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(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS AND BODIES

COURT OF JUSTICE

(2007/C 42/01)

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

OJ C 20, 27.1.2007

Past publications

OJ C 331, 30.12.2006

OJ C 326, 30.12.2006

OJ C 310, 16.12.2006

OJ C 294, 2.12.2006

OJ C 281, 18.11.2006

OJ C 261, 28.10.2006

These texts are available on:
EUR-Lex: http://eur-lex.europa.eu

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Second Chamber) of 11 January 2007 — Commission of the European Communities v Hellenic Republic

(Case C-251/04) [1]

(Failure of a Member State to fulfil obligations — Articles 1 and 2(1) of Regulation (EEC) No 3577/92 — Transport — Freedom to provide services — Maritime cabotage — Towage services on open sea)

(2007/C 42/02)

Language of the case: Greek

Parties

Applicant: Commission of the European Communities (represented by: G. Zavvos and K. Simonsson, Agents)

Defendant: Hellenic Republic (represented by: A. Samoni and S. Chala, Agents)

Re:

Failure of a Member State to fulfil obligations — Breach of Article 1 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) — National legislation granting only vessels flying the Greek flag the right to provide towage services on open sea.

Operative part of the judgment

The Court:

1. *Dismisses the application;*

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

[1] OJ C 201, 7.8.2004.

Judgment of the Court (Second Chamber) of 11 January 2007 — Technische Glaswerke Ilmenau GmbH v Commission of the European Communities, Schott AG (formerly Schott Glas)

(Case C-404/04 P) [1]

(Appeal — State aid — Article 87(1) EC — Contractual promise of payment — Disappearance of an essential condition of the contract — New pleas and arguments — Substitution of reasons — Application for the hearing of witnesses — Test of a private creditor — Grounds of the judgment of the Court of First Instance — Determination of the amount of aid — Article 87(3)(c) EC — Right to be heard — Breach, in respect of the Member State concerned, of the rights of the defence)

(2007/C 42/03)

Language of the case: German

Parties

Appellant: Technische Glaswerke Ilmenau GmbH (represented by: C. Arhold and N. Wimmer, Rechtsanwälte)

Other party to the proceedings: Commission of the European Communities (represented by: V. Di Bucci and V. Kreuschitz, Agents), Schott AG (formerly Schott Glas) (represented by: U. Soltész, Rechtsanwalt)

Re:

Appeal brought against the judgment of the Court of First Instance (Fifth Chamber, Extended Composition) of 8 July 2004 in Case T-198/01 *Technische Glaswerke Ilmenau* v *Commission* dismissing the action for annulment of Commission Decision 2002/185/EC of 12 June 2001 on State aid implemented by Germany for Technische Glaswerke Ilmenau GmbH (Germany) (OJ 2002 L 62, p 30)

Operative part of the judgment

The Court:

1. *Dismisses the appeal.*

2. *Orders Technische Glaswerke Ilmenau GmbH, in addition to bearing its own costs, to pay the total costs of the Commission of the European Communities related to the interlocutory proceedings and to these proceedings.*

3. *Orders Technische Glaswerke Ilmenau GmbH to pay the costs incurred by Schott AG in the interlocutory proceedings.*

4. *Orders Schott AG to bear its own costs related to these proceedings.*

([1]) OJ C 273, 6.11.2004.

Judgment of the Court (Grand Chamber) of 9 January 2007 (reference for a preliminary ruling from the Länssratten i Stockholms län — Migrationsdomstolen) — Yunying Jia v Migrationsverket

(Case C-1/05) ([1])

(Freedom of establishment — Article 43 EC — Directive 73/148/EEC — National of one Member State established in another Member State — Right to residence of a spouse's parent, the spouse and the parent being nationals of a non-Member country — Requirement that the parent be lawfully resident in a Member State when joining his family in the Member State of establishment — Evidence required to show that the parent is a dependant)

(2007/C 42/04)

Language of the case: Swedish

Referring court

Länsrätten i Stockholms län — Migrationsdomstolen

Parties to the main proceedings

Applicant: Yunying Jia

Defendant: Migrationsverket

Re:

Reference for a preliminary ruling — Utlänningsnämnden (Alien Appeals Board) (Sweden) — Interpretation of Article 43 EC, Article 10 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ L 257, p. 2) and Articles 1(d) and 6(b) of Council Directive 73/148/EEC of 21 May 1973 on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services (OJ L 172, p. 14) — Right to residence of a parent of a spouse, both holding the nationality of a non-Member State, of a national of a Member State resident in another Member State who is dependent on that citizen — Requirement for that parent to reside lawfully in a Member State when joining his family — Evidence required to show that the parent is a dependent

Operative part of the judgment

1. *Having regard to the judgment in Case C-109/01 Akrich [2003] ECR I-9607, Community law does not require Member States to make the grant of a residence permit to nationals of a non-Member State, who are members of the family of a Community national who has exercised his or her right of free movement, subject to the condition that those family members have previously been residing lawfully in another Member State;*

2. *Article 1(1)(d) of Council Directive 73/148/EEC of 21 May 1973 on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services is to be interpreted to the effect that 'dependent on them' means that members of the family of a Community national established in another Member State within the meaning of Article 43 EC need the material support of that Community national or his or her spouse in order to meet their essential needs in the State of origin of those family members or the State from which they have come at the time when they apply to join that Community national. Article 6(b) of that directive must be interpreted as meaning that proof of the need for material support may be adduced by any appropriate means, while a mere undertaking from the Community national or his or her spouse to support the family members concerned need not be regarded as establishing the existence of the family members' situation of real dependence.*

([1]) OJ C 57, 5.3.2005.

Judgment of the Court (Third Chamber) of 11 January 2007 (reference for a preliminary ruling from the Överklagandenämnden för högskolan, Sweden) — Kaj Lyyski v Umeå universitet

(Case C-40/05) ([1])

(Freedom of movement for workers — Article 39 CE — Obstacles — Vocational training — Teachers — Refusal to admit to a training course a candidate employed in a school in another Member State)

(2007/C 42/05)

Language of the case: Swedish

Referring court

Överklagandenämnden för högskolan

Parties to the main proceedings

Applicant: Kaj Lyyski

Defendant: Umeå universitet

Re:

Reference for a preliminary ruling — Överklagandenämnden för högskolan (Board of Appeals for Higher Education) — Interpretation of Community law and in particular of Article 12 EC — Professional training scheme organised to remedy a lack of qualified teachers in a Member State intended to allow teachers employed in schools to obtain the qualifications necessary for a contract unlimited as to time — Refusal to admit a candidate who is a national of that Member State but employed in a school in another Member State

Operative part of the judgment

Community law does not preclude national legislation which organises, on a provisional basis, training courses intended in the short term to meet the need for qualified teachers in a State from requiring that candidates for that training be employed in a school in that State, provided, however, that the manner in which that legislation is applied does not lead to the exclusion, as a matter of principle, of all applications made by teachers who are not employed in such a school without prior individual assessment of the merits of those applications in the light, inter alia, of the aptitude of the person concerned, and the possibility of monitoring the practical part of the training received or possibly of exempting that person from it.

([1]) OJ C 93, 16.4.2005.

Judgment of the Court (Sixth Chamber) of 11 January 2007 — Commission of the European Communities v Ireland

(Case C-175/05) ([1])

(Failure of a Member State to fulfil obligations — Directive 92/100/EEC — Copyright — Rental and lending right — Exclusive public lending right — Derogation — Condition of remuneration — Exemption — Scope)

(2007/C 42/06)

Language of the case: English

Parties

Applicant: Commission of the European Communities (represented by: M. Shotter and W. Wils, Agents)

Defendant: Ireland (represented by: D. O'Hagan, Agent, E. Regan SC, J. Gormley, Advisory Counsel)

Intervener in support of the defendant: Kingdom of Spain (represented by: I. del Cuvillo Contreras, Agent)

Re:

Failure of a Member State to fulfil obligations — Breach of Articles 1 and 5 of Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (OJ 1992 L 346, p. 6) — Derogation from the exclusive public lending right — Scope

Operative part of the judgment

The Court:

1) *Declares that, by exempting all categories of public lending establishments, within the meaning of Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property, from the obligation to remunerate authors for the lending carried out by them, Ireland has failed to fulfil its obligations under Articles 1 and 5 of that directive;*

2) *Orders Ireland to pay the costs;*

3) *Orders the Kingdom of Spain to pay its own costs.*

([1]) OJ C 155, 25.6.2005.

Judgment of the Court (Second Chamber) of 11 January 2007 — Commission of the European Communities v Ireland

(Case C-183/05) ([1])

(Failure of a Member State to fulfil obligations — Directive 92/43/EEC — Articles 12(1) and (2), 13(1)(b) and 16 — Conservation of natural habitats and of wild fauna and flora — Protection of species)

(2007/C 42/07)

Language of the case: English

Parties

Applicant: Commission of the European Communities (represented by: M. van Beek, Agent, assisted by M. Wemaëre, avocat)

Defendant: Ireland (represented by: D. O'Hagan, Agent)

Re:

Failure of a Member State to fulfil obligations — Defective transposition of Articles 12(1) and (2), 13(1)(b) and 16 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)

Operative part of the judgment

The Court:

1. *Declares that*

   — *by failing to take all the requisite specific measures for the effective implementation of the system of strict protection laid down in Article 12(1) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, and*

   — *by retaining the provisions of section 23(7)(a) to (c) of the 1976 Wildlife Act, as amended by the 2000 Wildlife (Amendment) Act, which are incompatible with those in Articles 12(1) and 16 of Directive 92/43,*

   Ireland has failed to comply with those articles of Directive 92/43 and to fulfil its obligations under that directive;

2. *Orders Ireland to pay the costs.*

([1]) OJ C 182, 23.7.2005.

Judgment of the Court (Third Chamber) of 11 January 2007 (reference for a preliminary ruling from the Sozialgericht Berlin — Germany) — ITC Innovative Technology Center GmbH v Bundesagentur für Arbeit

(Case C-208/05) ([1])

(Freedom of movement for workers — Freedom to provide services — National legislation — Payment by the Member State of the fee due to a private-sector recruitment agency in respect of recruitment — Employment subject to compulsory social security contributions in that Member State — Restriction — Justification — Proportionality)

(2007/C 42/08)

Language of the case: German

Referring court

Sozialgericht Berlin

Parties to the main proceedings

Applicant: ITC Innovative Technology Center GmbH

Defendant: Bundesagentur für Arbeit

Re:

Reference for a preliminary ruling — Sozialgericht Berlin — Interpretation of Articles 18 EC, 39 EC, 49 EC, 50 EC and 87 EC and of Articles 3 and 7 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition 1968(II), p. 475) — National legislation introducing subsidies for private-sector recruitment companies in the event of the conclusion by a job-seeker of a contract of employment resulting in affiliation to the social-security system — Excluded in the case of a contract of employment concluded with an employer established in the territory of another Member State

Operative part of the judgment

1. *Articles 39 EC, 49 EC and 50 EC prohibit national legislation, such as the second sentence of Paragraph 421(g)(1) of Book III of the German Social Security Code, which provides that payment by a Member State to a private-sector recruitment agency of the fee due to that agency by a person seeking employment in respect of that person's recruitment is subject to the condition that the job found by that agency be subject to compulsory social security contributions in that State.*

2. *It is for the national court to the full extent of its discretion under national law, to interpret and apply domestic law in accordance with the requirements of Community law and, to the extent that such an interpretation is not possible in relation to the EC Treaty provisions conferring rights on individuals which are enforceable by them and which the national courts must protect, to disapply any provision of domestic law which is contrary to those provisions*

([1]) OJ C 171, 9.7.2005.

Judgment of the Court (Grand Chamber) of 16 January 2007 (reference for a preliminary ruling from the Cour de cassation, France) — José Perez Naranjo v Caisse régionale d'assurance maladie (CRAM) Nord-Picardie

(Case C-265/05) ([1])

(Regulation (EEC) No 1408/71 — Articles 4(2a), 10a and 95b — Supplementary old-age allowance — National law making the grant of that allowance conditional on residence — Special non-contributory benefit — Listed in Annex IIa to Regulation No 1408/71)

(2007/C 42/09)

Language of the case: French

Referring court

Cour de cassation — Civil Chamber

Parties to the main proceedings

Applicant: José Perez Naranjo

Defendant: Caisse régionale d'assurance maladie (CRAM) Nord-Picardie

Re:

Reference for a preliminary ruling — Cour de cassation — Civil chamber — Paris — Interpretation of Articles 4(2a), 10a, 19(1) and 95b 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 (OJ English Special Edition 1971 (II), p. 416), as amended — National legislation making the grant of supplementary allowance from the National Solidarity Fund subject to a residence condition — Concept of a special non-contributory benefit — Listing of the allowance in Annex IIa to Regulation (EEC) No 1408/71

Operative part of the judgment

A benefit such as the supplementary allowance mentioned, under the heading 'France' in Annex IIa to 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, in the version amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, constitutes a special benefit. Examination of the method of financing the supplementary allowance, on the basis of the information in the file submitted to the Court, shows that there is no sufficiently identifiable link between the general social contribution and the benefit concerned, which leads to the conclusion that the supplementary allowance in non-contributory. However, it is for the national court to confirm the accuracy of the factors set out in paragraphs 48 to 52 of this judgment in order to determine conclusively whether that benefit is contributory or non-contributory.

([1]) OJ C 217, 3.9.2005.

Judgment of the Court (Seventh Chamber) of 11 January 2007 — Commission of the European Communities v Hellenic Republic

(Case C-269/05) ([1])

(Failure of a Member State to fulfil obligations — Article 1 of Regulation (EEC) No 4055/86 — Maritime transport — Harbour dues levied on passenger vessels or cargo vessels — Harbour dues levied on vehicles aboard ferries — Discrimination)

(2007/C 42/10)

Language of the case: Greek

Parties

Applicant: Commission of the European Communities (represented by: G. Zavvos and K. Simonsson, Agents)

Defendant: Hellenic Republic (represented by: E. Skandalou, Agent)

Re:

Failure of a Member State to fulfil obligations — Breach of Article 1 of Council Regulation (EEC) No 4055/86 of 22 December 1986 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries (OJ 1986 L 378, p. 1) — Harbour dues levied on passenger vessels or cargo vessels — Lower level of dues when transport is between two ports within national territory — Harbour dues levied on vehicles aboard ferries — Dues not levied on vehicles travelling between ports in national territory

Operative part of the judgment

The Court:

1) *Declares that, by maintaining in force:*

— *the harbour dues levied on passenger vessels (including cruise ships) or on cargo vessels when they enter into harbour, berth and anchor in the ports of Piraeus and Thessaloniki, applying a lower level of dues when transport is between two ports within Greece as compared with cases where transport is to a destination outside Greece,*

— *harbour dues for the benefit of the harbour funds of the Port Authorities AE, set up by Law No 2932/2001, and of the ports of Piraeus and Thessaloniki, which are levied on vehicles aboard ferries on international routes, while similar dues are not levied on routes between Greek ports,*

— *the right to levy dues on vehicles aboard vehicle ferries with a foreign port destination for the benefit of municipalities and communities,*

the Hellenic Republic has failed to fulfil its obligations under Article 1 of Council Regulation (EEC) No 4055/86 of 22 December 1986 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries;

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

([1]) OJ C 229, 17.9.2005.

Judgment of the Court (First Chamber) of 11 January 2007 (reference for a preliminary ruling from the College van Beroep voor het bedrijfsleven (Netherlands)) — Vonk Dairy Products BV v Productschap Zuivel

(Case C-279/05) ([1])

(Agriculture — Common organisation of the markets — Cheese — Articles 16 to 18 of Regulation (EEC) No 3665/87 — Differentiated export refunds — Almost immediate re-exportation from the country of importation — Evidence of abuse — Recovery of payments wrongly made — Second subparagraph of Article 3(1) of Regulation (EC, Euratom) No 2988/95 — Continuous or repeated irregularity)

(2007/C 42/11)

Language of the case: Dutch

Referring court

College van Beroep voor het bedrijfsleven (Netherlands)

Parties to the main proceedings

Applicant: Vonk Dairy Products BV

Defendant: Productschap Zuivel

Re:

Reference for a preliminary ruling — College van Beroep voor het bedrijfsleven Interpretation of Articles 16 to 18 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) in the version in force at the material time — Interpretation of the second subparagraph of Article 3(1) 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) — Differentiated refunds not due in the case of re-exports by the exporter that constitute an abuse — Determination of the criteria for a finding to that effect — Continuous or repeated irregularity

Operative part of the judgment

1. *In proceedings for the withdrawal and recovery of differentiated export refunds which have been definitively paid on the basis 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, a finding that those refunds have been wrongly paid must be substantiated by evidence of abuse on the part of the exporter, furnished in accordance with the rules of national law.*

2. *For the purposes of the second subparagraph of Article 3(1) of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests, an irregularity is continuous or repeated where it committed by a Community operator who derives economic advantages from a body of similar transactions which infringe the same provision of Community law. The fact that the irregularity relates to a relatively small proportion of all the transactions carried out in a given period and that the transactions in which the irregularity has been detected always concern different consignments is immaterial in this respect.*

([1]) OJ C 257, 15.10.2005.

Judgment of the Court (Fourth Chamber) of 11 January 2007 (reference for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) — Johan Piek v Ministerie van Landbouw, Natuurbeheer en Visserij

(Case C-384/05) ([1])

(Milk and milk products — Additional levy on milk — Special reference quantity — Second subparagraph of Article 3(1) of Regulation (EEC) No 857/84)

(2007/C 42/12)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: Johan Piek

Defendant: Ministerie van Landbouw, Natuurbeheer en Visserij

Re:

Reference for a preliminary ruling — Hoge Raad der Nederlanden — Interpretation of Article 3(1) of Council Regulation (EEC) No 857/84 of 31 March 1984 adopting general rules for the application of the levy referred to in Article 5c of Regulation (EEC) No 804/68 in the milk and milk products sector (OJ 1984 L 90, p. 13) — Determination of reference quantities exempt from levy — National measures providing for the allocation of special reference quantities to producers who have incurred investment obligations, whether or not under a development plan, between 1 September 1981 and 31 March 1984 — Compatibility with Community legislation providing for the period between 1 January 1981 and 31 March 1984

Operative part of the judgment

The second subparagraph of Article 3(1) of Council Regulation (EEC) No 857/84 of 31 March 1984 adopting general rules for the application of the levy referred to in Article 5c of Regulation (EEC) No 804/68 in the milk and milk products sector must be interpreted as not precluding a national rule such as that at issue in the main proceedings which restricts the category of milk producers who may obtain a special reference quantity to those who incurred investment obligations after 1 September 1981 but before 1 March 1984.

