including the one to award the contact to the successful contractors;

— order DIGIT to pay the applicant's damages suffered on account of the tendering procedure in question for an amount of EUR 30 000 000 for Lot 2 and the amount of EUR 3 000 000 for damages for loss of opportunity and damage to its reputation and credibility;

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

Pleas in law and main arguments

In the present case the applicant seeks the annulment of the defendant's decision of 16 July 2010 to select its bid in the context of the call for tenders DIGIT/R2/PO/2009/045 "External service provision for development, studies and information systems" (1), for Lot 2 "Off-site development projects", as third contractor in the cascade mechanism instead of first cascade contractor and of all the related decisions of the defendant including those to award the respective contracts to the first and second cascade contractors. The applicant further requests compensation for the alleged damages in account of the tender procedure.

In support of its claims the applicant puts forward the following grounds.

First, the applicant argues that the Commission has infringed Articles 93 and 94 of the financial regulation (2) and the principles of good administration and transparency as well as Articles 106 and 107 of the financial regulation because several members of the winning consortium did not comply with the exclusion criteria since they should have been found to be in serious breach of previous contracts, and one member of the winning consortium was involved in fraud, corruption and briberies, while several members of the winning consortia use non WTO/GPA based subcontractors.

Furthermore, the applicant argues that the principle of good administration and the principle of equal treatment as well as Articles 89 and 98 of the financial regulation and Article 145 of its implementing rules were infringed since a conflict of interest existed in the person of several evaluators.

The applicant further contends that vague and irregular award criteria were used during the evaluation thus infringing Article 97 of the financial regulation and Article 138 of the implementing rules.

Finally, the applicant claims that the contracting authority has failed to disclose the relative merits of the successful tenderer and has committed several manifest errors of assessment while evaluating its tender as well as the one of the winning consortia. In the applicant's opinion, the contracting authority has also used vague and unsubstantiated comments in its evaluation report thus violating the obligation to state reasons.

(1) OJ 2009/S 198-283663
(2) Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 248, p. 1)

Action brought on 26 September 2010 — Evropaïki Dynamiki v Commission

(Case T-474/10)

(2010/C 346/93)

Language of the case: English

Parties

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

Defendant: European Commission

Form of order sought

— annul DIGIT's decision to: (a) select the bid of the applicant, filed in response to the open call for tenders DIGIT/R2/PO/2009/45 "External service provision for development, studies and information systems" (OJ 2009/S 198-283663), for Lot 1A, as second contractor in the cascade mechanism, (b) select the bid of the applicant filed in response to the aforementioned open call for tenders Lot 1B, as third contractor in the cascade mechanism, (c) select the bid of the applicant filed in response to the aforementioned open call for tenders Lot 1C, as second contractor in the cascade mechanism, (d) select the bid of the applicant filed in response to the aforementioned call for tenders Lot 3 as third contractor in the cascade mechanism, instead of first contractor in all Lots, as communicated to the applicant by four separate letters (one for each Lot) dated 16 July 2010 and all the related decisions of DIGIT including those to award the respective contracts to the first and second cascade contractors;

— order DIGIT to pay the applicant's damages suffered on account of the tendering procedure in question for an amount of EUR 242 000 000 (EUR 122 000 000 for Lot 1A, EUR 40 000 000 for Lot 1B, EUR 30 000 000 for Lot 1C and EUR 50 000 000 for Lot 3) and the amount of EUR 24 200 000 for damages for loss of opportunity and damage to its reputation and credibility; and

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

Pleas in law and main arguments

In the present case the applicant seeks the annulment of the defendant's decision of 16 July 2010 to select its bid in the context of the call for tenders DIGIT/R2/PO/2009/45 "External service provision for development, studies and information systems" ([1]), for Lots 1A, 1B, 1C and 3, as second or third contractor in the cascade mechanism instead of first contractor and all the related decisions of DIGIT, including those to award the respective contracts to the first and second cascade contractors. The applicant further requests compensation for the alleged damages on account of the tender procedure.

In support of its claims the applicant puts forward the following grounds.

Firstly, the applicant argues that the Commission has infringed Articles 93 and 94 of the financial regulation ([2]) and the principles of good administration and transparency as well as Articles 106 and 107 of the financial regulation because several members of the winning consortium did not comply with the exclusion criteria since they should have been found to be in serious breach of previous contracts, and one member of the winning consortium was involved in fraud, corruption and briberies, while several members of the winning consortia use non WTO/GPA based subcontractors.

Furthermore, the applicant argues that the principle of good administration and the principle of equal treatment as well as Articles 89 and 98 of the financial regulation and Article 145 of its implementing rules were infringed since a conflict of interest existed in the person of several evaluators.

The applicant further contends that vague and irregular award criteria were used during the evaluation thus infringing Article 97 of the financial regulation and Article 138 of the implementing rules.

Finally, the applicant claims that the contracting authority has failed to disclose the relative merits of the successful tenderer and has committed several manifest errors of assessment while evaluating its tender as well as the one of the winning consortia. In the applicant's opinion, the contracting authority has also used vague and unsubstantiated comments in its evaluation report.