([1]) OJ C 330, 24.12.2005.

Judgment of the Court (Fifth Chamber) of 11 January 2007 (reference for a preliminary ruling from the Hoge Raad der Nederlanden, Netherlands) — B.A.S. Trucks BV v Staatssecretaris van Financiën

(Case C-400/05) ([1])

(Common Customs Tariff — Combined Nomenclature — Tariff classification — Subheading 8704 10 — Vehicle designed for use on construction sites for the transport and unloading of materials and also for use on the highway)

(2007/C 42/13)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: B.A.S. Trucks BV

Defendant: Staatssecretaris van Financiën

Re:

Preliminary ruling — Hoge Raad der Nederlanden — Tariff classification of a vehicle designed for use on construction sites for the transport and unloading of materials and also for use on the highway — Whether or not it should be classified under CN subheading 8704 10 as a 'dumper designed for off-highway use'

Operative part of the judgment

Subheading 8704 10 of 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 2261/98 of 26 October 1998, must be interpreted as meaning that it covers dumpers within the meaning of that subheading which are designed specifically and primarily for use off paved, public roads. The fact that dumper trucks have distinctive characteristics which enable them to be driven, incidentally, on paved, public roads does not preclude their classification as dumpers within the meaning of that subheading.

([1]) OJ C 36, 11.2.2006.

Appeal brought on 27 November 2006 by British Aggregates Association against the judgment of the Court of First Instance (Second Chamber, Extended Composition) delivered on 13 September 2006 in Case T-210/02: British Aggregates Association v Commission of the European Communities

(Case C-487/06 P)

(2007/C 42/14)

Language of the case: English

Parties

Appellant: British Aggregates Association (represented by: C. Pouncey, Solicitor, L. Van den Hende, advocaat)

Other parties to the proceedings: Commission of the European Communities, United Kingdom of Great Britain and Northern Ireland

Form of order sought

The applicant claims that the Court should:

— set aside the judgment of the CFI of 13 September 2006 in Case T-210/02;

— annul Commission decision C(2002) 1478fin of 24 April 2002 'State aid N863/01-United Kingdom/Aggregates Levy', save as regards the exemption for Northern Ireland; and

— to order the Commission to pay the Appellant's costs in this appeal and the procedure in Case T-210/01 in the CFI.

Pleas in law and main arguments

The applicant submits that the contested judgment of the Court of First Instance should be set aside on the following grounds:

— The Court of First Instance erred in law by assessing the existence of state aid in a non-objective way.

— The Court of First Instance erred in law by distinguishing the situation of the AGL from the situation at issue in Adria-Wien Pipeline ([1]) when assessing selectivity.

— The Court of First Instance erred in law by accepting that an environmental levy is non-selective because it is applied to a specific sector, without requiring or providing a clear definition of that sector.

— The Court of First Instance erred in law by applying the wring 'standard of review' to the Commission decision.

— The Court of First Instance erred in its assessment of the 'nature and general scheme' of the AGL. and in relation to the issue of the export exemption.

— The Court of First Instance erred in law by confirming that the Commission was under no obligation to initiate a formal investigation procedure.

— The Court of First Instance erred in law by finding that the contested decision is sufficiently reasoned.

([1]) [2001]ECR I-8365.

Appeal brought on 1 December 2006 by Bart Nijs against the judgment of the Court of First Instance (Second Chamber) delivered on 3 October 2006 in Case T-171/05 *Bart Nijs* v *Court of Auditors*

(Case C-495/06 P)

(2007/C 42/15)

Language of the case: French

Parties

Appellant: Bart Nijs (represented by: F. Rollinger, avocat)

Other party to the proceedings: Court of Auditors of the European Communities

Form of order sought

The appellant claims that the Court should:

— declare the appeal admissible and well-founded;

— set aside the judgment of the Court of First Instance (Second Chamber) of 3 October 2006 in Case T-171/05 *Bart Nijs* v *Court of Auditors*;

— annul the decisions which were the subject of the application in Case T-171/05, inter alia the decision establishing the definitive version of the appellant's staff report for the 2003 reporting period and the decision to promote Ms Y to the position of reviser in the Dutch unit of the Court of Auditor's translation service in 2004;

— grant the application for compensation for the damage suffered, corresponding to the applicant's loss of income as against the situation in which he would have been placed had he been promoted;

— order the Court of Auditors to pay the costs of the action, of the two sets of interim proceedings and of the present appeal.

Pleas in law and main arguments

By his appeal, the appellant essentially alleges that the Court of First Instance omitted to rule on the ninth plea in the application, concerning the Appointing Authority's failure to comply with its obligation to notify the European Anti-Fraud Office (OLAF) of the instances of intimidation and fraud adversely affecting the Community invalidity pensions scheme of which it had been informed. Had such an investigation been carried out, it would have revealed a number of breaches of procedure by the Appointing Authority and, in particular, the fact that Ms Y unlawfully temporarily carried out higher duties and the fact that the appellant's superior unlawfully carried out his/her duties. Likewise, the fact that the Appointing Authority did not inform the Appeal Committee of the personal interest which the superiors of the two officials concerned had in those officials' assessments casts doubt on the legality of the definitive version of the appellant's staff report.

In the second place, the appellant disputes the Court of First Instance's statement that he did not provide any evidence such as to prove the accuracy of his claim that Ms Y was asked to carry out on a temporary basis the duties of a reviser or, at least, to make that claim plausible. Firstly, he was not actually aware of that temporary posting in March 2003 and that information, discovered more than two years later, therefore indeed constitutes a new fact, which means that his pleading of 16 December 2005 should be held admissible. Secondly, the 11 pleas put forward in the application, far from weakening the argument as to the unlawful temporary posting, have the completely opposite effect and actually strengthen it. However, the Court of First Instance did not comment on any of those pleas and based its reasoning on a single plea, which the appellant himself has never relied on.

Lastly, the appellant maintains that the decisions not to promote him and to promote Ms Y must be regarded as constituting one indivisible decision which was indeed taken before the official date, namely on the application of Article 7(2) of the Staff Regulations to Ms Y's career in autumn 2003, and that the decision to promote Ms Y does constitute an act adversely affecting the appellant on the grounds that it changes his legal position and simultaneously constitutes an abuse of power, a disguised sanction and a measure which discriminates against him.

Appeal brought on 5 December 2006 by CAS Succhi di Frutta SpA. against the judgment delivered on 13 September 2006 in Case T-226/01 CAS Succhi di Frutta SpA v Commission

(Case C-497/06P)

(2007/C 42/16)

Language of the case: Italian

Parties

Appellant: CAS Succhi di Frutta SpA (represented by: F. Sciaudone, R. Sciaudone and D. Fioretti, Avvocati)

Other party to the proceedings: Commission of the European Communities

Form of order sought

— Annul the judgment under appeal and refer the case back to the Court of First Instance so that it may give a ruling on the merits in the light of the information provided by the Court of Justice;

— order the Commission to pay the costs of the present proceedings and of the proceedings at first instance relating to Case T-226/01.

Pleas in law and main arguments

The pleas in law put forward challenging the judgment of the Court of First Instance may be divided into four categories, which relate to: the significance of the judgment in Case C-496/99 P *Commission* v *CAS*; the substitution of fruit; the coefficients of substitution; the costs incurred by the appellant in arguing its case.

With regard to the significance of the judgment delivered in Case C-496/99 P *Commission* v *CAS*, the appellant alleges: distortion and misrepresentation of the arguments put forward by the appellant on the significance of the judgment in Case T-226/01 *Commission* v *CAS*; breach of the principle of the authority of res judicata; misrepresentation of the action for damages referred to in the judgment in *Commission* v *CAS*; an error in the interpretation of the conditions under which an action for damages may be brought.

With regard to the substitution of fruit, the appellant alleges: a failure to provide adequate reasoning in relation to the loss suffered as a result of the substitution of the fruit and manifest error of assessment of the appellant's arguments concerning the unlawfulness of the tendering procedure; an error concerning the legal significance of the substitution of the fruit in the context of the mechanism of the tendering procedure; breach of the principle of the authority of res judicata in relation to the date when it was known with certainty that substituted fruit was to be received; distortion of the clear sense of the evidence in the case-file and failure to give adequate reasons concerning the advantages resulting from the substitution of fruit and the appellant's knowledge as of March 1996; infringement of procedural rules, manifest distortion of evidence and breach of the general principles relating to the burden of proof.

With regard to the coefficients of substitution, the appellant claims; an incorrect assessment of the quantities of fruit to be taken into account in calculating the loss.

Lastly, with regard to the costs incurred in defending its case, the appellant claims; breach of the principle of the right to compensation for loss relating to the costs of technical and legal assistance and infringement of the principle of compensation for the expenses incurred in participating in the tendering procedure.

Reference for a preliminary ruling from the Giudice di Pace di Genova (Italy) lodged on 11 December 2006 — Corporación Dermoestética SA v To Me Group Advertising Media

(Case C-500/06)

(2007/C 42/17)

Language of the case: Italian

Referring court

Giudice di Pace di Genova

Parties to the main proceedings

Applicant: Corporación Dermoestética SA

Defendant: To Me Group Advertising Media SRL

Questions referred

1. Is it incompatible with Article 49 of the EC Treaty for national legislation, such as that under Articles 4, 5 and 9a of Law No 175 of 1992 and Ministerial Decree No 657 of 16 September 1994, and/or administrative practices to prohibit the broadcasting on national television of advertisements for medical and surgical treatments carried out in private health care establishments duly authorised for that purpose, even though that same advertising is permitted on local television networks, and, at the same time, to impose, in relation to the broadcasting of those advertisements, a ceiling on expenditure of 5 per cent of declared income for the preceding year?

2. Is it incompatible with Article 43 of the EC Treaty for national legislation, such as that under Articles 4, 5 and 9a of Law No 175 of 1992 and Ministerial Decree No 657 of 16 September 1994, and/or administrative practices to prohibit the broadcasting on national television of advertisements for medical and surgical treatments carried out in private health care establishments duly authorised for that purpose, even though that same advertising is permitted on local television networks, and, at the same time, to require, in relation to the broadcasting of those advertisements, prior authorisation from each individual municipality and the opinion of the provincial professional association, and to impose a ceiling on expenditure of 5 per cent of declared income for the previous year?

3. Is it contrary to Articles 43 and/or 49 of the EC Treaty for the broadcasting of advertisements which provide information on medical and surgical treatments of an aesthetic nature in private health care establishments, duly authorised for that purpose, to be made subject to additional prior authorisation by the local authorities and/or professional associations?

4. By adopting a code of conduct which lays down limits on the advertising of the health care professions and by construing the legislation in force concerning the advertising of medical services in a manner which considerably restricts the right of doctors to advertise their own activities, both measures being binding on all doctors, have the National Federation of Associations of Doctors, Surgeons and Dentists (FNOMCeO) and the associations of group practices restricted competition beyond what is permitted under the relevant national legislation and in breach of Article 81(1) EC?

5. In any event, is the interpretative practice adopted by the FNOMCeO incompatible with Articles 3(g), 4, 98, 10, 81 and, possibly, Article 86 of the EC Treaty in so far as the practice is permitted by a national law which requires the appropriate provincial associations to verify the transparency and accuracy of advertisements by doctors without indicating the criteria and procedures to be applied in exercising that authority?

Appeal brought on 11 December 2006 by GlaxoSmithKline Services Unlimited (GSK), anciennement Glaxo Wellcome plc against the judgment of the Court of First Instance (Fourth Chamber, Extended Composition) delivered on 27 September 2006 in Case T-168/01: GlaxoSmithKline Services Unlimited v Commission of the European Communities

(Case C-501/06 P)

(2007/C 42/18)

Language of the case: English

Parties

Appellant: GlaxoSmithKline Services Unlimited, anciennement Glaxo Wellcome plc (represented by: I. Forrester QC, J. Venit, member of the New York Bar, S. Martínez Lage, abogado, A. Komninos, Δικηγόρος, A. Schulz, Rechtsanwalt)

Other parties to the proceedings: Commission of the European Communities, European Association of Euro Pharmaceutical Companies (EAEPC), Bundesverband der Arzneimittel-Importeure eV, Spain Pharma, SA, Asociación de exportadores españoles de productos farmacéuticos (Aseprofar)

Form of order sought

The applicant claims that the Court should:

— annul the Judgment of the Court of First Instance in so far as it rejects GSK's claim for annulment of Article 1 of the contested Decision, or take such other action as justice may require.

— award GSK the costs.

Pleas in law and main arguments

The applicant submits that the contested judgment should be annulled, in so far as it rejects GSK's claim for annulment of article 1 of the contested decision on the following grounds:

— The Court of First Instance erred in reaching the conclusion that the General Sales Conditions produce ap0preciable anti-competitive effects and thus violate Article 81(1) EC, failing appropriately to assess their actual legal and economic context. Furthermore, (i) the intra-brand price competition that the Court refers to in its Judgment is itself the result of a market distortion, and (ii) the Court relied on alleged marginal advantages that final consumers in importing countries could have derived from the participation of the Spanish wholesalers in intra-brand competition.

— The Court lacked the competence to draw factual conclusions concerning the possible effect upon patients and those who paid for their medicines, given the absence of a basis for such conclusions in the contested Commission decision.

Action brought on 13 December 2006 — Commission of the European Communities v Italian Republic

(Case C-504/06)

(2007/C 42/19)

Language of the case: Italian

Parties

Applicant: Commission of the European Communities (represented by: L. Pignataro-Nolin and I. Kaufmann-Bühler, Agents)

Defendant: Italian Republic

Forms of order sought

— declare that, by having failed to transpose correctly in Italian law Article 3(1) of Council Directive 92/57/EEC ([1]) of 24 June 1992 on the implementation of minimum safety and health requirements at temporary or mobile construction sites (eighth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC ([2])), the Italian Republic has failed to fulfil its obligations under that directive;

— order the Italian Republic to pay the costs.

Pleas in law and main arguments

Under Italian law, constructions sites which correspond to less than 200 man-days and which do not involve work coming within the scope of Annex II to the Directive are covered solely by the coordination provisions contained in Article 7 of Decree No 626/1994. That article, however, imposes only a general obligation of cooperation and coordination on employers which, within the company or producer unit, assign work to contracting undertakings or to self-employed persons. Accordingly, it is not possible to conclude that the precise and detailed provisions of Directive 92/57/EEC relating to the coordination required during the drafting and execution phases of a project can be regarded as being implemented by the article of the Decree in question.

(1) OJ 1992 L 245, p. 6.
(2) OJ 1989 L 183, p. 1.

Reference for a preliminary ruling from the Commissione tributaria regionale di Genova (Italy) lodged on 12 June 2006 — Agenzia Dogane Circoscrizione Doganale di Genova v Euricom SpA

(Case C-505/06)

(2007/C 42/20)

Language of the case: Italian

Referring court

Commissione tributaria regionale di Genova

Parties to the main proceedings

Applicant: Agenzia Dogane Circoscrizione Doganale di Genova

Defendant: Euricom SpA

Questions referred

1. On a proper construction of Article 216 of the Community Customs Code, does that provision apply exclusively to products obtained under the inward processing procedure which incorporate non-Community goods, or does it form the basis for a customs debt quite separate from other such debts, justified by the need to avoid granting double relief from customs duty?

2. In the context of an operation under the inward processing arrangements, carried out in accordance with the prior export equivalence procedure (EX-IM), do Articles 115(1) and 115(3) of the Community Customs Code, together with the related implementing rules laid down in Regulation (EEC) No 2913/92 (1), govern in any case the question whether the products imported to make up for the products previously exported as originating in Italy are to be regarded for customs purposes as Community goods, and the question whether they benefit accordingly from an exemption from import duties, or do those provisions not apply in cases where that operation — in respect of the products at issue, as described in the preamble — concerns prior exports to countries with which the European Community has entered into related Agreements?

3. In the present case, does the fact that Article [115](3), referred to above, provides that the imported replacement goods are to acquire the customs status of the prior-exported Community goods have any effect on the operation in practice, in particular, on the Community origins of the prior-exported Italian rice? If so, what is the relationship between the customs regime of inward processing arrangements and the rules of origin laid down in the Community Customs Code and the Agreements with the CEECs?

4. In so far as Article 15(2) of the Agreements between the European Community and the CEECs establishes that the prohibition on refunds of customs duties relating to non-Community raw materials used in the manufacture of products exported with a EUR 1 certificate of origin (issued by a Community customs authority) does not apply if those products are instead retained for home use, must that provision be interpreted in such a way as to render Article 216 of the Community Customs Code redundant?

(1) OJ 1992 L 302, p. 1.

Appeal brought on 18 December 2006 by PTV Planung Transport Verkehr AG against the judgment delivered on 10 October 2006 in Case T-302/03 PTV Planung Transport Verkehr AG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-512/06 P)

(2007/C 42/21)

Language of the case: German

Parties

Appellant: PTV Planung Transport Verkehr AG (represented by: Dr. F. Nielsen, Rechtsanwalt)

Other party to the proceedings: Office for Harmonisation in the Internal Market

Form of order sought

— Set aside the judgment of the Court of First Instance of the European Communities (Second Chamber) of 10 October 2006 in Case T-302/03;

— Order the defendant and respondent to pay the costs.

Pleas in law and main arguments

The judgment of the Court of First Instance of 10 October 2006 infringes Article 7(1)(b) of Regulation No 40/94 ([1]). The Court of First Instance wrongly considered that there is a 'specific and direct relationship' between the designation 'map&guide' and the 'computer software' product and 'computer programming' services and that the designation 'map&guide' allows for an 'immediate identification' of that product and those services (paragraph 40 of the judgment). Furthermore, the Court of First Instance erred in law when it assumed that the sign 'map&guide' enables the relevant public 'to establish immediately, and without reflection, a specific and direct relationship with the computer software [product] and the computer programming services for computers providing the function of (city) maps and (travel) guides' (paragraph 47 of the judgment). Finally, it is claimed in the judgment that the 'computer software' product group and the 'computer programming' services group may also include goods and services which have the function of providing (city) maps and (travel) guides.

The interpretation of Article 7(1)(b) of Regulation No 40/94 adopted by the Court of First Instance in the judgment is incorrect. Contrary to the assumption of the Court of First Instance the mark applied for does not lack distinctive character. The mark applied for is not descriptive. A 'specific and direct relationship' and an 'immediate identification' may only be assumed to exist if the term at issue is one which directly designates the product or services in question or describes characteristics which 'attach to' the particular goods or services immediately or per se. That does not apply to the designation 'map&guide'. It neither designates the 'computer software' product or the 'computer programming' services directly nor makes a statement regarding an essential characteristic which is immediately associated with the product or services. The public does not have the opportunity 'to establish immediately, and without reflection, a specific and direct relationship with the computer software [product] and the computer programming services for computers providing the function of (city) maps and (travel) guides'. Furthermore, neither the 'computer programming' services nor the 'computer software' product can 'provide' the function of a (city) map or a (travel) guide.

The connection which the Court of First Instance in the judgment assumed to exist between the designation 'map&guide' and the specifically referred to 'computer software' product and 'computer programming' services is not present at the outset, but is only artificially contrived.

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

Appeal brought on 18 December 2006 by Commission of the European Communities against the judgment of the Court of First Instance (Fourth Chamber, Extended Composition) delivered on 27 September 2006 in Case T-168/01: GlaxoSmithKline Services Unlimited, formerly Glaxo Wellcome plc v Commission of the European Communities

(Case C-513/06 P)

(2007/C 42/22)

Language of the case: English

Parties

Appellant: Commission of the European Communities (represented by: T. Christoforou, F. Castillo de la Torre et E. Gippini Fournier, Agents)

Other parties to the proceedings: European Association of Euro Pharmaceutical Companies (EAEPC), Bundesverband der Arzneimittel-Importeure eV, Spain Pharma, SA, Asociación de exportadores españoles de productos farmacéuticos (Aseprofar), GlaxoSmithKline Services Unlimited, anciennement Glaxo Wellcome plc

Form of order sought

The applicant claims that the Court should:

— set aside points 1 and 3 to 5 of the operative part of the judgment of the Court of First Instance of 27 September 2006 in Case T-168/01, GlaxoSmithKline Services Ltd. v. Commission of the European Communities;

— give final judgment in the matter by dismissing the application for annulment in Case T-168/01 as unfounded;

— order the Applicant in Case T-168/01 to pay the costs of the Commission arising from that case and from the present appeal.

Pleas in law and main arguments

The Commission agrees with the conclusions of the Court of First Instance concerning the reasoning of the contested decision; the existence of an agreement between undertakings; the alleged misuse of powers and the alleged infringement of the principle of subsidiary and of Article 43 EC.

Concerning the part of the judgment dealing with existence of an anticompetitive 'effect' the Commission contests the reasoning followed by the Court of First Instance. It maintains that the Court's analysis confirming the existence of the restrictive 'effects' constitutes in reality an analysis of the restrictive 'object' of the agreement having due regard to the legal and economic context, and should have led the Court to confirm the Decision's finding that the agreement had an anticompetitive object. Concerning the other findings about 'effects', the Commission has serious objections in particular regarding: the definition of the relevant market; the dismissal of the Commission's findings under Article 81(1)(d) with the legally erroneous argument that the different prices were charged on different geographic markets; and a number of other findings made in the in the judgment where the Court substitutes its own

assessment of the factual and economic evidence for that of the Commission, an exercise that is not permissible in judicial review. However, given that the Commission shares the ultimate conclusions reached by the Court, i.e that the agreement in question produced anticompetitive effects, it does not intend at this stage to raise grounds of appeal against this part of the judgment.

The present appeal raises two series of pleas. The first series relates to the findings concerning Article 81(1), and in particular the errors of law and distortions in the interpretation and application of the notion of 'object' in the provision, as well as the many distortions, errors of law, and inadequacies or contradictions in the reasoning in relation with 'legal and economic context' of the agreement. The second series of pleas relates to the findings under Article 81(3): first and foremost those relating to the first condition contemplated in this provision, but also the lack of examination of several other conditions.

Appeal brought on 20 December 2006 by the Commission of the European Communities against the judgment of the Court of First Instance (First Chamber) delivered on 27 September 2006 in Case T-153/04 Ferriere Nord SpA v Commission of European Communities

(Case C-516/06 P)

(2007/C 42/23)

Language of the case: Italian

Parties

Appellant: Commission of the European Communities (represented by: V. Di Bucci and F. Amato, Agents)

Other party to the proceedings: Ferriere Nord SpA

Form of order sought

— The Court is asked to set aside the judgment appealed against in so far as it declares admissible the action for annulment brought by Ferriere Nord against the Commission's letter of 5 February 2004 and its fax of 13 April 2004;

— declare inadmissible and accordingly dismiss the action for annulment brought by Ferriere Nord against the contested acts;

— order Ferriere Nord to pay the costs of the proceedings, together with the costs of the proceedings at first instance.

Pleas in law and main arguments

In so far as it declares admissible the action brought at first instance, the judgment of the Court of First Instance of 27 September 2006 in Case T-153/04 *Commission of the European Communities* v *Ferriere Nord SpA* infringes the first paragraph of Article 230 EC, read in conjunction with Article 249 EC, concerning the interpretation of the concept of an act against which proceedings can be brought, fails to state reasons or states incorrect reasons and is vitiated by a lack of jurisdiction on the part of the Court of First Instance.

The Court of First Instance did not demonstrate that the contested acts produced binding legal effects likely to affect the interests of the applicant at first instance, thereby bringing about a significant change in its legal position. The Court of First Instance also based its finding of admissibility on the assumption, also unsubstantiated, that a presumption of lawfulness attached to the acts contested at first instance. Lastly, the Court of First Instance exceeded the powers conferred on it by the Treaty.

Action brought on 20 December 2006 — Commission of the European Communities v Republic of Austria

(Case C-517/06)

(2007/C 42/24)

Language of the case: German

Parties

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

Defendants: Republic of Austria

Form of order sought

The Court is asked to:

— declare that, by failing to adopt, in the Steiermark and Salzburg Länder, the laws, regulations and administrative provisions necessary to comply with Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information [1] or, in any event, by failing to communicate them to the Commission, the Republic of Austria has failed to fulfil its obligations under that directive;

— order the Republic of Austria to pay the costs.

Pleas in law and main arguments

The period prescribed for transposition of the directive expired on 1 July 2005.

[1] OJ 2003 L 345, p. 90.

Action brought on 20 December 2006 — Commission of the European Communities v Italian Republic

(Case C-518/06)

(2007/C 42/25)

Language of the case: Italian

Parties

Applicant: Commission of the European Communities (represented by: E. Traversa and N. Yerrell, acting as Agents)

Defendant: Italian Republic

Forms of order sought

The applicant claims that the Court should:

(1) declare that the Italian Republic,

— by introducing and maintaining legislation pursuant to which premiums for third party motor vehicle liability insurance must be calculated on the basis of fixed parameters;

— by making the premiums for third party motor vehicle liability insurance subject to controls *ex post facto*,

has failed to fulfil the obligations relating to the free marketing of insurance products incumbent upon it under the provisions on pricing freedom laid down in Articles 6, 29 and 39 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) ([1]) ('Directive 92/49');

— by controlling the detailed rules in accordance with which insurance undertakings which have their head office in another Member State, but operate in Italy in exercise of the freedom of establishment or the freedom to provide services, calculate their insurance premiums;

— by imposing penalties for infringement of the Italian rules concerning the detailed rules for calculating insurance premiums, even in the case of insurance undertakings which have their head office in another Member State but which operate in Italy in exercise of the freedom of establishment or the freedom to provide services,

has failed to fulfil its obligations under Article 9 of Directive 92/49;

— by maintaining an obligation to provide coverage for third party motor vehicle liability, incumbent upon all insurance undertakings, including those which have their head office in another Member State but which operate in Italy in exercise of the freedom of establishment or the freedom to provide services,

has failed to fulfil its obligations under Articles 43 and 49 of the Treaty establishing the European Community.

(2) order the Italian Republic to pay the costs.

Pleas in law and main arguments

The obligation for insurance companies to establish net premiums in accordance with 'proper technical bases, which are sufficiently wide and which extend over at least five business years' and to ensure that those premiums comply with a particular market average, together with the subjection of those premiums to controls *ex post facto* — with the consequence that substantial fines may be imposed by the Italian supervisory authority in the case of infringement of those obligations — constitutes a breach of the principle of pricing freedom provided for in Directive 92/49. The effect of the Italian legislation is to set up a system of regulated premiums and thus to prevent insurance undertakings from marketing their services as they see fit and freely establishing their pricing policies, and thereby jeopardising the establishment of the single market in insurance.

The general interest underlying the adoption of the national provisions cannot be used by the Italian State to legitimise a derogation from the principle of pricing freedom for undertakings as established by Community legislation in so far as it does not fall within the exceptions expressly provided for in the second paragraph of Article 29, and in Article 39(3), of Directive 92/49.

The control effectively exercised by the Italian supervisory authority, that is to say, the supervisory authority of the host Member State, over the detailed rules in accordance with which insurance undertakings operating in Italy in exercise of freedom of establishment or the freedom to provide services calculate their insurance premiums, together with the imposition of penalties by the Italian supervisory authority for infringement of the Italian legislation, constitutes a failure to comply with the allocation of tasks and responsibilities — between the home Member State (the Member State in which the insurance company is principally established) and the host Member State — as provided for in Article 9 of Directive 92/49.

The obligation to provide coverage, imposed on all insurance undertakings engaged in motor vehicle liability, independently of the location of the head office, and in relation to all categories of insured persons and all regions of Italy — coupled with the possibility that penalties may be applied by the Italian supervisory authority for infringement of that obligation — entails a restriction on the fundamental freedom of establishment, prohibited as such by Article 43 EC, and also constitutes a restriction of the freedom to provide services, incompatible with Article 49 EC. Indeed, the obligation under the Italian legislation to provide the compulsory motor vehicle liability insurance constitutes a serious obstacle to engaging in the activities of an insurance undertaking in Italy, in that such an obligation discourages insurance undertakings established in other Member States from establishing themselves in Italy or from providing services there, and thus impairs access to the Italian market.

The obligation to provide coverage constitutes an obstacle which is neither justified nor proportionate in relation to the aim pursued. Indeed, '*the concept of public policy may be relied upon in the event of a genuine and sufficiently serious threat to … one of the fundamental interests of society*' and '*the public policy exception, like all derogations from a fundamental principle of the Treaty, must be interpreted restrictively*' (see Case C-348/96 *Criminal proceedings against Donatella Calfa* [1999] ECR I-11, paragraphs 21 and 23).

Furthermore, that restriction appears to be an inappropriate means of attaining the objective for which it was adopted, in that such a generalised obligation to provide coverage hampers the development and operability of specialised services within insurance undertakings, which would be better able to satisfy the needs of consumers properly and efficiently simply because of being so specialised.

Lastly, such a restriction goes beyond what is necessary in order to achieve the objective of maintaining public order or of protecting consumers, both in geographical terms — in that the problems relating to public order concern, according to the Italian authorities themselves, only '*specific geographical areas*' of the national territory — and in terms of content — in that insurance undertakings operating in Italy are required to offer coverage to any owner or driver of motor vehicles, regardless of the risk posed in practice by that owner or driver as regards liability for damage caused to third parties.

(1) OJ 1992 L 228, p. 1.

Appeal brought on 21 December 2006 by Athinaiki Techniki AE against the order delivered by the Court of First Instance (Second Chamber) on 26 September 2006 in Case T-94/05 *Athinaiki Techniki AE* v *Commission*

(Case C-521/06 P)

(2007/C 42/26)

Language of the case: French

Parties

Appellant: Athinaiki Techniki AE (represented by: S.A. Pappas, lawyer)

Other parties to the proceedings: Commission of the European Communities, Athens Resort Casino AE Symmetochon

Form of order sought

The Court is asked to:

— annul the contested order;

— grant the forms of order sought at first instance;

— order the Commission to pay the costs.

Pleas in law and main arguments

The appellant relies on a single plea in support of its appeal, based on the error allegedly committed by Court of First Instance in its legal characterisation of the letter deciding to take no further action on its complaint. First, the decision taken by the Commission not to take any further action clearly assumes a final character in the light of the file; secondly, it is unambiguously apparent from the context in which the Commission ruled that it had indeed implicitly taken a reasoned decision on the classification of the State aid which was the subject of the complaint. Consequently, the Court of First Instance erred in law in finding that the contested letter could not be subject of an action and in dismissing the action as inadmissible.

Action brought on 22 December 2006 — Commission of the European Communities v Kingdom of Belgium

(Case C-522/06)

(2007/C 42/27)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: A. Alcover San Pedro, B. Stromsky, Agents)

Defendant: Kingdom of Belgium

Form of order sought

The Court is asked to:

— Declare that, by failing to define the minimum qualification requirements for certain members of personnel working in recovery, recycling, reclamation and destruction of controlled substances in accordance with Article 16(5) of Regulation (EC) No 2037/2000 of the European Parliament and of the Council of 29 June 2000 on substances that deplete the ozone layer (1) and, in respect of the Walloon Region, by failing to take all precautionary measures practicable to prevent and minimise leakages of controlled substances and by failing to carry out annual checks to establish the presence or not of leakages in accordance with Article 17(1) of that regulation, the Kingdom of Belgium has failed to fulfil its obligations under Articles 16(5) and 17(1) of that regulation.

— Order the Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

In support of its action, the applicant asserts that the Kingdom of Belgium, first, has failed to define the minimum qualification requirements for personnel responsible for recovery, recycling, reclamation and destruction of controlled substances referred to in Article 2 of the Regulation and contained in refrigeration, air-conditioning and heat pump equipment, fire protection systems and fire extinguishers — except, in respect of extinguishers containing halons, the Region of Brussels-Capital — and, secondly, in respect of the Walloon Region, has failed to take all precautionary measures practicable to prevent and minimise leakages of controlled substances and to carry out annual checks to establish the possible presence or not of such leakages.

([1]) OJ 2000 L 244, p. 1.

Action brought on 22 December 2006 — Commission of the European Communities v Republic of Finland

(Case C-523/06)

(2007/C 42/28)

Language of the case: Finnish

Parties

Applicant: Commission of the European Communities (represented by: M. Huttunen and K. Simonsson, acting as Agents)

Defendant: Republic of Finland

Form of order sought

— declare that, by failing to draw up and implement waste reception and handling plans in respect of all ports, the Republic of Finland has failed to fulfil its obligations under Articles 5(1) and 16(1) of Directive 2000/59/EC ([1]) of the European Parliament and of the Council of 27 November 2000 on port reception facilities for ship-generated waste and cargo residues;

— order the Republic of Finland to pay the costs.

Pleas in law and main arguments

The period for implementing the Directive expired on 28 December 2002.

([1]) OJ L 332, p. 81.

Reference for a preliminary ruling from the Rechtbank van koophandel, Hasselt (Belgium) lodged on 22 December 2006 — NV De Nationale Loterij v BVBA Customer Service Agency

(Case C-525/06)

(2007/C 42/29)

Language of the case: Dutch

Referring court

Rechtbank van koophandel, Hasselt

Parties to the main proceedings

Applicant: NV De Nationale Loterij

Defendant: BVBA Customer Service Agency

Questions referred

1. Is Article 49 of the EC Treaty to be interpreted as meaning that restrictive national provisions, such as Article 37 of the Law of 19 April 2002, which obstruct the access to the market of an undertaking wishing to sell for profit group participation forms in Euro Millions, are still permitted having regard to the public interest (prevention of squandering through gaming), in the knowledge that:

   (a) the Nationale Loterij, which acquired a statutory monopoly from the Belgian State and pays a monopoly rent for it and which has the objective of channelling man's inherent compulsion to gamble, regularly advertises participation in Euro Millions thereby in reality strengthening that compulsion;

   (b) the regular advertising by Nationale Loterij and its sales methods have a foreclosure effect, in which the Nationale Loterij is induced to maximise turnover (financial reasons) rather than channel the citizens' inherent compulsion to gamble;

   (c) less obstructive measures, such as restriction of possible stakes and winnings, would better achieve the objective pursued, namely the channelling of the inherent compulsion to gamble?

2. Is a restrictive national provision such as Article 37 of the Law of 19 April 2002, which prevents the access to the market of an undertaking intending to sell, for profit, group participation forms in Euro Millions, contrary to the freedom to provide services (Article 49 of the EC Treaty) where the defendant itself does not organise a lottery but in fact seeks to organise, for profit, merely participation as a group in Euro Millions via the Nationale Loterij's own participation forms?

Reference for a preliminary ruling from the Hoge Raad der Nederlanden, lodged on 27 December 2006 — Staatssecretaris van Financiën v Road Air Logistics Customs B.V.

(Case C-526/06)

(2007/C 42/30)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Appellant: Staatssecretaris van Financiën

Respondent: Road Air Logistics Customs B.V.

Question referred

Must the term 'not legally owed' in Article 236 of the Community Customs Code ([1]) be construed as covering also the case in which the place where the customs debt was incurred was not determined in accordance with the relevant provisions of Regulation No 2454/93 implementing the Community Customs Code? ([2])

([1]) Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1).
([2]) Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ 1993 L 253, p. 1).