([1]) OJ 2009/S 198-283663

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

Action brought on 9 October 2010 — SE — Blusen Stenau v OHIM (SPORT EYBL & SPORTS EXPERTS (SE© SPORTS EQUIPMENT)

(Case T-477/10)

(2010/C 346/94)

Language in which the application was lodged: German

Parties

Applicant: SE — Blusen Stenau GmbH (Gronau, Germany) (represented by: O. Bischof, 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: SPORT EYBL & SPORTS EXPERTS GmbH (Wels, Austria)

Form of order sought

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 22 July 2010 in Case R 1393/2009-1;

— order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: SPORT EYBL & SPORTS EXPERTS GmbH.

Community trade mark concerned: Figurative mark containing the word element 'SE© SPORTS EQUIPMENT' for goods in Classes 18 and 25.

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

Mark or sign cited in opposition: German word mark and international registration 'SE' for goods in Class 25 and German word marks 'SE So Easy' and 'SE-Blusen' for goods in Classes 14, 18, 24 and 25.

Decision of the Opposition Division: Opposition allowed in part.

Decision of the Board of Appeal: The contested decision was annulled and remitted to the Opposition Division for further consideration.

Pleas in law: Infringement of Article 8(1)(b) of Regulation (EC) No 207/2009 [1] in that the marks at issue are identical and there is a likelihood of confusion.

[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 4 October 2010 — Département du Gers v Commission

(Case T-478/10)

(2010/C 346/95)

Language of the case: French

Parties

Applicant: Département du Gers (Auch, France) (represented by: S. Mabile and J.-P. Mignard, lawyers)

Defendant: European Commission

Form of order sought

— annul Decision 2010/419/EU of the European Commission of 28 July 2010 authorising the marketing of products containing, consisting of, or produced from genetically modified maize Bt11 (SYN-BTØ11-1), pursuant to Regulation (EC) No 1829/2003 of the European Parliament and of the Council;

— order the Commission to pay all the costs.

Pleas in law and main arguments

The applicant, a French 'département' with a large agricultural sector and which cultivates vast fields of maize, seeks the annulment of Commission Decision 2010/419/EU authorising the marketing of genetically modified maize or products containing such maize.

In support of its action, the applicant raises two pleas in law:

— A plea of illegality raised against Regulation (EC) No 1829/2003 of the European Parliament and of the Council of 22 September 2003 on genetically modified food and feed, [1] on the basis of which the contested decision was adopted, in so far as:

  — Regulation No 1829/2003 infringes the principle of institutional balance in that (i) the European Parliament did not have any power during the authorisation procedure while the Commission had too much power, and (ii) the Member States were left without any discretion;

  — Regulation No 1829/2003 infringes the precautionary principle in that it fails to take sufficient account of the threats to public health, the environment, agriculture and rearing which genetically modified food and feed would pose;

  — Regulation No 1829/2003 infringes the rights of consumers, first, by failing to provide for any measure enabling consumers to be informed that the animals which they consume have been fed GMOs and, second, by permitting substantively incorrect information regarding the absence of GMOs in products which actually contain GMOs but in a proportion no higher than 0.9 %;

— the contested decision is unlawful:

  — it fails to provide sufficient reasoning, which constitutes an infringement of an essential procedural requirement, in so far as the Commission's decision merely refers to the opinion of the European Food Safety Authority ('EFSA');

  — the Commission failed to exercise the powers invested in it ('incompétence négative') by refraining from exercising its discretion, which constitutes a misuse of procedure;

  — the precautionary principle was infringed, since the methods of evaluation used by EFSA were incomplete and the evaluation of maize Bt11 was too uncertain;

— the rights of consumers were infringed by failing to label animals fed with maize Bt11 and due to a lack of transparency in relation to products containing less than 0.9% of maize Bt11.

(1) OJ 2003 L 268, p. 1.

Action brought on 4 October 2010 — Département du Gers v Commission

(Case T-479/10)

(2010/C 346/96)

Language of the case: French

Parties

Applicant: Département du Gers (Auch, France) (represented by: S. Mabile and J.-P. Mignard, lawyers)

Defendant: European Commission

Form of order sought

— Annul Decision 2010/420/EU of the European Commission of 28 July 2010 authorising the placing on the market of products containing, consisting of, or produced from genetically modified maize MON89034xNK603 (MON-89Ø34-3xMON-ØØ6Ø3-6) pursuant to Regulation (EC) No 1829/2003 of the European Parliament and of the Council;

— order the Commission to pay the costs.

Pleas in law and main arguments

The pleas in law and the main arguments raised by the applicant are identical or essentially the same as those raised in Case T-478/10 *Département du Gers* v *Commission.*

Action brought on 4 October 2010 — Département du Gers v Commission

(Case T-480/10)

(2010/C 346/97)

Language of the case: French

Parties

Applicant: Département du Gers (Auch, France) (represented by: S. Mabile and J.-P. Mignard, lawyers)

Defendant: European Commission

Form of order sought

— annul Decision 2010/426/EU of the European Commission of 28 July 2010 authorising the placing on the market of products containing, consisting of, or produced from genetically modified maize Bt11xGA21 (SYN-BTØ11-1xMON-ØØØ21-9) pursuant to Regulation (EC) No 1829/2003 of the European Parliament and of the Council;

— order the Commission to pay the costs.