Action brought on 22 December 2006 — Commission of the European Communities v Kingdom of Belgium

(Case C-528/06)

(2007/C 42/31)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: E. Montaguti, Agent)

Defendant: Kingdom of Belgium

Form of order sought

— declare that by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2003/98/EC ([1]) of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information, or in any event by failing to communicate them to the Commission, the Kingdom of Belgium has failed to fulfil its obligations under that directive.

— order the Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

The period prescribed for transposing the directive into domestic law expired on 1 July 2005.

([1]) OJ 2003 L 345, p. 90.

Action brought on 22 December 2006 — Commission of the European Communities v Grand-Duchy of Luxembourg

(Case C-529/06)

(2007/C 42/32)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: E. Montaguti, Agent)

Defendant: Grand-Duchy of Luxembourg

Form of order sought

— declare that by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2003/98/EC ([1]) of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information, or in any event by failing to communicate them to the Commission, the Grand-Duchy of Luxembourg has failed to fulfil its obligations under that directive;

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

Pleas in law and main arguments

The period prescribed for transposing the directive into domestic law expired on 1 July 2005.

([1]) OJ 2003 L 345, p. 90.

Action brought on 22 December 2006 — Commission of the European Communities v Italian Republic

(Case C-530/06)

(2007/C 42/33)

Language of the case: Italian

Parties

Applicant: Commission of the European Communities (represented by: E. Montaguti and N. Yerrell, acting as Agents)

Defendant: Italian Republic

Form of order sought

The applicant claims that the Court should:

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2003/41/EC ([1]) of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision, or, in any event, by not informing the Commission of such measures, the Italian Republic has failed to fulfil its obligations under that directive;

— order the Italian Republic to pay the costs.

Pleas in law and main arguments

The period prescribed for the implementation of Directive 2003/41/EC expired on 23 September 2005.

([1]) OJ L 235, p.10.

Action brought on 22 December 2006 — Commission of the European Communities v Italian Republic

(Case C-531/06)

(2007/C 42/34)

Language of the case: Italian

Parties

Applicant: Commission of the European Communities (represented by: E. Traversa, Agent, G. Giacomini and E. Boglione, avvocati)

Defendant: Italian Republic

Form of order sought

The applicant claims that the Court should:

— declare that,

(a) by keeping in force legislation which restricts the right to operate private pharmacies to natural persons who have graduated in pharmacy and to companies composed exclusively of members who are pharmacists; and

(b) by keeping in force legislative provisions which make it impossible for undertakings engaged in the distribution of pharmaceutical products to acquire shareholdings in the companies which manage municipal pharmacies,

the Italian Republic has failed to fulfil its obligations under Articles 43 and 56 of the EC Treaty;

— order the Italian Republic to pay the costs.

Pleas in law and main arguments

The prohibition on the acquisition of shareholdings in private pharmacies by natural persons who are not pharmacists or by undertakings which are not composed exclusively of pharmacists not only obstructs, but renders absolutely impossible for those categories of persons, the exercise of two fundamental freedoms guaranteed by the Treaty, namely free movement of capital and freedom of establishment.

The prohibition on the acquisition of shareholdings in companies which manage municipal and private pharmacies by undertakings engaged in pharmaceutical distribution can be inferred from several rules still in force in the Italian legal system and is very likely to be applied by the Italian courts. That prohibition constitutes an obstacle both to the free movement of capital and to the exercise of the right of establishment.

Reference for a preliminary ruling from the Corte suprema di cassazione (Italy) lodged on 27 December 2006 — Industria Lavorazione Carni Ovine v Regione Lazio

(Case C-534/06)

(2007/C 42/35)

Language of the case: Italian

Referring court

Corte suprema di cassazione

Parties to the main proceedings

Applicant: Industria Lavorazione Carni Ovine

Defendant: Regione Lazio

Question referred

Must Article 13 of Council Regulation (EEC) No 866/90 ([1]) of 29 March 1990 be interpreted as meaning that financing must be excluded in cases in which, notwithstanding implementation of the specific programme for which the financing was obtained, the marketing and/or processing (in addition) of products which are not from the Community takes place along with the marketing and/or processing of products from the Community in the amounts required by the programme.

([1]) OJ L 91, p. 1.

Reference for a preliminary ruling from the Landgericht Siegen (Germany), lodged on 3 January 2007 — Criminal proceedings against Frank Weber

(Case C-1/07)

(2007/C 42/36)

Language of the case: German

Referring court

Landgericht Siegen

Party to the main proceedings

Frank Weber

Question referred

Is Article 1(2) in conjunction with Article 8(2) and (4) of Directive 91/439/EEC ([1]) to be interpreted as meaning that a Member State is precluded, within its territory, from refusing to recognise or from denying the validity of an entitlement to drive under a driving licence issued by another Member State because the right to drive was withdrawn from its holder in the first Member State after the grant to him in another Member State of a so-called 'second' EU right to drive, if the withdrawal of the right to drive is based on an incident or on misconduct which occurred prior to the grant of the right to drive by the other Member State?

([1]) Council Directive 91/439/EC of 29 July 1991 on driving licenses, OJ L 237, p. 1.

Action brought on 11 January 2007 — Commission of the European Communities v Portuguese Republic

(Case C-4/07)

(2007/C 42/37)

Language of the case: Portuguese

Parties

Applicant: Commission of the European Communities (represented by: M. Condou-Durande and P. Guerra e Andrade, acting as Agents)

Defendant: Portuguese Republic

Form of order sought

— a declaration that, by having failed to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 2003/110/EC on assistance in cases of transit for the purposes of removal by air ([1]) or, in any case, by having failed to communicate them to the Commission, the Portuguese Republic has failed to fulfil its obligations under that directive;

— order the Portuguese Republic to pay the costs.

Pleas in law and main arguments

The period prescribed for the transposition of the directive into domestic law expired on 6 December 2005.

([1]) OJ 2003 L 321, p. 26.

Action brought on 12 January 2007 — Commission of the European Communities v Portuguese Republic

(Case C-5/07)

(2007/C 42/38)

Language of the case: Portuguese

Parties

Applicant: Commission of the European Communities (represented by: M. Condou-Durande and P. Guerra e Andrade, Acting as Agents)

Defendant: the Portuguese Republic

Form of order sought

— a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents ([1]) or, in any case, by failing to communicate them to the Commission, the Portuguese Republic has failed to fulfil its obligations under that directive;

— order the Portuguese Republic to pay the costs.

Pleas in law and main arguments

The period prescribed for transposition of that directive into domestic law expired on 23 January 2006.

([1]) OJ L 16 of 23 January 2004, p. 44.

Order of the President of the Court of 7 December 2007 — Commission of the European Communities v Grand Duchy of Luxembourg

(Case C-219/06) ([1])

(2007/C 42/39)

Language of the case: French

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

([1]) OJ C 165, 15.7.2006.

COURT OF FIRST INSTANCE

Assignment of Judges to the Chambers

(2007/C 42/40)

On 15 January 2007, the Court of First Instance decided, following the entry into office as Judges of Mr Tchipev and Mr Ciucă, to change the composition of the Chambers for the period from 15 January 2007 to 31 August 2007 and to assign the Judges to the Chambers as follows:

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

Mr Vesterdorf, President of the Chamber, Mr Cooke, Mr García-Valdecasas, Ms Labucka, Mr Prek and Mr Ciucă, Judges;

First Chamber, sitting with three Judges:

Mr Cooke, President of the Chamber

(a) Mr García-Valdecasas and Mr Ciucă, Judges;

(b) Ms Labucka and Mr Prek, Judges;

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

Mr Pirrung, President of the Chamber, Mr Meij, Mr Forwood, Ms Pelikánová and Mr Papasavvas, Judges;

Second Chamber, sitting with three Judges:

Mr Pirrung, President of the Chamber

(a) Mr Meij and Ms Pelikánová, Judges;

(b) Mr Forwood and Mr Papasavvas, Judges;

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

Mr Jaeger, President of the Chamber, Ms Tiili, Mr Azizi, Ms Cremona, Mr Czúcz and Mr Tchipev, Judges;

Third Chamber, sitting with three Judges:

Mr Jaeger, President of the Chamber

(a) Ms Tiili, Mr Czúcz and Mr Tchipev, Judges;

(b) Mr Azizi and Ms Cremona, Judges;

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

Mr Legal, President of the Chamber, Ms Wiszniewska-Białecka, Mr Vadapalas, Mr Moavero Milanesi and Mr Wahl, Judges;

Fourth Chamber, sitting with three Judges:

Mr Legal, President of the Chamber

(a) Mr Vadapalas and Mr Wahl, Judges;

(b) Ms Wiszniewska-Białecka and Mr Moavero Milanesi, Judges;

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

Mr Vilaras, President of the Chamber, Ms Martins Ribeiro, Mr Dehousse, Mr Šváby and Ms Jürimäe, Judges;

Fifth Chamber, sitting with three Judges:

Mr Vilaras, President of the Chamber

(a) Ms Martins Ribeiro and Ms Jürimäe, Judges;

(b) Mr Dehousse and Mr Šváby, Judges.

In the First Chamber (Extended Composition), sitting with five Judges, the Judges who sit with the President of the Chamber to make up the formation of five Judges will be the three judges of the formation which initially heard the case and one judge from the other formation to be designated in turn in the order provided for by Article 6 of the Rules of Procedure of the Court of First Instance.

In the Third Chamber (Extended Composition), sitting with five Judges, the Judges who sit with the President of the Chamber to make up the formation of five Judges will be:

— where the case was initially heard by formation (a), in addition to the three Judges who sit in that formation, two Judges, sitting as assessors, from formation (b);

— where the case was initially heard by formation (b), in addition to the three Judges who sit in that formation, two Judges, sitting as assessors, from formation (a), to be designated in turn.

In the Third Chamber sitting with three Judges, the President of the Chamber will sit either with formation (b) or with two of the three Judges of formation (a) above, depending on the formation to which the Judge-Rapporteur belongs. For the purposes of composing formation (a), a rota will be established among those Judges in order to determine which of the three Judges is not to sit.

In the Second, Fourth and Fifth Chambers, sitting with three Judges, the President of the Chamber will sit either with the Judges of formation (a) above or with the Judges referred to at (b) above, depending on the formation to which the Judge-Rapporteur belongs.

For cases in which the President of the Chamber is the Judge-Rapporteur, the President of the Chamber will sit with the Judges of one or other of those formations alternately in accordance with the order in which the cases are registered, subject to the presence of connected cases.

Criteria for the assignment of cases to the Chambers

On 15 January 2007, the Court of First Instance laid down criteria as follows for the assignment of cases to the Chambers for the period from 15 January 2007 to 31 August 2007, in accordance with Article 12 of the Rules of Procedure::

1. Cases shall be assigned, as soon as applications have been lodged and without prejudice to any subsequent application of Articles 14 and 51 of the Rules of Procedure, to Chambers of three Judges.

2. Cases shall be allocated to the Chambers in turn, in accordance with the date on which they are registered at the Registry, following three separate rotas, namely:

   — for cases concerning application of the competition rules applicable to undertakings, the rules on State aid and the rules on trade protection measures;

   — for cases concerning the intellectual property rights referred to in Article 130(1) of the Rules of Procedure;

   — for all other cases.

   In applying those rotas, the Third Chamber shall be taken into consideration twice at each fifth turn.

   The President of the Court of First Instance may derogate from the rotas on the ground that cases are related or with a view to ensuring an even spread of the workload.

Action brought on 1 December 2006 — Bateaux Mouches v OHIM — Castanet (Bateaux Mouches)

(Case T-365/06)

(2007/C 42/41)

Language in which the application was lodged: French

Parties

Applicant: SA Compagnie des Bateaux Mouches (Paris, France) (represented by: D. de Leusse, 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: Jean-Noël Castanet (Paris, France)

Form of order sought

The Court is asked to:

— Declare the action by Compagnie des Bateaux Mouches admissible;

— Annul the decision of the First Board of Appeal of OHIM of 7 September 2006 (Case R 1172/2005-1, Castanet v Compagnie des Bateaux Mouches);

— Order OHIM to pay the costs.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: the word mark 'Bateaux Mouches' for services in Classes 39, 41 and 42 — Community trade mark No 1 336 122

Proprietor of the Community trade mark: the applicant

Applicant for the declaration of invalidity: Jean-Noël Castanet

Decision of the Cancellation Division: rejection of the application for cancellation

Decision of the Board of Appeal: annulment of the decision of the Cancellation Division

Pleas in law: breach of Article 7(1)(b) of Council Regulation No 40/94 [1] on the grounds that the contested decision wrongly held the applicant's trade mark to be descriptive and without distinctive character and inasmuch as it held that the applicant had not proved that its trade mark had acquired by usage a distinctive character for the services concerned.

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

Action brought on 7 December 2006 — Holland Malt v Commission

(Case T-369/06)

(2007/C 42/42)

Language of the case: English

Parties

Applicant: Holland Malt BV (Lieshout, Netherlands) (represented by: O.W. Brouwer and D. Mes, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Annul, in full or in part, Articles 1, 2, 3 and 4 of the contested decision;

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

— take any other measures that the Court considers appropriate.

Pleas in law and main arguments

The applicant seeks the annulment of Commission Decision C(200) 4196 final [1] of 26 September 2006 by which the Commission declared that a subsidy that the Netherlands conditionally granted to the applicant constitutes State aid that is incompatible with the common market.

The applicant contests that the Commission was entitled to find that the subsidy constituted State aid incompatible with the common market and submits that the Commission committed infringements of Article 87 EC and a number of principles of Community law. These infringements concern the following:

1) Infringement of Article 87(1) EC related to a failure to establish that the subsidy constituted State aid in the sense of this provision and a misconstruction and misapplication of Community case law on this point;

2) Infringement of Article 87(3) EC related to:

   a) A misconstruction and misapplication of the Community Guidelines [2] on State aid in the agriculture sector;

   b) A failure to properly balance the beneficial effects of the subsidy and its impact on trading conditions inside the Community;

   c) A failure to properly assess and establish the impact of the subsidy on capacities in the malt industry;

   d) A failure to take account of events and developments that occurred between the moment the Dutch government decided to conditionally grant the subsidy and the moment the Commission adopted the contested decision;

3) Infringement of the principle of sound administration related to a failure to duly investigate all aspects and interests involved in the granting of the subsidy, including events and developments that occurred between the moment the Dutch government decided to conditionally grant the subsidy and the moment the Commission adopted its decision.

4) Infringement of the duty to state reasons as laid down in Article 253 EC.

[1] C 14/2005 (ex N 149/2004) Holland Malt BV.
[2] Community Guidelines for State aid in the agriculture sector (OJ 2000 C 28, p. 2).

Action brought on 4 December 2006 — Germany v Commission

(Case T-371/06)

(2007/C 42/43)

Language of the case: German

Parties

Applicant: Federal Republic of Germany (represented by: M. Lumma, C. Schulze-Bahr, C. von Donat (lawyer))

Defendant: Commission of the European Communities

Form of order sought

— Annul Commission Decision C(2006) 4193 final of 25 September 2006 on the reduction of the financial contribution of the ERDF under Objective 2 of the programme for North Rhine-Westphalia (ERFD No 97.02.13.005) awarded by Commission Decision No C(97) 1120 of 7 May 1997;

— order the Commission to pay the costs.

Pleas in law and main arguments

By the contested decision, the Commission reduced the contribution of the European Regional Development Fund (ERDF) under Objective 2 of the programme for Nordrhein-Westfalen.

In support of its claim, the applicant alleges breach of Article 24(2) of Regulation No 4253/88 [1], on the ground that the conditions for a reduction were not fulfilled. In this connection, it submits, in particular, that the deviations from the indicative financing plan do not amount to a significant alteration of the programme.

Even if the programme were significantly altered, the applicant submits that the Commission gave its prior consent pursuant to its 'Guidelines for the financial closure of operational measures (1994-1999) under the Structural Funds' (SEK (1999) 1316).

Assuming that the conditions for a reduction are met, the applicant submits that the defendant did not use its discretion in relation to the specific programme. According to the applicant, a reduction would not amount to a misuse of powers only if it appeared to be justified, as a whole, in the light of implementation of the programme and attainment of the objective. According to the applicant, as the defendant did not use this discretion, it also failed to provide justification.

Finally, the contested decision infringes the principle of sound administration, in that the applicant was forced by that decision to bring a new action against a decision pending before the courts at the time of bringing that action.

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

Action brought on 11 December 2006 — Bomba Energia Getränke v OHIM — Eckes-Granini (Bomba)

(Case T-372/06)

(2007/C 42/44)

Language in which the application was lodged: German

Parties

Applicant: Bomba Energia Getränke Vertriebs GmbH (Wiener Neudorf, Austria) (represented by: A. Kockläuner, lawyer)

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

Other party to the proceedings before the Board of Appeal: Eckes-Granini GmbH & Co. KG (Nieder-Olm, Germany)

Form of order sought

— annul in its entirety the decision of the Second Board of Appeal of OHIM of 3 October 2006 in Appeal Case R 184/2005-2;

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

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant.

Community trade mark concerned: The word mark 'Bomba' for goods in Classes 32 and 33 (Application No 558 874).

Proprietor of the mark or sign cited in the opposition proceedings: Eckes-Granini GmbH & Co. KG.

Mark or sign cited in opposition: Various word and figurative marks 'la bamba', including the German word mark 'la bamba' for goods in Classes 29, 32 and 33.

Decision of the Opposition Division: Rejection of the application.

Decision of the Board of Appeal: Dismissal of the appeal.

Pleas in law: The contested decision infringes Article 8(1)(b) of Regulation (EC) No 40/94 (1), in as much as there is no likelihood of confusion between the opposing marks.