Pleas in law and main arguments

The pleas in law and the main arguments raised by the applicant are identical or essentially the same as those raised in Case T-478/10 *Département du Gers* v *Commission.*

Action brought on 4 October 2010 — Département du Gers v Commission

(Case T-481/10)

(2010/C 346/98)

Language of the case: French

Parties

Applicant: Département du Gers (Auch, France) (represented by: S. Mabile and J.-P. Mignard, lawyers)

Defendant: European Commission

Form of order sought

— annul Decision 2010/429/EU of the European Commission of 28 July 2010 authorising the placing on the market of products containing, consisting of, or produced from genetically modified maize MON 88017 x MON 810 (MON-88Ø17-3 x MON-ØØ81Ø-6) pursuant to Regulation (EC) No 1829/2003 of the European Parliament and of the Council;

— order the Commission to pay the costs.

Pleas in law and main arguments

The pleas in law and the main arguments raised by the applicant are identical or essentially the same as those raised in Case T-478/10 *Département du Gers* v *Commission.*

Action brought on 4 October 2010 — Département du Gers v Commission

(Case T-482/10)

(2010/C 346/99)

Language of the case: French

Parties

Applicant: Département du Gers (Auch, France) (represented by: S. Mabile and J.-P. Mignard, lawyers)

Defendant: European Commission

Form of order sought

— annul Decision 2010/432/EU of the European Commission of 28 July 2010 authorising the placing on the market of products containing, consisting of, or produced from genetically modified maize 1507x59122 (DAS-Ø15Ø7-1xDAS-59122-7) pursuant to Regulation (EC) No 1829/2003 of the European Parliament and of the Council;

— order the Commission to pay the costs.

Pleas in law and main arguments

The pleas in law and the main arguments raised by the applicant are identical or essentially the same as those raised in Case T-478/10 *Département du Gers* v *Commission*.

Action brought on 13 October 2010 — MIP Metro v OHIM — J.C. Ribeiro SGPS (MISS B)

(Case T-485/10)

(2010/C 346/100)

Language in which the application was lodged: German

Parties

Applicant: MIP METRO Group Intellectual Property GmbH & Co. KG (Düsseldorf, Germany) (represented by: J.-C Plate and R. Kaase, 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: J.C. Ribeiro SGPS S.A. (Sta Maria de Feira, Portugal)

Form of order sought

— Declare the action admissible, together with the annexes thereto, against the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 5 August 2010 in Case R 1526/2009-1;

— annul the contested decision in so far as it concerns the opposition to the trade mark application for goods in Classes 14 and 25, since it is incompatible with Article 8(1)(b) of Regulation (EC) No 40/94;

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

Pleas in law and main arguments

Applicant for a Community trade mark: J.C. Ribeiro SGPS S.A.

Community trade mark concerned: word mark 'MISS B' for goods in Classes 14, 16, 18, 21, 25 and 28.

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

Mark or sign cited in opposition: German and international word mark 'miss H.' for goods in Classes 6, 9, 14, 16, 18, 25 and 26, and the German figurative mark containing the word element 'Miss H.' for goods in Classes 3, 8, 9, 14, 16, 18, 20, 24, 25 and 26.

Decision of the Opposition Division: opposition upheld.

Decision of the Board of Appeal: appeal granted.

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

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

Action brought on 18 October 2010 — Mayer Naman v OHIM — Daniel & Mayer (David Mayer)

(Case T-498/10)

(2010/C 346/101)

Language in which the application was lodged: Italian

Parties

Applicant: David Mayer Naman (Rome, Italy) (represented by: S. Sutti, lawyer, S. Cazzaniga, lawyer, and V. Fedele, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Daniel & Mayer Srl (Milan, Italy)

Form of order sought

The applicant claims that the Court should:

— vary the contested decision in its entirety;

— order the defendant to pay the costs.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: Figurative mark containing the word element 'David Mayer' (registration application No 1518950), to designate inter alia goods in Classes 18 and 25

Proprietor of the Community trade mark: The applicant

Applicant for the declaration of invalidity: Daniel & Mayer Srl

Trade mark right of applicant for the declaration: Italian word mark 'DANIEL & MAYER MADE IN ITALY' (No 472351), to designate goods in Class 25, and the unregistered word mark 'DANIEL & MAYER', used in Italy in relation to the 'manufacture and sale of garments and accessories'

Decision of the Cancellation Division: Application for a declaration of invalidity upheld in part

Decision of the Board of Appeal: Appeal dismissed

Pleas in law: Infringement and misapplication of Article 8 of Regulation No 207/2009

Action brought on 8 October 2010 — MOL v Commission

(Case T-499/10)

(2010/C 346/102)

Language of the case: English

Parties

Applicant: MOL Magyar Olaj- és Gázipari Nyrt. (Budapest, Hungary) (represented by: N. Niejahr, lawyer, F. Carlin, Barrister and C. van der Meer, lawyer)

Defendant: European Commission

Form of order sought

— annul the contested decision; or

— in the alternative, annul the contested decision in so far as it orders the recovery of amounts from the applicant; and

— order the defendant to pay its own costs and the applicant's costs in connection with these proceedings.