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

Action brought on 13 December 2006 — Rath v OHIM — Grandel (Epican Forte)

(Case T-373/06)

(2007/C 42/45)

Language in which the application was lodged: German

Parties

Applicant: Matthias Rath (Cape Town, South Africa) (represented by: S. Ziegler, C. Kleiner and F. Dehn, 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: Dr. Grandel GmbH

Form of order sought

The applicant claims that the Court should:

— set aside the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 5 October 2006 in so far as it refuses to allow the Community trade mark application in respect of the goods in Class 5 'food supplements not for medical purposes, mainly consisting of vitamins, amino acids, minerals and trace elements; dietetic substances not adapted for medical use, namely amino acids and trace elements; the aforesaid goods not for use as antiepileptics';

— order OHIM to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The word mark 'Epican Forte' for goods in Classes 5, 30 and 32 (Application No 2 525 251)

Proprietor of the mark or sign cited in the opposition proceedings: Dr. Grandel GmbH

Mark or sign cited in opposition: The word mark 'EPIGRAN' originally registered for goods in Classes 1, 3 and 5 and now registered only for goods in Class 3 (Community trade mark No 560 292), albeit that the opposition was brought solely against the registration in Class 5

Decision of the Opposition Division: Opposition granted, partial refusal to register

Decision of the Board of Appeal: Partial annulment of the decision of the Opposition Division

Pleas in law: The contested decision infringes Article 8(1)(b) of Regulation No 40/94 ([1]) as there is no likelihood of confusion between the marks in opposition.

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

Action brought on 13 December 2006 — Rath v OHIM — Grandel (Epican)

(Case T-374/06)

(2007/C 42/46)

Language in which the application was lodged: German

Parties

Applicant: Matthias Rath (Cape Town, South Africa) (represented by: S. Ziegler, C. Kleiner and F. Dehn, 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: Dr. Grandel GmbH

Form of order sought

The applicant claims that the Court should:

— set aside the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 5 October 2006 in so far as it refuses to allow the Community trade mark application in respect of the goods in Class 5 'food supplements not for medical purposes, mainly consisting of vitamins, amino acids, minerals and trace elements; dietetic substances not adapted for medical use, namely amino acids and trace elements; the aforesaid goods not for use as antiepileptics';

— order OHIM to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The word mark 'Epican' for goods in Classes 5, 30 and 32 (Application No 2 524 510)

Proprietor of the mark or sign cited in the opposition proceedings: Dr. Grandel GmbH

Mark or sign cited in opposition: The word mark 'EPIGRAN' originally registered for goods in Classes 1, 3 and 5 and now registered only for goods in Class 3 (Community trade mark No 560 292), albeit that the opposition was brought solely against the registration in Class 5

Decision of the Opposition Division: Opposition granted, partial refusal to register

Decision of the Board of Appeal: Partial annulment of the decision of the Opposition Division

Pleas in law: The contested decision infringes Article 8(1)(b) of Regulation No 40/94 ([1]) as there is no likelihood of confusion between the marks in opposition.

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

Action brought on 14 December 2006 — Viega v Commission

(Case T-375/06)

(2007/C 42/47)

Language of the case: German

Parties

Applicant: Viega GmbH & Co. KG (Attendorn, Germany) (represented by: J. Burrichter, T. Mäger and F.W. Bulst, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Declare Article 1(1) of the decision void, in so far as it finds an infringement by the applicant of Article 81(1) EC and Article 53(1) of the EEA Agreement;

— declare Article 2 of the decision void, in so far as it imposes a fine of EUR 54.29 million on the applicant;

— in the alternative, make an appropriate reduction in the fine imposed on the applicant in Article 2 of the decision;

— order the defendant to pay the costs.

Pleas in law and main arguments

The applicant is challenging Commission Decision C(2006) 4180 final of 20 September 2006 in Case COMP/F-1/38.121 — Fittings. In the contested the decision a fine was imposed on the applicant for breach of Article 81(1) EC and Article 53(1) of the EEA Agreement. According to the Commission, the applicant took part in a series of agreements in the form of price-fixing, establishing price lists and rebates, establishing mechanisms for the implementation of price increases, dividing up markets and customers and exchanging other economic information on the market for copper fittings and copper alloy fittings, from 12 December 1991 until 22 March 2001.

The applicant puts forward four pleas in support of its claim.

It is submitted, first, that the contested decision infringes Article 23(2) of Regulation (EC) No. 1/2003 ([1]), on the ground that the defendant infringed fundamental principles in the assessment of fines by incorrectly determining the applicable turnover. The defendant, in assessing the severity of the alleged infringement by the applicant, should have taken into account the turnover of press fittings when determining the turnover, even though the applicant did not at any time participate in anti-competitive practices in respect of press fittings.

Secondly, the applicant submits that the Commission infringed Article 81(1) EC and Article 253 EC by incorrectly establishing the participation, and the duration of that participation, in the conduct of which it is accused. According to the applicant, the defendant failed to produce substantive evidence in relation to the applicant and erred in finding that infringements were committed.

In addition, the applicant alleges, in the alternative, breach of Article 81(1) EC and Article 253 EC, on the ground that the geographic scope of the infringements in Article 1 of the contested decision in relation to the applicant was incorrectly established.

Finally, the applicant alleges that Article 2 of the contested decision infringes Article 23(2) of Regulation No. 1/2003, on the ground that the Commission infringed fundamental principles in the assessment of fines. The applicant submits, in this connection, that the Guidelines on the method of setting fines ([2]) were incorrectly applied in that the Commission classed the infringement as particularly serious, incorrectly established the duration of the infringement, incorrectly increased the basic amount of the fine on account of the duration of the infringement and failed to assess the mitigating circumstances.

([1]) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2002 L 1, p. 1).

([2]) Guidelines on the method of setting fines imposed pursuant to Article 15(2) of Regulation No 17 and Article 65(5) of the ECSC Treaty (OJ 1998 C 9, p. 3).

Action brought on 14 December 2006 — Legris Industries v Commission of the European Communities

(Case T-376/06)

(2007/C 42/48)

Language of the case: French

Parties

Applicant: Legris Industries (Rennes, France) (represented by: A. Wachsmann and C. Pommiès, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— annulment of Commission Decision C(2006) 4180 final of 20 September 2006 in Case COMP/F-1/38.121 — Joints, together with the grounds on which the operative part was reached, in so far as that decision imposes a fine on the holding company Legris Industries by reason of the practices at issue of Comap being imputed to Legris Industries in its capacity as a holding company;

— allow the holding company Legris Industries to adopt the written pleadings, forms of order sought and claims submitted by Comap against the decision;

— order the Commission to pay the costs.

Pleas in law and main arguments

By this action, the applicant seeks the partial annulment of Commission Decision C(2006) 4180 final of 20 September 2006 relating to a proceeding under Article 81 EC (COMP/F-1/38.121 — Joints), concerning a series of agreements and concerted practices on the market for copper joints and copper alloys having as their object price fixing, the drawing up of price lists and lists of rebates and discounts, the putting in place of coordination arrangements for price increases, the sharing of national markets and customers, together with the exchange of other business information, in so far as that decision imposes a fine of the holding company Legris Industries by reason of the practices at issue of its former subsidiary Comap being imputed to it.

In support of its application, the applicant invokes the following pleas in law.

First, it argues that the Commission infringed Article 81 EC in imputing to it disputed infringements committed by its subsidiary Comap and, accordingly, in holding it jointly and severally liable for those infringements. It submits that the Commission infringed the principle of the legal and commercial autonomy of the subsidiary and the principle of personal responsibility in the field of competition law in considering that the holding by the applicant of the entire issued share capital of

the subsidiary was sufficient to establish the exercise of a determinative influence over the latter. The applicant also claims that the Commission committed errors of law, errors of fact and manifest errors of assessment in that it failed to adduce evidence to show that the holding company Legris Industries had effective control over the actings of Comap.

The applicant also claims that the Commission committed errors of law in that it failed to rebut the evidence put forward by the applicant to show Comap's autonomy, in particular as regards the determination and direction of its trading policy. The applicant claims to have demonstrated that it did not give instructions to Comap in relation to its conduct on the market, that its role was merely that of financial supervision which did not include the giving of directions to its subsidiaries in budgetary matters and that Comap had access to its own sources of finance. Consequently, it argues that mere evidence of the connection established by its holding in the capital of the subsidiary and the direct consequences resulting from such a connection, on which, according to the applicant, the Commission based its decision to impute the infringements committed by its subsidiary to the applicant, cannot be evidence of the exercise of effective control over the actings of that subsidiary.

Action brought on 14 December 2006 — Comap v Commission

(Case T-377/06)

(2007/C 42/49)

Language of the case: French

Parties

Applicant: Comap SA (Lyons, France) (represented by A. Wachsmann and C. Pommiès, lawyers)

Defendant: Commission of the European Communities

Forms of order sought

— annulment of Commission Decision C(2006) 4180 final of 20 September 2006 in Case COMP/F-1/38.121 — Joints, together with the grounds on which the operative part of the decision was reached, in so far as that decision censures Comap for periods other than that between December 1997 and March 2001, in relation to which Comap does not challenge the facts set out by the Commission;

— amend Articles 1 and 2 and the grounds on which they were reached, by reducing the amount of the fine of EUR 18.56 million imposed on Comap;

— order the Commission to pay the costs.

Pleas in law and main arguments

By this action, the applicant seeks the partial annulment of Commission Decision C(2006) 4180 final of 20 September 2006 relating to a proceeding under Article 81 EC (COMP/F-1/38.121 — Joints), concerning a series of agreements and concerted practices on the market for copper joints and copper alloys having as their object price fixing, the drawing up of price lists and lists of rebates and discounts, the putting in place of coordination arrangements for price increases, the sharing of national markets and customers, together with the exchange of other business information, in so far as that decision censures Comap for periods other than that between December 1997 and March 2001, in relation to which Comap does not challenge the facts set out by the Commission. In the alternative, it seeks a reduction in the amount of the fine imposed on it by the contested decision.

In support of its application, the applicant invokes the following pleas in law.

First, it argues that the Commission infringed Article 81 EC and committed errors of law, errors of fact and manifest errors of assessment in finding that the alleged cartel continued after on-the-spot investigations by the Commission in March 2001, until April 2004.

Secondly, the applicant claims that the Commission infringed Article 81(1) EC and Article 25 of Regulation No 1/2003 ([1]), in that it did not acknowledge that, since no evidence of anti-competitive practices could be produced, the alleged infringement was interrupted for a period of 27 months, between September 1992 and December 1994, with the result, according to the applicant, that facts occurring prior to December 1994 were subject to limitation when the Commission's investigation opened in January 2001.

In the alternative, the applicant puts forward a plea based on infringement of Article 81(1) EC and Article 23(2) of Regulation No 1/2003, together with the Guidlines on the method of setting fines ([2]) and the Leniency Notice ([3]), in that the Commission failed to comply with the rules on the method of setting fines. It argues that the Commission infringed the principle of proportionality and the principle of equal treatment in that the starting amount for the purposes of calculating the fine imposed on Comap was, according to it, unduly high in comparison with the starting amounts chosen in respect of the other undertakings censured by the contested decision, notwithstanding that their competitive position was comparable to the position held on the market by the applicant.

([1]) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1).

([2]) Guidelines on the method of setting fines imposed pursuant to Article 15 (2) of Regulation No 17 and Article 65 (5) of the ECSC Treaty (OJ 1998 C 9, p. 3).

([3]) Commission notice on immunity from fines and reduction of fines in cartel cases (OJ 2002 C 45, p. 3).

Action brought on 14 December 2006 — Kaimer and Others v Commission

(Case T-379/06)

(2007/C 42/50)

Language of the case: German

Parties

Applicants: Kaimer GmbH & Co. Holding (Essen, Germany), SANHA GmbH & Co. KG (Essen, Germany) and Sanha Italia srl. (Milan, Italy) (represented by: J. Brück, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— Annul the defendant's decision C(2006) 4180 final of 20 September 2006, as amended by the defendant's decision of 29 September 2006, served on applicants 1 to 3 on 5 October 2006, relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case COMP/F-1/38.121 — Fittings);

— in the alternative, reduce the duration of the alleged infringement by applicants 1 to 3 in Article 1 of the decision and cancel or reduce the fine imposed on applicants 1 to 3 in Article 3 of the decision;

— order the defendant to pay costs.

Pleas in law and main arguments

The applicants are challenging Commission Decision C(2006) 4180 final of 20 September 2006 in Case COMP/F-1/38.121 — Fittings. In the contested the decision a fine was imposed on the applicant for breach of Article 81(1) EC and Article 53(1) of the EEA Agreement. According to the Commission, the applicants took part in a series of agreements in the form of price-fixing, establishing price lists and rebates, establishing mechanisms for the implementation of price increases, dividing up markets and customers and exchanging other economic information on the market for copper fittings and copper alloy fittings.

The applicants put forward five pleas in support of their claims.

First of all, it is submitted, in particular, that the defendant based its reasoning on documents, in respect of which the applicants were not granted a fair hearing.

Secondly, the applicants submit that the Commission infringed the duty to state reasons under Article 253 EC. According to the applicants the contested decision is not adequately reasoned on the ground that the facts at issue were not properly assessed. In addition, exculpatory facts were not taken into account and evidence was incorrectly evaluated.

Furthermore, the applicants criticise the fact that the facts, as established by the Commission, were deemed to be a complex infringement contrary to Article 81(1) EC.

Fourthly, it is submitted, in the alternative, that the calculation of the fine reveals a misuse of powers in that it was based on an excessive duration of the infringement and that the applicants did not benefit from mitigating circumstances.

Finally, the applicants maintain that the Commission infringed the principle of proportionality with the amount of the fine imposed.

Action brought on 15 December 2006 — FRA.BO v Commission

(Case T-381/06)

(2007/C 42/51)

Language of the case: English

Parties

Applicant: FRA.BO SpA (Milan, Italy) (represented by: R. Celli and F. Distefano, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Annul Article 2 of Commission Decision of 20 September 2006 (Case COMP/F-1/38.121 — Fittings — C(2006) 4180 final) relating to a proceeding under Article 81 EC, insofar as it relates to the amount of the fine imposed on the applicant;

— reduce the fine imposed on the applicant under the Court's jurisdiction; and

— order the Commission to pay the costs of the proceedings, including those of the applicant.

Pleas in law and main arguments

The applicant seeks the partial annulment of Commission Decision C(2006) 4180 final of 20 September 2006 in Case COMP/F-1/38.121 — Fittings, by which the Commission found that the applicant, together with other undertakings, had infringed Article 81 EC and Article 53 of the Agreement on the European Economic Area by fixing prices, agreeing on price lists, agreeing on discounts and rebates, agreeing on implementation mechanisms for introducing price increases, allocating national markets, allocating customers and exchanging other commercial information.

The applicant challenges the contested decision on the following grounds:

— The applicant claims, first, that the Commission made a manifest error of appreciation and breached fundamental principles of law in making an improper and unlawful application of the principles of the 2002 Leniency Notice ([1]).

— The applicant further claims, that the Commission made a manifest error of appreciation by granting FRA.BO a disproportionately low reduction of 20 per cent under the 1996 Leniency Notice, and infringed the fundamental principles of proportionality, legitimate expectations and duty to state reasons.

([1]) Commission notice on immunity from fines and reduction of fines in cartel cases (OJ 2002 C 45, p. 3).

Action brought on 15 December 2006 — Tomkins v Commission

(Case T-382/06)

(2007/C 42/52)

Language of the case: English

Parties

Applicant: Tomkins plc (London, United Kingdom) (represented by: T. Soames and S. Jordan, solicitors)

Defendant: Commission of the European Communities

Form of order sought

— Annul Article 1 of Commission Decision of 20 September 2006 (Case COMP/F-1/38.121 — Fittings — C(2006) 4180 final) relating to a proceeding pursuant to Article 81 EC and Article 53 of the EEA Agreement, insofar as it relates to the applicant; or in the alternative

— amend Article 2(h) of the contested decision so as to reduce the fine imposed on the applicant and on Pegler; and

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

Pleas in law and main arguments

The applicant seeks annulment of Article 1 of Commission Decision C(2006) 4180 final of 20 September 2006 in Case COMP/F-1/38.121 — Fittings, by which the Commission found the applicant, jointly and severally liable with Pegler Ltd for an infringement of Article 81 EC in the Copper Fittings industry from 31 December 1988 to 22 March 2001 and ordered it to pay a fine of EUR 5.25 million. In the alternative, the applicant seeks to amend Article 2(h) of the contested decision.

The applicant contends that the Commission infringed Article 230 EC on the following grounds:

First, the Commission has allegedly breached the rules governing the responsibility of parent companies for the acts of their subsidiaries by holding the applicant jointly and severally liable for the conduct of Pegler, one of the applicant's former subsidiaries. In that sense, the applicant claims that the Commission made a manifest error in law by incorrectly stating the legal basis for parent company liability and incorrectly applying the test for shareholder liability in a factual setting where it should not apply. Moreover, the applicant submits that the Commission erred in relying on the applicant's alleged scope of business in the construction sector as relevant to the question of whether the applicant was purely a financial investor delegating operational responsibility to Pegler at the local business unit level. Further still, the Commission's elimination of its own burden to establish shareholder liability and the raising of the burden for the shareholder in this case infringes the principle of presumption of innocence.

Second, the applicant alleges that the Commission committed a manifest error of fact and has failed to prove to the requisite legal standard any decisive influence by the applicant on the commercial conduct of Pegler. According to the applicant's submissions the facts do not establish the applicant's liability either under (a) the correct law that was either not applied or misapplied by the Commission, or (b) the incorrect law as stated by the Commission.

Third, the applicant contends that the Commission has failed to state adequately why the evidence submitted by the applicant was insufficient to rebut the presumption of decisive influence.

Fourth, the applicant maintains that the Commission applied the wrong standard in imposing an uplift for deterrence, and failed properly to assess the evidential basis for calculating the length of Pegler's participation in the cartel, thus arriving at an unfounded and inaccurate determination of the duration of the infringement.

Action brought on 19 December 2006 — Karstadt Quelle v OHIM — dm drogerie markt (S-HE)

(Case T-391/06)

(2007/C 42/53)

Language in which the application was lodged: German

Parties

Applicant: Karstadt Quelle Aktiengesellschaft (Essen, Germany) (represented by: V. von Bomhard, A. Renck and T. Dolde, 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: dm drogerie markt GmbH

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) No R 301/2006-1 of 26 September 2006;

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

Pleas in law and main arguments

Applicant for a Community trade mark: dm drogerie markt GmbH.

Community trade mark concerned: The word mark 'S-HE' for goods and services in Classes 3, 9, 14, 16, 18, 24, 25, 28, 32, 38, 41 and 42 (Application No 2 766 723).

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

Mark or sign cited in opposition: German word mark 'SHE' for goods in Classes 3 and 25, German figurative mark 'She' for goods in Classes 3, 9, 16, 18 and 25, and international figurative mark 'She' for goods in Classes 3, 9, 16, 18 and 25.

Decision of the Opposition Division: Partial granting of the appeal, partial rejection of the application.

Decision of the Board of Appeal: Dismissal of the appeal.

Pleas in law: Infringement of Article 8(1)(b) of Regulation (EC) No 40/94 [1], on the ground that there is a likelihood of confusion between the marks in opposition.

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

Action brought on 20 December 2006 — Union Investment Privatfonds v OHIM — Unicre-Cartão International De Crédito (unibanco)

(Case T-392/06)

(2007/C 42/54)

Language in which the application was lodged: German

Parties

Applicant: Union Investment Privatfonds GmbH (Frankfurt am Main, Germany) (represented by: H. Keller, 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: Unicre-Cartão International De Crédito, S.A.

Form of order sought

The Court is asked to:

— annul the decision of the Board of Appeal of the Office for Harmonisation in the Internal Market;

— allow the oppositions against registration of the word/figurative mark 'Unibanco' on the basis of the UniFLEXIO, UniZERO and UniVARIO marks;

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

Pleas in law and main arguments

Applicant for a Community trade mark: Unicre-Cartão International De Crédito, S.A.

Community trade mark concerned: The figurative mark 'unibanco' for services in Classes 36 and 38 (application for registration No 1 871 896).

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

Mark or sign cited in opposition: German figurative marks 'UniFLEXIO' and 'UniVARIO' for services in Classes 35 and 36, German figurative mark 'UniZERO' for services in Class 36.

Decision of the Opposition Division: Rejection of the opposition.

Decision of the Board of Appeal: Dismissal of the appeal.

Pleas in law: Infringement of the applicant's procedural rights, since no regard was had to the evidence put forward by the applicant of the use of the marks with the 'Uni' element.

Action brought on 11 December 2006 — Italy v Commission

(Case T-394/06)

(2007/C 42/55)

Language of the case: Italian

Parties

Applicant: Italian Republic (represented by: G. Aiello, Avvocato dello Stato)

Defendant: Commission of the European Communities

Form of order sought

— Annul the Commission's decision C (2006) 4324 of 3 October 2006, notified on the same date, in so far as it excludes from Community financing, and charges to the budget of the Italian Republic the financial consequences to be applied in the context of the clearance of expenditure financed by the European Agricultural Guidance and Guarantee Fund, Guarantee Section, cases of irregularity by a number of operators.

Pleas in law and main arguments

In the present action, the Italian Republic contests the exclusion from Community financing, and the consequent charging to the budget of the Italian State, the financial consequences relating to 157 cases of irregularities in the total amount of EUR 310 849 495,98, in relation to which the applicant failed to take steps with all due diligence by instigating the recovery procedure.

In support of its claims, the applicant disputes that there is any negligence that can be attributed to it and claims:

— Infringement and/or misapplication of Article 5(2) of Council Regulation (EEC) No 595/91 of 4 March 1991 concerning irregularities and the recovery of sums wrongly paid in connection with the financing of the common agricultural policy and the organization of an information system in this field and repealing Regulation (EEC) No 283/72 ([1]).

— Infringement and/or misapplication of Article 8(1)(c) of Regulation (EEC) No 729/70 of the Council of 21 April 1970 on the financing of the common agricultural policy ([2]), and Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy ([3]).

([1]) OJ L 67, 14.3.1999. p. 11.
([2]) OJ English Special Edition 1970 (I), p. 218.
([3]) OJ L 160, 26.6.1999, p. 103.

Action brought on 14 December 2006 — Italy v Commission

(Case T-395/06)

(2007/C 42/56)

Language of the case: Italian

Parties

Applicant: Italian Republic (represented by: P. Gentili, lawyer)

Defendant: Commission of the European Communities

Forms of order sought

— Annul memorandum No 9433 of 4.10.2006 of the European Commission, Directorate General for Regional Policy — Programmes and projects in Cyprus, Greece, Hungary, Italy, Malta and the Netherlands — concerning payments by the Commission which differ from the amount requested. Ref. Programma DOCUP Piemonte (No CCI 2000 IT 162 DO 007);

— annul memorandum No 10841 of 14.11.2006 of the European Commission, Directorate General for Regional Policy — Programmes and projects in Cyprus, Greece, Hungary, Italy, Malta and the Netherlands — concerning certification of the intermediate statement of expenses and claim for payment. DOCUP Veneto Ob. 2 2000-2006 (No CCI 2000 IT 162 DO 005)

— annul memorandum No 10853 of 14.11.2006 of the European Commission, Directorate General for Regional Policy — Programmes and projects in Cyprus, Greece, Hungary, Italy, Malta and the Netherlands — concerning payments by the Commission which differ from the amount requested. Ref. Programma POR Puglia (No CCI 1999 IT 161 PO 009)

— annul memorandum No 10929 of 15.11.2006 of the European Commission, Directorate General for Regional Policy — Programmes and projects in Cyprus, Greece, Hungary, Italy, Malta and the Netherlands — concerning payments by the Commission which differ from the amount requested. Ref. Programma DOCUP Toscana Ob. 2 (No CCI 2000 IT 162 DO 001)

— annul memorandum No 10930 of 15.11.2006 of the European Commission, Directorate General for Regional Policy — Programmes and projects in Cyprus, Greece, Hungary, Italy, Malta and the Netherlands — concerning payments by the Commission which differ from the amount requested. Ref. POR Campania 2000-2006 (No CCI 1999 IT 161 PO 007)

— annul memorandum No 11019 of 17.11.2006 of the European Commission, Directorate General for Regional Policy — Programmes and projects on Cyprus, in Greece, Hungary, Italy, Malta and the Netherlands — concerning payments by the Commission different from the amount requested. Ref. Programma POR Sardegna 2000-2006 (No CCI 1999 IT 161 PO 010)

— annul all related and prior acts and, consequently, order the Commission of the European Communities to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those put forward in Case T-345/04 *Italian Republic* v *Commission* ([1]).

([1]) OJ C 262 of 23.10.04, p. 55.

Action brought on 21 December 2006 — Commission v TGA Technische Gebäudeausrüstung Chemnitz

(Case T-396/06)

(2007/C 42/57)

Language of the case: German

Parties

Applicant: Commission of the European Communities (represented by: M. Šimerdová, R.Bierwagen (lawyer))

Defendant: TGA Technische Gebäudeausrüstung Chemnitz GmbH

Form of order sought

— order the defendant to reimburse the applicant EUR 32,440.80 plus 4 % interest with effect from 30 November 1999;

— order the defendant to pay the costs.

Pleas in law and main arguments

The applicant concluded an agreement on Community activities in the field of non-nuclear energy (1994 — 1998) ([1]), in which it was agreed that the Court of First Instance would have jurisdiction over disputes connected with this agreement. The subject of the project was the construction and commissioning, on a trial basis, of a leather drying plant.

The Commission terminated this agreement by letter of 18 February 1999, on the ground that no proper final report was submitted to it. The applicant submits, in this connection, that the statements of accounts presented to it by the defendant subsequently were only partially approved because a number of documents were missing. The remaining amount has been demanded by the applicant on several occasions and is the subject of the present action.

([1]) Council Decision 94/806/EC of 23 November 1994 adopting a specific programme for research and technological development, including demonstration, in the field of non-nuclear energy (1994 to 1998) (OJ 1998 L 334, p. 87).

Action brought on 16 December 2006 — DOW AgroSciences v EFSA

(Case T-397/06)

(2007/C 42/58)

Language of the case: English

Parties

Applicant: DOW AgroSciences Ltd (Hitchin, United Kingdom) (represented by: K. Van Maldegem and C. Mereu, lawyers)

Defendant: European Food Safety Authority (EFSA)

Form of order sought

— Order the annulment of EFSA Conclusion titled '*Conclusion regarding the peer review of the pesticide risk assessment of the active substance Haloxyfop-R*';

— order the defendant to compensate the applicant for the damages incurred as a result of the contested measure, and in the meantime, to hold at this stage by interlocutory statement that the defendant is obliged to compensate the applicant for the damages they incurred and to reserve the fixing of the amount of compensation either by agreement between the parties or by the Court in the absence of such an agreement;

— order the defendant to pay all the costs and expenses in these proceedings.

Pleas in law and main arguments

The pleas in law and main arguments relied on by the applicant are similar to those relied on in Case T-311/06 *FMC Chemical and Arysta Lifesciences* v *EFSA*.

Action brought on 15 December 2006 — Unicredito Italiano SpA v OHIM — Union Investment Privatfonds (1 Unicredit)

(Case T-398/06)

(2007/C 42/59)

Language in which the application was lodged: Italian

Parties

Applicant: Unicredito Italiano SpA (Genoa, Italy) (represented by: G. Floridia and R. Floridia, lawyers)

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

Other party to the proceedings before the OHIM Board of Appeal: Union Investment Privatfonds GmbH.

Form of order sought

— Annul the contested decision.

Pleas in law and main arguments

Applicant for a Community trade mark: Unicredito Italiano SpA

Community trade mark concerned: Figurative mark '1 Unicredit', registration application No 2.055.069 for goods and services in Classes 9, 16, 35, 36, 38, 39, 41 and 42.

Proprietor of the mark or sign cited in the opposition proceedings: Union Investment Privatfonds GmbH

Mark or sign cited in opposition: German word marks 'UNIFONDS' (No 881.995) and 'UNIRAK' (No 991.997) and figurative mark 'UNIZINS' (No 2.016.954) for services in Class 36 (capital investment).

Decision of the Opposition Division: to allow the opposition.

Decision of the Board of Appeal: to dismiss the action.

Pleas in law: Misapplication of the theory of the extended protection of 'serial marks' as formulated by the Court of First Instance in Case T-194/03 *Il Ponte Finanziaria* v *OHIM* [2006] ECR II-0000 *(Bainbridge)*.

Action brought on 27 December 2006 — giropay v OHIM (GIROPAY)

(Case T-399/06)

(2007/C 42/60)

Language of the case: German

Parties

Applicant: Giropay GmbH (Frankfurt am Main, Germany) (represented by: K. Gründig-Schnelle, lawyer)

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

Form of order sought

— annul the decision of 26 October 2006 of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market in appeal case R 308/2005-4 in relation to Community trade mark application No 2 843 514 'GIROPAY';

— order the Office for Harmonisation in the Internal Market to pay the costs of the proceedings.

Pleas in law and main arguments

Community trade mark concerned: The word mark 'GIROPAY' for goods and services in Classes 9, 36-38 and 42 (Application No 2 843 514).

Decision of the Examiner: Partial rejection of the application.

Decision of the Board of Appeal: Dismissal of the appeal.

Pleas in law: The mark applied for does not present any descriptive indications for the purposes of Article 7(1)(c) of Regulation (EC) No 40/94 [1]. In addition, the mark applied for is particularly capable of being perceived by the relevant public as a distinctive sign.

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

Action brought on 28 December 2006 — Brosmann Footwear (HK) and Others v Council

(Case T-401/06)

(2007/C 42/61)

Language of the case: English

Parties

Applicants: Brosmann Footwear (HK) Ltd (Kowloon, Hong Kong), Seasonable Footwear (Zhong Shan) Ltd (Banfu, China), Lung Pao Footwear (Guangzhou) Ltd (Guangzhou, China), Risen Footwear (HK) Co. Ltd (Kowloon, Hong Kong) (represented by: L. Ruessmann, A. Willems, lawyers)

Defendant: Council of the European Union

Form of order sought

— Annul Council Regulation (EC) No 1472/2006 to the extent it imposes anti-dumping duties on exports by the applicants;

— order the Council to pay the costs.

Pleas in law and main arguments

By the present application, the applicants are seeking annulment of the contested regulation to the extent that it imposes anti-dumping duties on their exports to the European Union. The application is based on the following grounds:

— A breach of Articles 2(7)(b) and (9)(5) of Council Regulation (EC) No 384/96 on protection against dumped imports (the 'Basic Regulation'), Article VI of the GATT, as well as principles of non-discrimination, *nemo auditur* and legitimate expectations, with regard to the failure of the Community institutions to examine each Market Economy Treatment ('MET') and Individual Treatment ('IT') request individually;

— a violation of Articles 18 and 20 of the Basic Regulation, and a breach of the applicants' rights of defence with regard to the Community's Institutions' failure to inform the applicants of the treatment accorded to MET and IT requests;

— a manifest error of assessment as well as a breach of Articles 5(4) of the Basic Regulation with regard to the evaluation of the standing of the Community producers in supporting the investigation, Article 1(4) of the Basic Regulation with regard to the definition of the product scope, Article 17 of the Basic Regulation and Article 253 EC with regard to the selection of the sample of exporting producers, Article 3(2) of the Basic Regulation and Article 253 EC with regard to the injury of determination, Article 3(2) of the Basic Regulation with regard to the assessment of the causal link between dumped imports and injury, and, finally, Article 9(4) of the Basic Regulation in the calculation of the injury elimination level.

Action brought on 27 December 2006 — Spain v Commission

(Case T-402/06)

(2007/C 42/62)

Language of the case: Spanish

Parties

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

Defendant: Commission of the European Communities

Form of order sought

— annulment of Commission decision C(2006) 5105 of 20 October 2006 reducing the assistance granted by the Cohesion Fund for eight projects under way in the territory of the Autonomous Community of Catalonia;

— an order that the Commission should pay the costs.

Pleas in law and main arguments

This action challenges Commission decision C(2006) 5105 of 20 October 2006 reducing the assistance granted by the Cohesion Fund for the eight projects under way in the territory of the Autonomous Community of Catalonia ('the contested decision'), viz:.

— No 2001.ES.16.C.PE.058 (project for extension of biological treatment at the Besos treatment station)

— No 2003.ES.16.C.PE.005 (project for waste-water disposal infrastructures in small towns in Catalonia)

— No 2001.ES.16.C.PE.054 (project for treatment of sludge and reuse of urban waste water in Catalonia)

— No 2000.ES.16.C.PE.112 (project for drainage and water treatment in the Ebro Basin: Monzón, Caspe and inland river basins of Catalonia)

— No 2002.ES.16.C.PE.006 (project for a desalination [of seawater] plant in the Tordera delta)

— No 2001.ES.16.C.PE.055 (project for construction and improvement of the infrastructures for treating municipal solid waste in Catalonia)

— No 2001.ES.16.C.PE.057 (project for municipal waste-treatment plants in the districts of Urgell, Pallars Jussa and Conca de Barberá)

— No 2002.ES.16.C.PE.041 (project for the establishment and improvement of the network of infrastructures for the treatment of municipal waste in Catalonia).

In the contested decision the defendant made a correction of 2 % of the Community assistance (85 %) granted for the project 2001.ES.16.C.PE.058, because the management company had charged ineligible expenditure.

So far as concerns the other projects, the Commission, having regard to the use of the 'average prices' system and the 'experience of previous works' criterion, has decided to apply a financial correction to 100 % of the Community difference in terms of Community assistance between the tenders selected and those recalculated contract by contract.

In support of its claims, the applicant State alleges, principally, misinterpretation of Article 30(1) of Directive 93/37/EEC [1] and of Article 36(1) and (2) of Directive 92/50/EEC [2], in so far as the contested decision concludes that application of the average prices system used in the analysis of 'the most economically advantageous tender' in the projects awarded infringes the principle of equal treatment, by discriminating against tenders which are too low compared with other more costly tenders.

In the alternative, the applicant alleges infringement of Article H(2) of Annex II to Regulation (EC) 1164/94 ([3]), by reason of breach of the principles of proportionality and sound administration.

With specific regard to the project for the Besos treatment station, the applicant also alleges infringement of Article 17 of Regulation (EC) No 1386/2002 ([4]), on the ground that there are no real irregularities or, alternatively, on the ground of the principle of subsidiarity laid down in that act.

([1]) Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts (OJ 1993 L 199, p. 115).
([2]) Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts (OJ 1992 L 209, p. 1).
([3]) Council Regulation (EC) No 1164/94 of 16 May 1994 establishing a Cohesion Fund (OJ 1994 L 130, p. 1).
([4]) Commission Regulation (EC) No 1386/2002 of 29 July 2002 laying down detailed rules for the implementation of Council Regulation (EC) No 1164/94 as regards the management and control systems for assistance granted from the Cohesion Fund and the procedure for making financial corrections (OJ 2002 L 201, p. 5).

Action brought on 22 December 2006 — Belgium v Commission

(Case T-403/06)

(2007/C 42/63)

Language of the case: French

Parties

Applicant: Kingdom of Belgium (represented by: L. Van den Broeck, Agent, and J. Meyers, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— annul the contested decision pursuant to Article 230 EC;

— order the Commission (Eurostat) to pay the costs in connection with this action.

Pleas in law and main arguments

By this action, the applicant seeks the annulment of the Commission's decision, contained in the letter of the Statistical Office of the European Communities (Eurostat) of 18 October 2006, to amend the data relating to the government deficit and the government debt of Belgium for 2005 and to provide the data thus amended, pursuant to Article 8h(2) of Council Regulation (EC) No 3605/93 of 22 November 1993 on the application of the Protocol on the excessive deficit procedure annexed to the EC Treaty ([1]), as amended. The applicant objects to two amendments made by the Commission, namely the classification of the Fonds de l'infrastructure ferroviaire (FIF) (Railway Infrastructure Fund) in the public administration sector rather than in the non-financial corporations sector for the application of the European system of accounts 1995 (ESA 95) ([2]) and the recording of a capital transfer of EUR 7 400 million on account of the assumption by the State (FIF) in 2005 of the debts of the Société nationale des Chemins de fer belges (SNCB).