Pleas in law and main arguments

By means of the present application, the applicant seeks the annulment of Commission Decision C(2010) 3553 final of 9 June 2010, declaring incompatible with the common market the aid implemented by the Hungarian authorities in favour of the Hungarian Oil & Gas Plc ('MOL') as a result of an agreement between MOL and the Hungarian State which allows the company to be actually exempted from the increased level of mining fee following an amendment to the Hungarian Mining Act in January 2008 [State aid C 1/09 (ex NN 69/08)]. The applicant is identified in the contested decision as a beneficiary of the alleged State aid and the decision orders Hungary to recover the aid, including interest, from the applicant.

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

First, it argues that the defendant erred in law when it found that the prolongation of the applicant's mining rights in 2005 viewed together with the subsequent 2008 amendment of the Mining Act constitute unlawful and incompatible State aid and ordered the recovery of this alleged State aid with interest from the applicant. Specifically the applicant contends that the defendant violated Article 107(1) TFEU in determining that:

— the 2005 prolongation agreement and the 2008 amendment of the Mining Act together are one State aid measure pursuant to Article 107(1) TFEU;

— the alleged aid measure is selective based on the erroneous conclusion that the appropriate system of reference is the authorization regime rather than the Mining Act;

— the alleged aid measure conferred an advantage on the applicant despite the fact that the applicant paid higher mining fees and charges than would have been due absent the alleged aid measure or pursuant to the 2008 amendment of the Mining Act and, in any event, Hungary acted as a market operator and the prolongation agreement was justified by economic considerations;

— the alleged aid measure distorted competition even though other market participants did not pay higher fees pursuant to the Mining Act as amended.

Second, and in the alternative, the applicant submits that the defendant infringed Article 108(1) TFEU by failing to assess the prolongation agreement (which was not a State aid measure between its conclusion in 2005 and the 2008 amendment of the Mining Act and became State aid only with the entry into force of the 2008 amendment of the Mining Act) under the rules applicable to existing aid.

Third and alternatively, in the event that the Court should find that the measure constitutes new aid, the applicant claims that the defendant violated Article 14(1) of the Procedural Regulation by ordering recovery, because the recovery of amounts from the applicant violates the applicant's legitimate expectations in the stability of the prolongation agreement and the principle of legal certainty.

Action brought on 19 October 2010 — Dorma v OHIM — Puertas Doorsa (doorsa FÁBRICA DE PUERTAS AUTOMÁTICAS)

(Case T-500/10)

(2010/C 346/103)

Language in which the application was lodged: English

Parties

Applicant: Dorma GmbH & Co. KG (Ennepetal, Germany) (represented by: P. Koch Moreno, lawyer)

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

Other party to the proceedings before the Board of Appeal: Puertas Doorsa, SL (Petrel, Spain)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 17 August 2010 in case R 542/2009-4; and

— Order the defendant and the other party to the proceedings before the Board of Appeal to bear 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 "doorsa FÁBRICA DE PUERTAS AUTOMÁTICAS", for goods in classes 6, 9 and 19 — Community trade mark application No 4884359

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

Mark or sign cited: German trade mark registration No 39525884 of the figurative mark "DORMA", for goods and services in classes 6, 9, 16, 19 and 37; United Kingdom trade mark registration No 2201691 of the word mark "DORMA" for goods in classes 6, 7, 9, 16 and 19; International trade mark registration No 722009 of the figurative trade mark "DORMA" for goods in classes 6, 7, 9, 16 and 19

Decision of the Opposition Division: Rejected the opposition

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: The applicant considers that the contested decision infringes Article 8(1)(b) of Council Regulation (EC) No 207/2009, as the Board of Appeal misapplied the provisions of this article to the contested trade mark.

Action brought on 22 October 2010 — TI Media Broadcasting and TI Media v Commission

(Case T-501/10)

(2010/C 346/104)

Language of the case: Italian

Parties

Applicants: Telecom Italia Media Broadcasting Srl (TI Media Broadcasting) (Rome, Italy) and Telecom Italia Media SpA (TI Media) (Rome, Italy) (represented by: B. Caravati di Toritto, L. Sabelli, F. Pace and A. d'Urbano, lawyers)

Defendant: European Commission

Form of order sought

— Declare that the contested decision in unlawful and annul the decision in so far as it authorised SKY to participate in the *digital dividend* tendering procedure;

— In the alternative, order the Commission to: (i) state the Lot for which SKY is permitted to submit a tender in the procedure; (ii) extend the five-year ban on the use of frequencies for Pay TV purposes also to those acquired under agreements with existing operators or new entrants;

— Order the defendant to pay the costs.

Pleas in law and main arguments

The applicant companies in the present proceedings seeks the annulment of Commission Decision C(2010) 4976 of 20 July 2010 (the Decision) relating to the amendment of Clause 9.1 of the Commitments annexed to the Decision of 2 April 2003 (Case COMP/M.2876) by which the Commission declared that the concentration brought about by the creation of 'SKY Italia' ('SKY') was compatible with the common market and the EEA Agreement.