The applicant relies on the following pleas in law in support of its application for annulment.

As regards the classification of FIF in the public administration sector, the applicant puts forward a plea alleging infringement of Article 8h(2) of Regulation (EC) No 3605/93 and paragraphs 2.12, 3.19 and 3.27 to 3.37 of ESA 95. The applicant submits that FIF must be categorised as an 'institutional unit' within the meaning of paragraph 2.12 of ESA 95 and as a 'market producer' under the criteria set out in paragraphs 3.19 and 3.27 to 3.37 of ESA 95, and must as such be classified outside the public administration sector. The applicant therefore claims that the contested decision is wrong to find that FIF does not satisfy that twofold condition for 2005.

In the alternative, as regards the capital transfer of EUR 7 400 million from the Belgian State to SNCB on account of FIF's assumption in 2005 of SNCB's debts, the applicant relies on three pleas. The first is based on infringement of Article 8h(2) of Regulation (EC) No 3605/93 and of paragraphs 1.33, 1.44(c), 4.165(f) and 6.30 of ESA 95. The applicant claims that the allocation of the debt in question to FIF does not flow from a 'transaction' within the meaning of paragraph 1.33 of ESA 95 but from a 'restructuring' within the meaning of paragraphs 1.44(c) and 6.30 of ESA 95. As an alternative plea, the applicant submits that, even if the allocation of the debt to FIF were to be analysed as a 'transaction' within the meaning of paragraph 1.33 of ESA 95, it does not involve a capital transfer for the purposes of paragraph 4.165(f) of ESA 95. The second plea put forward in connection with the objection to the recording of the capital transfer of EUR 7 400 million from the Belgian State to SNCB alleges breach of Article 253 EC in that, according to the applicant, the Commission failed to give a sufficient statement of reasons for the contested decision on that point. Furthermore, the applicant claims that the contested decision infringes the principle of protection of legitimate expectations in that it disregards the opinion expressed by the Commission (Eurostat) in its email of 13 August 2004, in which a Commission expert agreed with the analysis submitted by the applicant in this case.

([1]) OJ 1993 L 332, p. 7.
([2]) Approved by Council Regulation (EC) No 2223/96 of 25 June 1996 on the European system of national and regional accounts in the Community (OJ 1996 L 310, p. 1).

Appeal brought on 22 December 2006 by the European Training Foundation against the judgment of the Civil Service Tribunal delivered on 26 October 2006 in Case F-1/05, Landgren v European Training Foundation

(Case T-404/06 P)

(2007/C 42/64)

Language of the case: French

Parties

Appellant: European Training Foundation (Turin, Italy) (represented by G. Vandersanden, lawyer)

Other party to the proceedings: Pia Landgren

Form of order sought by the appellant

— Declare this appeal admissible and well-founded;

— As a result, annul the judgment of the Civil Service Tribunal of 26 October 2006 in Case F-1/05 *Landgren* v *European Training Foundation*, which is the subject of this appeal, and thereby recognise the lawfulness of the decision of 25 June 2004 to dismiss the respondent and, accordingly, the lack of any legal basis for compensation;

— Order the respondent to pay the costs, including the costs of proceedings before the Civil Service Tribunal.

Pleas in law and main arguments

By judgment of 26 October 2006, annulment of which is sought in this appeal, the Civil Service Tribunal annulled the decision of the European Training Foundation of 25 June 2004 terminating the indefinite contract of Mrs Landgren as a temporary agent and asked the parties to agree on the monetary compensation required by the unlawfulness of the decision.

In support of its claim for annulment of that judgment, the Foundation raises two pleas, the first alleging disregard of the extent of the obligation to state reasons. The appellant submits that there is no legal basis requiring a defendant to state reasons for a decision dismissing a temporary agent and that, by finding to the contrary, the judgment under appeal breaches Article 47 of the Conditions of Employment ([1]) and the case-law applying that provision. Moreover, the appellant submits that the judgment under appeal erroneously relies on agreements and conventions which are not applicable to relations between the institutions and their staff. It also submits that the judgment under appeal contains a contradiction between the formal requirement of a statement of reasons and the lawfulness of the knowledge the person concerned has of the reasons for the decision to terminate.

By its second plea the appellant submits that the judgment under appeal contains an error of law relating, first, to the distortion of the facts and, second, to failure to have regard to the public interest, in that it makes an erroneous assessment of the material facts of which Mrs Landgren was informed and which constitute the reasons for the decision to dismiss.

([1]) The Conditions of Employment of Other Servants of the European Communities were laid down by Article 3 of Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities (OJ, English Special Edition, 1968 (I), p. 30).

Action brought on 27 December 2006 — Arcelor and Others v Commission

(Case T-405/06)

(2007/C 42/65)

Language of the case: French

Parties

Applicants: Arcelor Luxembourg (Luxembourg, Grand-Duchy of Luxembourg), Arcelor Profil Luxembourg SA (Esch-sur-Alzette, Grand-Duchy of Luxembourg) and Arcelor International (Luxembourg, Grand-Duchy of Luxembourg) (represented by: A. Vandencasteele, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— annul the Commission's decision of 8 November 2006 in Case COMP/F/38.907 — Steel beams — C(2006) 5342 final;

— at the very least, annul Article 2 of the decision imposing on the applicants a financial penalty or reduce that penalty drastically;

— order the defendant to pay the costs.

Pleas in law and main arguments

By this action, the applicants seeks the annulment of Commission Decision C(2006) 5342 final of 8 November 2006 relating to a proceeding under Article 65 ECSC (Case COMP/F/38.907 — Steel beams), concerning agreements and concerted practices engaged in by European producers of beams and relating to price-fixing, allocation of quotas and information exchange on the market for beams in the Community. In the alternative, they seek the annulment of or a substantial reduction in the fine imposed on them by the contested decision.

The applicants rely on several pleas in law in support of their action.

The first plea alleges infringement of Article 97 ECSC and misuse of powers in so far as the contested decision applies Article 65 ECSC after expiry of that treaty pursuant to Article 97 thereof.

Second, the applicants allege infringement of Regulation No 1/2003 [1] and a misuse of powers in so far as the Commission bases its competence to adopt an ECSC decision on a regulation which confers on it powers only pursuant to the implementation of Articles 81 and 82 EC.

The third plea alleges breach of the rule of law and the rights of the defence in so far as the decision holds three affiliated companies responsible for a practice in which only one participated.

Furthermore, the applicants claim that, by adopting the contested decision, the Commission has infringed rules of law relating to limitation.

Finally, the applicants claim that the contested decision infringed their rights of defence in so far as it was adopted more than fifteen years after the facts, on the basis of a theory for attributing responsibility which, according to the applicants, was set out for the first time by the Commission in its statement of objections of March 2006 and therefore after an excessive period of time.

[1] Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, OJ 2003 L 1, p. 1.

Action brought on 28 December 2006 — Evropaïki Dynamiki v Commission

(Case T-406/06)

(2007/C 42/66)

Language of the case: English

Parties

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

Defendant: Commission of the European Communities

Form of order sought

— Annul the Commission's decision (DG ENV) to reject the applicant's bid and to award the contract to the successful contractor;

— order the Commission (DG ENV) to pay the applicant's legal and other costs and expenses incurred in connection with this application, even if the current application is rejected;

— order the Commission (DG ENV) to pay the applicant's damages suffered on account of the tendering procedure in question for an amount of EUR 86 300.

Pleas in law and main arguments

The applicant submitted a bid in response to the defendant's call for an open tender for the provision of services to support Registries Systems established under Directive 2003/87 [1] with technical maintenance and user support (OJ 2006/S 102-108793). The applicant contests the decision to reject its bid and to award the contract to another bidder.

In support of its application, the applicant submits that the defendant committed several errors of assessment and violated the principles of equal treatment and transparency. Furthermore, the applicant claims that the defendant did not state reasons for its decision by not informing the applicant of the merits of the successful tender compared to the applicant's tender.

[1] Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ 2003 L 275, p. 32).

Action brought on 21 December 2006 — Zhejiang Aokang Shoes v Council

(Case T-407/06)

(2007/C 42/67)

Language of the case: English

Parties

Applicant: Zhejiang Aokang Shoes Co., Ltd (Oubei, China) (represented by: I. MacVay, solicitor, R. Thompson, QC, and K. Beal, barrister)

Defendant: Council of the European Union

Form of order sought

— The contested regulation be annulled in so far as it applies to the applicant;

— the defendant meet the applicant's costs of these proceedings.

Pleas in law and main arguments

The applicant, who is a Chinese producer and exporter of leather footwear, seeks the annulment of Council Regulation (EC) No 1472/2006 of 5 October 2006 imposing a definitive anti-dumping duty and collecting definitely the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam ([1]).

In support of its application, the applicant invokes nine pleas in law of which the first five relate to the lack of competence, infringement of essential procedural requirements laid down in the Basic Regulation ([2]) and infringement of the principles of legitimate expectations, rights of defence and equal treatment.

Furthermore, the applicant submits that there has been an erroneous and discriminatory calculation of the dumping margin applied to the applicant and that the contested regulation is vitiated by a manifest error of assessment in respect of the extent and duration of the injury relied on to justify the imposition of duties on the applicant.

Moreover, the applicant contends that the Commission has infringed Article 20 of the Basic Regulation in failing to give proper disclosure to the applicant in respect of the radical change of the definitive measures proposed by the Commission between 7 July and 28 July 2006.

Finally, the applicant alleges that the contested regulation infringes Article 2(10) of the Basic Regulation in respect of the need to make a 'fair comparison' between the export price and the normal value when assessing the dumping margin.

([1]) OJ 2006 L 275, p. 1.
([2]) Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (OJ 1996 L 56, p. 1).

Action brought on 21 December 2006 — Wenzhou Taima Shoes v Council

(Case T-408/06)

(2007/C 42/68)

Language of the case: English

Parties

Applicant: Wenzhou Taima Shoes Co., Ltd (Yang Yi, China) (represented by: I. MacVay, solicitor, R. Thompson, QC, and K. Beal, barrister)

Defendant: Council of the European Union

Form of order sought

— The contested regulation be annulled in so far as it applies to the applicant;

— the defendant meet the applicant's costs of these proceedings.

Pleas in law and main arguments

The pleas in law and main arguments relied on by the applicant are identical to those relied on in Case T-407/06 *Zhejiang Aokang Shoes* v *Council*.

Action brought on 21 December 2006 — Sun Sang Kong Yuen Shoes Factory v Council

(Case T-409/06)

(2007/C 42/69)

Language of the case: English

Parties

Applicant: Sun Sang Kong Yuen Shoes Factory (Hui Yang) Co., Ltd (Xin Xu, China) (represented by: I. MacVay, solicitor, R. Thompson, QC, and K. Beal, barrister)

Defendant: Council of the European Union

Form of order sought

— The contested regulation be annulled in so far as it applies to the applicant;

— the defendant meet the applicant's costs of these proceedings.

Pleas in law and main arguments

The applicant, who is a Chinese producer and exporter of leather footwear, seeks the annulment of Council Regulation (EC) No 1472/2006 of 5 October 2006 imposing a definitive anti-dumping duty and collecting definitely the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam ([1]).

In support of its application, the applicant invokes six pleas in law claming that:

— the contested regulation is vitiated by a manifest error of assessment or infringes essential procedural requirements and the principle of equal treatment in failing to conclude that the applicant operated under market economy conditions ([2]);

— by refusing the applicant market economy treatment, the Commission breached Article 3 of the Basic Regulation and made a manifest error of assessment in failing to take account of relevant information concerning the structure of the market and in particular the important role played by independent intermediaries in the supply of products manufactured by the applicant;

— the Commission acted outside the scope of Article 18(1) of the Basic Regulation and breached the applicant's rights of defence;

— the Commission infringed Article 20 of the Basic Regulation in failing to give proper disclosure to the applicant in respect of the radical change of the definitive measures proposed by the Commission between 7 July and 28 July 2006;

— the contested regulation is vitiated by a manifest error of assessment in respect of the extent and duration of the injury relied on to justify the imposition of duties on the applicant; and

— the contested regulation infringes Article 2(10) of the Basic Regulation in respect of the need to make a 'fair comparison' between the export price and the normal value when assessing the dumping margin.

(1) OJ 2006 L 275, p. 1.
(2) See Article 2(7)(b) and (c) of Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (OJ 1996 L 56, p. 1).

Action brought on 21 December 2006 — Foshan City Nanhai Golden Step Industrial v Council

(Case T-410/06)

(2007/C 42/70)

Language of the case: English

Parties

Applicant: Foshan City Nanhai Golden Step Industrial Co. Ltd (Hong Kong, China) (represented by: I. MacVay, solicitor, R. Thompson, QC and K. Beal, barrister)

Defendant: Council of the European Union

Form of order sought

— Annul Council Regulation (EC) No 1472/2006 insofar as it applies to the applicant;

— order the Council to meet the applicant's costs of these proceedings.

Pleas in law and main arguments

By the present application, the applicant seeks annulment, pursuant to Article 230 EC, of the contested regulation to the extent that it imposes definitive anti-dumping duties on its exports to the European Union.

The applicant advances four pleas in law in support of its claims:

— The applicant submits that the Commission's calculation of the profit margin to be used for the constructed value of the applicant's normal value is vitiated by a manifest error and/or infringes its rights of defence.

— Furthermore, the applicant claims that the Commission allegedly breached the requirements of Article 3 of the Basic Regulation and/or made a manifest error of assessment in failing to take account of relevant information concerning the structure of the market, and in particular the important role played by independent intermediaries in the supply of products manufactured by the applicant.

— According to the applicant, the Commission has further infringed Article 20 of the Basic Regulation and/or essential procedural requirements and/or its rights of defence in failing to give proper disclosure in respect of the radical amendment of the definitive measures proposed by the Commission between 7 July and 28 July 2006.

— Finally, the applicant contends that the contested regulation is further vitiated by a manifest error of assessment in respect of the extent and duration of the injury relied on to justify a determination of material injury and the imposition of duties on the applicant.

Action brought on 22 December 2006 — SO.GE.L.M.A. v EAR

(Case T-411/06)

(2007/C 42/71)

Language of the case: Italian

Parties

Applicant: SO.GE.L.M.A. (Scandicci, Italy) (represented by: E. Cappelli, P. De Caterini, A. Bandini and A. Gironi, avvocati)

Defendant: European Agency for Reconstruction

Form of order sought

The applicant claims that the Court should:

— annul the decisions of the EAR cancelling the works tender procedure 'Restoring of Unhindered Navigation (removal of unexploded ordnance) in the Inland Waterway Transport System, Republic of Serbia, Serbia and Montenegro' (Publication Reference No: EuropeAid/120694/D/W/YU, Project No 05SER01 04 01) and launching a new tender procedure, communicated by AER letter of 9 October 2006, Prot. D (06)DG/MIL/EP 2715 and AER letter of 14 December 2006, Prot. DG/mie/3313, together with all other prior or connected acts, including the decision excluding the applicant, and, in any case, order the European Agency for Reconstruction to pay damages to the applicant in the amount specified in the application;

— order the European Agency for Reconstruction to pay the costs.

Pleas in law and main arguments

The object of the tender procedure at issue in the present case was the award of a public works contract for works consisting in the identification and clearance of unexploded military ordnance left over from the aerial bombardment carried out by NATO in 1999, with a view to re-opening the waterways of the Danube and the Sava for inland navigation.

After its tender had been found to be the most suitable, the applicant received a first request for clarifications, which were provided without delay. In particular, precise reasons were given for the presence, as leader of the aquatic survey team, of a person who had high qualifications but whose work experience fell short of that specified in the call for tenders.

Following professional contacts with a consultancy which had provided the European Agency for Reconstruction with advice in respect of the tender procedure in question, on the basis of which the applicant was led to expect a positive outcome, the applicant was informed that the tender procedure had been cancelled for lack of tenders which were technically suitable, and it became clear that there was an intention to issue a new call for tenders.

In support of its claims, the applicant alleges infringement of Article 41 of Directive 2004/18 of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts ([1]) and, more generally, breach of the principles that govern Community legislation on public procurement procedures, in so far as the annulment of the tendering procedure in question was the result of a choice made without careful reflection and without an in-depth assessment of the public interest to be safeguarded. Secondly, the applicant alleges failure to comply with the obligation to state reasons.

([1]) OJ 2004 L 134, 30.4.2004, p. 114.

Action brought on 29 December 2006 — Vitro Corporativo v OHIM — VKR Holding (Vitro)

(Case T-412/06)

(2007/C 42/72)

Language in which the application was lodged: Spanish

Parties

Applicant: Vitro Corporativo, S.A. de C.V. (represented by: J. Botella Reyna, 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: VKR Holding A/S

Form of order sought

— Declare that the Community trade mark VITRO be registered for goods in Class 19

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant.

Community trade mark concerned: Figurative mark 'Vitro' (CTR application No 2 669 521) for goods and services in Classes 1, 7, 8, 9, 11, 12, 16, 17, 19, 20, 21, 22, 27, 30, 35, 39, 40, 41, 42 and 43.

Proprietor of the mark or sign cited in the opposition proceedings: VKR Holding A/S

Mark or sign cited in opposition: Danish (No 1956 1415 VR), German (No 725 452), United Kingdom (No 1 436 897) and Community (No 651 745) word marks 'VITRAL', for goods, inter alia, in Class 19 (building glass, window glass, safety and isolating glass), in respect of which the opposition proceedings were lodged.

Decision of the Opposition Division: The opposition was upheld and the Community trade mark was refused for goods in Class 19.

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

Pleas in law: Incorrect application of Article 8(1)(b) of Regulation No 40/94 on the Community trade mark.