It should be noted in that connection that the clause in question required SKY to refrain from acquiring analogue and digital frequencies and no to engage in any activities on the digital terrestrial platform either as a network operator or as a content provider before 31 December 2011. By the contested decision, the Commission granted SKY's request, allowing it to participate in the tendering procedure for the allocation of *digital dividend* by submitting a bid for the award of only one multiplex intended to distribute content in unencoded form for a period of five years from the adoption of the decision itself.

In support of their claims, the applicants rely on the following grounds: infringement of Articles 2, 6, and 8(2) of Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, ([1]) paragraph 74 of the Commission notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004, ([2]) Clause No 14.1 of the Commitments annexed to the Decision of 2 April 2003 (Case COMP/M.2876) and Article 102 TFEU.

The contested decision is vitiated by misuse of power and failure to state reasons in so far as it grants a request the content of which goes beyond the objective scope of the Clause 9.1 of the Commitments annexed the 2003 Decision (Case COMP/M.2876), thereby permitting SKY to participate in a public tendering procedure for the allocation of *digital dividend*.

The applicants also maintain that, by infringing essential procedural requirements and distorting the facts, the Commission made an incorrect assessment of the exceptional circumstances capable of justifying the amendment of the commitments originally imposed on SKY. In particular, by putting forward arguments concerning anomalous features which characterise the competitive procedure in question, the Commission equated TI Media with the *incumbents* RAI and Mediaset, even though no notification of a dominant position

had ever been made in respect of TI Media. In order to substantiate such *obiter dictum* concerning the purported '*strong position*' of TI Media on the market, the Commission relied on a misinterpretation of Decision 544/07/CONS, totally failing to take account of the results of the market test.

Lastly, the applicants submit that the Decision is unlawful on grounds of failure to investigate adequately and to state reasons, in so far as, with regard to the definition of the criteria for the award of the contract, it was based on an incorrect and misleading interpretation of the content of Decisions 181/09/CONS and 427/09/CONS. Contrary to the claims made by the Commission, those decisions defined the award criteria with reference to frequency Lots (A, B and, optionally, C) without distinguishing national operators per category and, essentially, without defining TI Media as a vertically integrated operator.

(1) OJ 2004 L 24, p. 1.
(2) OJ 2008 C 267, p. 1.

Action brought on 18 October 2010 — Département du Gers v Commission

(Case T-502/10)

(2010/C 346/105)

Language of the case: French

Parties

Applicant: Département du Gers (Auch, France) (represented by: S. Mabile and J.-P. Mignard, lawyers)

Defendant: European Commission

Form of order sought

— annul Decision 2010/428/EU of the European Commission of 28 July 2010 authorising the placing on the market of products containing, consisting of, or produced from genetically modified maize 59122x1507xNK603 (DAS-59122-7xDAS-Ø15Ø7xMON-ØØ6Ø3-6) pursuant to Regulation (EC) No 1829/2003 of the European Parliament and of the Council;

— order the Commission to pay the costs.

Pleas in law and main arguments

The pleas in law and the main arguments raised by the applicant are identical or essentially the same as those raised in Case T-478/10 *Département du Gers* v *Commission*.

Action brought on 21 October 2010 — IDT Biologika v Commission

(Case T-503/10)

(2010/C 346/106)

Language of the case: German

Parties

Applicant: IDT Biologika GmbH (Dessau-Roßlau, Germany) (represented by: R. Gross and T. Kroupa, lawyers)

Defendant: European Commission

Form of order sought

— Annul the decision of the Delegation of the European Union to the Republic of Serbia of 10 August 2010 rejecting the tender submitted in respect of Lot No 1 by IDT Biologika GmbH in response to the call for tenders (reference EuropeAid/129809/C/SUP/RS) for the supply of rabies vaccines to the beneficiary Ministry of Agriculture, Forestry and Water Supply of the Republic of Serbia, and awarding the contract to a consortium of various firms led by 'Biovet a.s.';

— order the defendant to pay the costs.

Pleas in law and main arguments

The applicant challenges the European Commission's decision of 10 August 2010 to choose a tenderer other than the applicant in the context of a call for tenders for the supply of rabies vaccines (publication reference EuropeAid/129809/C/SUP/RS).

In support of its claim, the applicant alleges infringement of Article 252(3) of Regulation (EC, Euratom) No 2342/2002, (1) in that the chosen tender does not satisfy the technical requirements specified in the tender dossier with regard to the requisite non-virulence to humans of the vaccines offered or with regard to the requisite authorisations and should, therefore, necessarily have been disregarded.

Further, the applicant alleges infringement of the principles of equal treatment and transparency under Article 89(1) of Regulation (EC, Euratom) No 1605/2002, (2) since the applicant's tender alone satisfies all the requirements with regard to the technical specifications and yet another tender was chosen.

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

Action brought on 22 October 2010 — Prima TV v Commission

(Case T-504/10)

(2010/C 346/107)

Language of the case: Italian

Parties

Applicant: Prima TV SpA (Milan, Italy) (represented by: L. Fossati and L. Perfetti, lawyers)

Defendant: European Commission

Form of order sought

— Annul the contested decision.

— Order the Commission to pay the costs.

Pleas in law and main arguments

The decision that is contested in the present case is the same as that in Case T-501/10 *TI Media Broadcasting and TI Media* v *Commission*.

The applicant relies on three grounds in support of its claims.

By the first ground, the applicant seeks annulment of the decision, alleging infringement of legal provisions in the form of a manifest error of assessment, since the Commission found incorrectly that the conditions in the Italian pay-TV market had changed since 2003 to such an extent that it was possible to revise the commitments given by Newscorp in Case COMP/M.2876. All the evidence shows that, on the contrary, the market conditions which determined the commitments given to and accepted by the Commission in 2003 have not changed in any significant or lasting manner. In particular, Sky Italia still holds a position of absolute dominance in the Italian pay-TV market.

By the second ground, the applicant seeks annulment of the decision, alleging infringement of legal provisions and misuse of power, including as a result of manifest error of assessment, and infringement of the principle of proportionality, since the Commission amended the commitments given by Newscorp in Case COMP/M.2876 on the incorrect assumption that the fact that Sky Italia was not to participate in the next procedure for the allocation of terrestrial digital frequencies would preclude it from engaging in free-to-air television broadcasting in Italy. It is submitted in this connection that, on the contrary, Sky Italia is already active in free-to-air television broadcasting in Italy, broadcasts on digital terrestrial frequencies and will be able to acquire transmission capacity even if the commitments in question are not amended.

By the third ground, the applicant seeks annulment of the decision, alleging infringement of legal provisions and manifest error of assessment, since the Commission amended the commitments given by Newscorp in Case COMP/M.2876 at the request of Sky Italia, notwithstanding the fact that the replies received during the investigation into the market which took place during the administrative procedure — including those sent by Italian public bodies — gave clear indications of the negative impact which the amendment of the commitments in question would have in terms of competition at national level.

Action brought on 18 October 2010 — Höganäs v OHIM — Haynes (ASTALOY)

(Case T-505/10)

(2010/C 346/108)

Language in which the application was lodged: English

Parties

Applicant: Höganäs AB (Höganäs, Sweden) (represented by: L.-E. Ström, lawyer)

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

Other party to the proceedings before the Board of Appeal: Haynes International, Inc. (Kokomo, USA)

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 18 August 2010 in case R 1530/2009-4;

— Reject the opposition decision No B 85624; and

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

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The word mark "ASTALOY", for goods in class 6 — Community trade mark application No 3890233

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

Mark or sign cited: Community trade mark registration No 55400 of the word mark "HASTELLOY", for goods in class 6

Decision of the Opposition Division: Upheld the opposition

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: The applicant considers that the contested decision infringes Articles 8 and 9 of Council Regulation (EC) No 207/2009, as the Board of Appeal erred in its assessment of likelihood of confusion as well as in its assessment of the similarity of the contested trade mark.

Action brought on 22 October 2010 — RTI and Elettronica Industriale v Commission

(Case T-506/10)

(2010/C 346/109)

Language of the case: English

Parties

Applicants: Reti Televisive Italiane SpA (RTI) and Elettronica Industriale SpA (Lissonne, Italy) (represented by: J.-F. Bellis and S. Bariatti, lawyers)

Defendant: European Commission

Form of order sought

— annul the contested decision;

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

Pleas in law and main arguments

By means of the present application, the applicants seek the annulment of the Commission decision C(2010) 4976 final of 20 July 2010 modifying the application of the commitments attached to a decision C(2003) 1082 final of 2 April 2003 declaring the operation whereby the News Corporation Limited ("Newscorp") acquired control of the whole of the undertakings Telepiù Spa and Stream Spa compatible with the common market and with the EEA Agreement, subject to full compliance by the Newscorp with the commitments (Case No COMP/M.2876 — Newscorp/Telepiù) ([1]).

The applicants put forward three pleas in law in support of their claims.

First, they argue that the Commission has committed a manifest error of assessment in finding that, since the adoption of the decision of 2 April 2003, (the "Clearance Decision"), conditions in the Italian pay-TV market have changed to such an extent that a revision of the commitments annexed to the Clearance Decision could be warranted and, as a result, has misapplied the Notice on remedies and Article 8(2) of the Merger Regulation ([2]). The applicants submit that there is clear evidence that the market circumstances on the basis of which the commitments were accepted in 2003 have neither changed significantly nor on a permanent basis. Notably, Sky Italia, the Italian subsidiary of Newscorp, still enjoys a position of super-dominance in the Italian pay-TV market.

Second, the applicants contend that the Commission has committed an error of law, a manifest error of assessment and a violation of the principle of proportionality in acceding to the request for revision of the commitments presented by Sky Italia and accepting the new commitments proposed by Newscorp, on the assumption that Sky Italia's inability to take part in the forthcoming selection procedure for digital terrestrial television capacity to be carried out in the coming months in Italy would prevent Sky Italia from operating in the free-to-air television sector. In fact, Sky Italia is already active in the Italian free-to-air television sector and has access to digital terrestrial broadcasting capacity even without taking part in the selection procedure.

Third, the applicants claim that the Commission has committed a manifest error of assessment and an error of law by adopting the contested decision and acceding to the request for revision of the commitments presented by Sky Italia despite the fact that, as a result of the market investigation carried out during the administrative proceedings, most parties — including the Italian Competition Authority and the Italian Communications Authority — expressed serious concerns as to the impact of the proposed revision on the Italian pay-TV market.

([1]) JO 2004 L 110, p. 73

([2]) Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation), OJ 2004 L 24, p. 1

Action brought on 19 October 2010 — Seba Diş Ţicaret ve Nakliyat v OHIM — von Eicken (SEBA TRADITION ESTABLISHED 1932 20 FILTER)

(Case T-508/10)

(2010/C 346/110)

Language in which the application was lodged: German

Parties

Applicant: Seba Diş Ţicaret ve Nakliyat A.S. (Istanbul, Turkey) (represented by: H. Wilde, 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: Johann Wilhelm von Eicken GmbH (Lübeck, Germany)

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 18 August 2010 in Case R 0559/2009-4;

— Order the defendant to pay the costs.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: Coloured figurative mark, which contains the word elements 'ESTABLISHED 1932 SEBA TRADITION', for goods in Class 34.

Proprietor of the Community trade mark: The Applicant.

Applicant for the declaration of invalidity: Johann Wilhelm von Eicken GmbH

Trade mark right of applicant for the declaration: German figurative mark, which contains the word elements 'ESTABLISHED 1770 JOHANN WILHELM VON EICKEN TRADITION', for goods in Class 34.

Decision of the Cancellation Division: The application was granted.

Decision of the Board of Appeal: The appeal was rejected.

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

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

Action brought on 20 October 2010 — Manufacturing Support & Procurement Kala Naft v Council

(Case T-509/10)

(2010/C 346/111)

Language of the case: French

Parties

Applicant: Manufacturing Support & Procurement Kala Naft Co., Tehran (Tehran, Iran) (represented by: F. Escalatine and S. Perrotet, lawyers)

Defendant: Council of the European Union

Form of order sought

— annul the Council Decision of 26 July 2010;

— annul, in its entirety, Council implementing Regulation No 668/2010 of 26 July 2010;

— order the Council to pay all of the costs.

Pleas in law and main arguments

The applicant, a commercial undertaking trading in the oil industry sector, is seeking the annulment of Council Decision 2010/413/CFSP [1] and of Council implementing Regulation (EU) No 668/2010 implementing Article 7(2) of Regulation (EC) No 423/2007 [2] concerning restrictive measures against Iran with the aim of preventing nuclear proliferation, inasmuch as the name of the applicant has been included on a list of persons, entities and bodies whose funds and economic resources have been frozen pursuant to that provision.

In support of its action, the applicant submits eight pleas in law:

— a breach of the duty to give reasons, as the Council relied on vague and imprecise factors which cannot be verified;

— a breach of the applicant's fundamental rights, in so far as (i) the applicant was obliged, in order to defend itself, to prove a negative, namely, that it has not contributed to the Iranian nuclear programme, (ii) the applicant was granted a very short period within which to file a request for a review and (iii) the applicant has been deprived of its right to effective judicial protection and of its right to property, as it has not had access to the information contained in the dossier on it;

— a lack of competence, as the Council is not competent to adopt measures accompanying UN Security Council Resolution 1929 (2010), as that resolution lays down no measure referring to the oil industry;

— a misuse of power inasmuch as the contested decision would freeze all the transactions carried out by the applicant in the European Union, including acquisitions of non-essential equipment, thus going beyond what is covered by Article 4 of the contested decision;

— an error of law, as the sale of dual-use goods cannot justify a measure against an entity freezing its funds, where that entity does not actually contribute to the Iranian nuclear programme;

— a material factual inaccuracy, inasmuch as the applicant has not acquired any goods likely to be of interest to the Iranian nuclear programme;

— a manifest error of assessment, since the restrictions imposed on the applicant's right to property and its right to carry on an economic activity are not justified by any public interest ground and are disproportionate in the light of the objective pursued;

— no legal basis for the contested regulation as a consequence of the annulment of the contested decision.

[1] Council Decision 2010/413/CFSP of 26 July 2010 concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP (OJ 2010 L 195, p. 39).

[2] Council implementing Regulation (EU) No 668/2010 of 26 July 2010 implementing Article 7(2) of Regulation (EC) No 423/2007 concerning restrictive measures against Iran (OJ 2010 L 195, p. 25).

Action brought on 26 October 2010 — Nike International v OHIM (DYNAMIC SUPPORT)

(Case T-512/10)

(2010/C 346/112)

Language of the case: English

Parties

Applicant: Nike International Ltd (Beaverton, USA) (represented by: M. de Justo Bailey, 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 25 August 2010 in case R 640/2010-4; and

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

Pleas in law and main arguments

Community trade mark concerned: The word mark "DYNAMIC SUPPORT" for goods in class 25 — Community trade mark application No 8299869

Decision of the examiner: Refused the application for a Community trade mark

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: The applicant considers that the contested decision infringes Article 7(1)(c) of Council Regulation (EC) No 207/2009, as the Board of Appeal erred in its assessment and wrongly concluded that this Article precludes the registration of the mark applied for.

Order of the General Court of 28 October 2010 — Agriconsulting Europe v Commission

(Case T-443/09) ([1])

(2010/C 346/113)

Language of the case: Italian

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

([1]) OJ C 11, 16.1.2010.

Order of the General Court of 18 October 2010 — Alisei v Commission

(Case T-16/10) ([1])

(2010/C 346/114)

Language of the case: Italian

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

([1]) OJ C 63, 13.3.2010.

Order of the General Court of 22 October 2010 — Bank Nederlandse Gemeenten v Commission

(Case T-151/10) ([1])

(2010/C 346/115)

Language of the case: Dutch

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

([1]) OJ C 148, 5.6.2010.

Order of the General Court of 28 October 2010 — Babcock Noell v Entreprise commune Fusion for Energy

(Case T-299/10) ([1])

(2010/C 346/116)

Language of the case: English

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

([1]) OJ C 234, 28.8.2010.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Judgment of the Civil Service Tribunal (Second Chamber) of 28 October 2010 — Sørensen v Commission

(Case F-85/05) [1]

(Staff cases — Officials — Appointment — Officials advancing to a higher function group by open competition — Candidates placed on a reserve list prior to the entry into force of the new Staff Regulations — Transitional rules governing classification in grade at the time of recruitment — Classification in grade pursuant to the new, less favourable rules — Article 5(2) and Article 12(3) of Annex XIII to the Staff Regulations)

(2010/C 346/117)

Language of the case: French

Parties

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

Defendant: European Commission (represented by: J. Currall and H. Krämer, acting as Agents)

Intervener in support of the defendant: Council of the European Union (represented by: M. Arpio Santacruz and M. Simm, acting as Agents)

Re:

Annulment of the Commission's decision classifying the applicant, who was placed on a reserve list B prior to the entry into force of the new Staff Regulations, pursuant to the less favourable provisions of those regulations (Article 12 of Annex XIII to Regulation (EC, Euratom) No 723/2004 of 22 March 2004 amending the Staff Regulations of officials), and annulment of the decision to cancel the promotion points acquired by the applicant as a category C official

Operative part of the judgment

The Tribunal:

1. *Dismisses Ms Sørensen's action;*

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

[1] OJ C 296, 26.11.05, p. 26 (case initially registered before the Court of First Instance of the European Communities under the number T-335/05 and transferred to the Civil Service Tribunal of the European Union by order of 15.12.2005).

Judgment of the Civil Service Tribunal (Second Chamber) of 28 October 2010 — Kay v Commission

(Case F-113/05) [1]

(Staff cases — Officials — Appointment — Officials advancing to a higher function group by open competition — Candidates placed on a reserve list prior to the entry into force of the new Staff Regulations — Transitional rules governing classification in grade at the time of recruitment — Classification in grade pursuant to the new, less favourable rules — Article 2, Article 5(2) and Article 12(3) of Annex XIII to the Staff Regulations)

(2010/C 346/118)

Language of the case: French

Parties

Applicant: Roderick Neil Kay (Brussels, Belgium) (represented: initially by T. Bontinck and J. Feld, lawyers, and subsequently by T. Bontinck and S. Woog, lawyers)

Defendant: European Commission (represented by: J. Currall and H. Krämer, acting as Agents)

Intervener in support of the defendant: Council of the European Union (represented by: M. Arpio Santacruz and I. Šulce, acting as Agents)

Re:

Annulment of the Commission's decision reclassifying the applicant, who was placed on the reserve list of an external competition prior to the entry into force of the new Staff Regulations, in grade pursuant to the less favourable provisions of those regulations

Operative part of the judgment

The Tribunal:

1. *Dismisses Mr Kay's action;*

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

[1] OJ C 48, 25.2.2006, p. 36 (case initially registered before the Court of First Instance of the European Communities under the Number T-421/05 and transferred to the Civil Service Tribunal of the European Union by order of 15.12.2005).

Judgment of the Civil Service Tribunal (Second Chamber) of 27 October 2010 — Birkhoff v Commission

(Case F-60/09) [1]

(Officials — Remuneration — Family allowances — Dependent child allowance — Child prevented by serious illness or invalidity from earning a livelihood — Application for extension of payment of the allowance — Article 2(5) of Annex VII to the Staff Regulations — Maximum income of the child as a condition for extending the payment of the allowance — Costs deductible from that income)

(2010/C 346/119)

Language of the case: Italian

Parties

Applicant: Gerhard Birkhoff (Weitnau, Germany) (represented by: C. Inzillo, lawyer)

Defendant: European Commission (represented by: J. Currall and B. Eggers, acting as Agents, assisted by A. Dal Ferro, lawyer)

Re:

Annulment of the decision rejecting the applicant's request for an extension of the payment of the dependent child allowance under Article 2(5) of Annex VII to the Staff Regulations

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

2. *Orders Mr Birkhoff to pay the costs in their entirety.*

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[1] OJ C 205, 29.8.2009, p. 50.

Order of the Civil Service Tribunal of 23 September 2010 — Bui Van v Commission

(Case F-51/07 RENV) [1]

(2010/C 346/120)

Language of the case: French

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

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[1] OJ C 170, 21.7.2007, p. 43.

European Union Civil Service Tribunal

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