Appeal brought on 22 December 2006 against the order of the Civil Service Tribunal of 9 October 2006 in Case F-53/06, Gualtieri v Commission

(Case T-413/06 P)

(2007/C 42/73)

Language of the case: Italian

Parties

Appellant: Claudia Gualtieri (Brussels, Belgium) (represented by M. Gualtieri and P. Gualtieri, avvocati)

Other party to the proceedings: Commission of the European Communities

Form of order sought by the appellant

— annulment of the contested order of the Civil Service Tribunal of 9 October 2006, and a declaration that the Civil Service Tribunal has jurisdiction to decide the dispute.

Pleas in law and main arguments

The present appeal has been brought against the order of the Civil Service Tribunal of the European Union of 9 October 2006 in Case F-53/06, by which the Civil Service Tribunal declared that it lacked jurisdiction *ratione materiae* to make a ruling in the dispute between the applicant — a national expert on secondment — and the Commission.

In support of her appeal, the appellant alleges that the contested measure is based on a superficial and incorrect understanding of Article 1(2) of the Commission Decision concerning the rules applicable to seconded national experts (SNEs). On that point, she refers to Article 7(a), (f) and (g), Article 11(1) and (3), Article 12(1) and (2), Article 13(1), Article 14 and Article 15 of that Decision.

According to the appellant, it is to be inferred from that multiplicity of provisions that the relationship between a national expert and the home administration remains dormant throughout the period of secondment and that during that period the national expert on secondment is fully integrated in the Commission organisation, for whose exclusive benefit the expert is required to carry out his or her duties.

Consequently, there can be no doubt that disputes relating to that special employment relationship fall within the jurisdiction of the Civil Service Tribunal, the legal position of national experts on secondment being clearly assimilated to that of servants.

Appeal brought on 27 December 2006 against the judgment of the Civil Service Tribunal delivered on 19 October 2006 in Case F-114/05, Philippe Combescot v Commission

(Case T-414/06 P)

(2007/C 42/74)

Language of the case: Italian

Parties

Appellant: Philippe Combescot (Lecce, Italy) (represented by A. Maritati and V. Messa, avvocati)

Other party to the proceedings: Commission of the European Communities

Form of order sought by the appellant

The appellant claims that the Court should:

— reverse the judgment of the Civil Service Tribunal of 19 October 2006 in Case F-114/05 by declaring at the outset that the action is admissible in that it was brought in good time and in that it is based on the interest possessed by the official in obtaining judicial protection;

— recognise that, on account of the measure adopted, Mr Philippe Combescot has suffered non-material damage, both to his health and to his image, with serious consequences for his mental stability;

— order that Mr Combescot be paid the sum of EUR 150 000 by way of compensation for damage;

— order the Commission to pay the costs and charges incurred in the proceedings.

Pleas in law and main arguments

The present appeal has been brought against the judgment of the Civil Service Tribunal of the European Union of 19 October 2006 in Case F-114/05, by which the action was declared to be inadmissible on the grounds that it had been brought out of time and that the applicant had no legal interest in bringing proceedings.

In support of his claims, the appellant alleges:

— misinterpretation of Article 92(2) of the Staff Regulations, with particular reference to the definition of the expression 'rejected […] by implied decision', in that the judgment under appeal — for the purposes of determining the time-limits for contesting the rejection — assimilated the express decision adopted within the time-limits, but not communicated, to the implied decision of rejection. According to the appellant, the judgment at first instance refrains from addressing the crucial issue in the dispute: an express decision of rejection, adopted within the time-limits laid down in the Staff Regulations, exists for all intents and purposes, even if it is not communicated to the person concerned.

— aside from other considerations, in the case in question, the unacceptable delay in communicating the decision can in no way be imputed to the appellant. On this point, too, the Tribunal failed to carry out an adequate evaluation — even in terms of procedural correctness — of the contentions of the defendant concerning the difficulty of identifying the official's place of residence.

— that, notwithstanding the fact that at the time of bringing the action the appellant had already retired, he had an interest in bringing proceedings to establish the unlawfulness of the transfer in question and he continues to possess such an interest, in that his application for compensation for non-material and professional damage is predicated upon establishing the unlawfulness of the contested measure.

Appeal brought on 29 December 2006 by De Smedt against the judgment of the Civil Service Tribunal delivered on 19 October 2006 in Case F-59/05, De Smedt v Commission

(Case T-415/06 P)

(2007/C 42/75)

Language of the case: French

Parties

Appellant: Elisabeth de Smedt (Wezembeek-Oppem, Belgium) (represented by L. Vogel and R. Kechiche, lawyers)

Other party to the proceedings: Commission of the European Communities

Form of order sought by the appellant

— annulment in full of the judgment under appeal, delivered in 19 October 2006 by the Second Chamber of the Civil Service Tribunal, notified by registered letter of 19 October 2006, by which the action brought by the appellant on 8 July 2005 was dismissed;

— grant to the appellant the forms of order sought in the action brought by her on 8 July 2005;

— order the defendant and the intervener to pay the costs of the action pursuant to Article 87(2) of the Rules of Procedure, including the expenses necessarily incurred for the purposes of the proceedings, and, in particular, the costs of having an address for service, travel and accommodation expenses and lawyers' fees, pursuant to Article 91(b) of the Rules of Procedure.

Pleas in law and main arguments

By judgment of 19 October 2006, the annulment of which is sought by this appeal, the Civil Service Tribunal dismissed the action brought by the appellant seeking, first, annulment of the decision of the Commission of 21 March 2005 fixing the classification and remuneration of the applicant, who was previously an auxiliary agent recruited as a contractual agent, and, secondly, payment of damages.

In support of her application for the annulment of that judgment, the appellant puts forward two grounds of appeal, the first of which is based on infringement of Article 80(3) of the Conditions of Employment of other servants of the Communities (CEOS) ([1]), together with a manifest error of assessment. The appellant argues that, in rejecting the first plea in law under her original application on the ground that the Commission was obliged to follow a timescale laid down in terms of Regulation No 723/2004 ([2]), for the replacement of the former temporary staff status by the new contractual agent status, the Civil Service Tribunal allowed the Commission to disregard all preliminary procedures relating to the recruitment of contractual agents, in breach of Article 80(3) of the CEOS.

The second ground of appeal is based on infringement of the principle of non-discrimination, a failure to state adequate reasons and a failure to address the appellant's written pleadings in rejecting the second plea in law of her initial application, which was founded on the discriminatory situation in which the appellant was required to work, by comparison with other persons carrying out duties identical to her own, in the same department of the Commission. The appellant objects that the Civil Service Tribunal failed to provide a satisfactory response to her submissions in that regard and did no more than reject the plea, using an abstract form of words.

([1]) The Conditions of Employment of Other Servants of the Communities were laid down under Article 3 of Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 laying down the Staff Regulations of Officials and the CEOS (OJ 1968 L 6, p. 1).

([2]) Council Regulation (EC, Euratom) No 723/2004 of 22 March 2004 amending the Staff Regulations of officials of the European Communities and the Conditions of Employment of other servants of the European Communities (OJ 2004 L 124, p. 1).

Action brought on 29 December 2006 — Sumitomo Chemical Agro Europe v Commission

(Case T-416/06)

(2007/C 42/76)

Language of the case: English

Parties

Applicant: Sumitomo Chemical Agro Europe SAS (Saint Didier, France) (represented by: K. Van Maldegem and C. Mereu, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Order the defendant, if necessary by means of an interlocutory order, to correct the material mistake in Annex I, Part A, and replace '0.75 g' with '0.75 Kg';

— order the annulment of the following provisions of Directive 2006/132:

Article 3(2): '*by 30 June 2008*'

Annex I: '*30 June 2008*'

Annex I, Part A: 'on the following crops'

'— cucumbers in greenhouses (closed hydroponic systems),

— plums (for processing)'

Annex I, Part B: 'Member States shall request the submission of further studies to address the potential endocrine disrupting properties of procymidone within two years after the adoption of the Test Guidelines on endocrine disruption by the Organisation for Economic Cooperation and Development (OECD). They shall ensure that the notifier at whose request procymidone has been included in this Annex provide such studies to the Commission within two years of the adoption of the above test guidelines.'

— order the defendant to pay all costs and expenses in these proceedings.

Pleas in law and main arguments

Council Directive 91/414 concerning the placing of plant protection products on the market [1] provides that Member States shall not authorise a plant protection product unless its active substances are listed in Annex I and any conditions laid down therein are fulfilled. The applicant seeks the partial annulment of Commission Directive 2006/132 amending Directive 91/414 to include procymidone as active substance [2] insofar as this directive i) only provides for a limited inclusion of procymidone in Annex I to Directive 91/414, ii) provides for specific conditions on the authorised use and iii) foresees a limited period of 18 months for the validity of the limited inclusion in Annex I.

In support of its application, the applicant submits that the contested directive violates Articles 1(1), 2(1) and 5(1) and (4) of Directive 91/414. Furthermore, the applicant contends that the contested directive is inconsistent with Article 5(5) of Directive 91/414 and that the Commission therefore exceeded the limits of its discretion.

The applicant moreover claims that the contested directive is procedurally flawed as the Commission is obliged to adopt the measures as they were proposed to the Standing Committee on the Food Chain and Animal Health and the Council without amending them before their final adoption.

Furthermore, the applicant alleges that the contested directive violates the applicant's legitimate expectations, as well as the principles of sound administration, subsidiarity, proportionality, legal certainty, equal treatment and excellence and independence of scientific advice. The applicant also contends that the contested directive is not providing sufficient justification and that the duty to state reasons is therefore infringed.

Finally, the applicant submits that the contested directive encroaches upon its right to conduct business activities and interferes with its right of property.

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[1] 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).

[2] Commission Directive 2006/132/EC of 11 December 2006 amending Council Directive 91/414/EEC to include procymidone as active substance (OJ 2006 L 349, p. 22).

Action brought on 5 January 2007 — Sanofi-Aventis v OHIM — AstraZeneca (EXANTIN)

(Case T-4/07)

(2007/C 42/77)

Language in which the application was lodged: English

Parties

Applicant: Sanofi-Aventis SA (Paris, France) (represented by: R. Gilbey, lawyer)

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

Other party to the proceedings before the Board of Appeal: AstraZeneca AB (Södertälje, Sweden)

Form of order sought

— Annul the decision of the First Board of Appeal dated 10 October 2006, case R 1302/2005-1, and uphold the appellant's contention that there exists a likelihood of confusion between the marks in conflict;

— order the Office for Harmonisation in the Internal Market to bear the costs of the appellant in the present instance.

Pleas in law and main arguments

Applicant for the Community trade mark: AstraZeneca AB

Community trade mark concerned: The word mark 'EXANTIN' for goods in class 5 — application No 2 694 115

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

Mark or sign cited: The international and national word marks 'ELOXATIN' and 'ELOXATINE' for goods in class 5

Decision of the Opposition Division: Rejection of the opposition

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: The Board of Appeal failed to identify the relevant public in its entirety, and erroneously established a hierarchy of attentiveness between the sections of the relevant public that it identified.

Furthermore, the Board of Appeal failed to apply the appropriate criteria in comparing the goods and failed to compare the signs globally. Consequently the Board of Appeal erroneously held that there was no likelihood of confusion.

Order of the Court of First Instance/Second Chamber of 1 December 2006 — Neoperl v OHIM (Representation of a sanitary pipe)

(Case T-97/06) ([1])

(2007/C 42/78)

Language of the case: German

The President of the Court of First Instance/Second Chamber has ordered that the case be removed from the register.

([1]) OJ C 131, 3.6.2006.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Judgment of the Civil Service Tribunal (First Chamber) of 16 January 2007 — Genette v Commission

(Case F-92/05) ([1])

(Officials — Pensions — Pension rights acquired before entry into the service of the Communities — Transfer to Community scheme — Withdrawal of the application to transfer in order to rely on new more favourable provisions)

(2007/C 42/79)

Language of the case: French

Parties

Applicant: Emmanuel Genette (Gorze, France) (represented by: M.-A Lucas, lawyer)

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

Intervener in support of the defendant: Kingdom of Belgium (represented by: L. Van den Broeck, Agent)

Re:

Annulment of the Commission decision refusing to withdraw the applicant's application relating to the transfer of his pension rights acquired in Belgium in order to bring a fresh claim on the basis of new and more favourable provisions.

Operative part of the judgment

The Tribunal:

1. *Annuls the decision of the Commission of the European Communities of 25 January 2005.*

2. *Orders the Commission of the European Communities to bears its own costs and to pay the costs of Mr Genette.*

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

([1]) OJ C 315 of 10.12.2005, p. 14 (case originally registered at the Court of First Instance under number T-361/05 and transferred to the Civil Service Tribunal of the European Union by order of 15.12.2005).

Judgment of the Civil Service Tribunal (First Chamber) of 16 January 2007 — Vienne and Others v Parliament

(Case F-115/05) ([1])

(Officials — Obligation on the administration to provide assistance — Refusal — Transfer of pension rights acquired in Belgium)

(2007/C 42/80)

Language of the case: French

Parties

Applicants: Philippe Vienne (Bascharage, Luxembourg) and Others (represented by: G. Bouneou and F. Frabetti, lawyers)

Defendant: European Parliament (represented by: initially, M. Mustapha-Pacha and A. Bencomo-Weber and, subsequently, J. De Wachter, M. Mustapha-Pacha and K. Zejdova, Agents)

Re:

First, annulment of the Parliament's decision rejecting the requests for assistance submitted by the applicants in connection with the transfer of their pension rights acquired in Belgium and, secondly, an application for damages

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

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

([1]) OJ C 22, 28.1.2006, p. 24 (case initially registered before the Court of First Instance of the European Communities under number T-427/05 and transferred to the Civil Service Tribunal of the European Union by order of 15.12.2005).

Judgment of the Civil Service Tribunal of 16 January 2007 — Gesner v OHIM

(Case F-119/05) ([1])

(Officials — Invalidity — Refusal of request for the establishment of an Invalidity Committee)

(2007/C 42/81)

Language of the case: Spanish

Parties

Applicant: Charlotte Gesner (Birkerod, Denmark) (represented by: J. Vázquez Vázquez and C. Amo Quiñones, lawyers)

Defendant: Office for Harmonisation in the Internal Market (represented by: I. de Medrano Caballero, Agent)

Re:

Staff case — Annulment of the decision of OHIM of 2 September 2005 refusing the applicant's request for the establishment of an Invalidity Committee to evaluate her inability to perform the duties corresponding to a post in her function group, and her right to claim invalidity allowance

Operative part of the judgment

The Tribunal:

1. *Annuls the decision of 21 April 2005 by which the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) refused Ms Gesner's request for the establishment of an Invalidity Committee;*

2. *Orders OHIM to pay the costs.*

([1]) OJ C 96, 22.4.2006, p. 34.

Judgment of the Civil Service Tribunal (First Chamber) of 16 January 2007 — Borbély v Commission

(Case F-126/05) ([1])

(Officials — Reimbursement of expenses — Installation allowance — Daily subsistence allowance — Travel expenses on taking up an appointment — Place of recruitment — Unlimited jurisdiction)

(2007/C 42/82)

Language of the case: English

Parties

Applicant(s): Andrea Borbély (Brussels, Belgium) (represented by: R. Stötzel, lawyer)

Defendant: Commission of the European Communities (represented by: J. Currall and H. Kraemer, agents)

Re:

Annulment of the decision of the Commission refusing the applicant the benefit of the installation allowance and the daily subsistence allowance and reimbursement of travel expenses following the establishment of her place of recruitment as Brussels

Operative part of the judgment

The Tribunal:

1. *Declares that the decision of the Commission of the European Communities of 2 March 2005 is annulled in so far as it refuses to grant the applicant the installation allowance provided for in Article 5(1) of Annex VII to the Staff Regulations and the daily subsistence allowance provided for in Article 10(1) of that Annex;*

2. *Orders the Commission of the European Communities to pay the applicant, in accordance with the rules of the Staff Regulations in force, those allowances plus default interest, from the dates on which they were payable respectively and up to the date of their payment, at the rate set by the European Central Bank for its main refinancing transactions, as applicable during the relevant period, increased by two points;*

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

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

([1]) OJ C 60, 11.3.2006, p. 54.

Judgment of the Civil Service Tribunal (First Chamber) of 16 January 2007 — Frankin and Others v Commission

(Case F-3/06) ([1])

(Officials — Obligation on the administration to provide assistance — Refusal — Transfer of pension rights acquired in Belgium)

(2007/C 42/83)

Language of the case: French

Parties

Applicants: Jacques Frankin (Sorée, Belgium) and Others (represented by: G. Bouneou and F. Frabetti, lawyers)

Defendant: Commission of the European Communities (represented by: L. Lozano Palacios and D. Martin, Agents)

Re:

First, annulment of the Commission's decision rejecting the requests for assistance submitted by the applicants in connection with the transfer of their pension rights acquired in Belgium and, secondly, an application for damages.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

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

([1]) OJ C 74, 25.3.2006, p. 33.

Action brought on 27 December 2006 — Dragoman v Commission

(Case F-147/06)

(2007/C 42/84)

Language of the case: French

Parties

Applicant: Adriana Dragoman (Brussels, Belgium) (represented by: S. Mihailescu, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— annul the decision of the selection board of Open Competition EPSO/AD/44/06-CJ for the constitution of a reserve for future recruitment of lawyer-linguists having Romanian as their principal language to award a mark of 18/40 for written test (b) to the applicant and not to admit her to the oral test of that competition;

— order the defendant to pay the costs.

Pleas in law and main arguments

In support of her action, the applicant raises two pleas in law, the first of which is divided into two branches. The first refers to the infringement of the rules governing the work of the selection board, in that it assessed the tests by taking account rather of the comprehension of the source languages than of the precision of the translation into Romanian. The second refers to the infringement of the provisions of the competition notice relating to proper establishment and publication of the names of the members of the selection board. Such publication took place three days before the date of the tests, whereas the competition notice provided for a minimum of 15 days.

In her second plea, the applicant alleges breach of the principle of the obligation to state reasons, insofar as the assessment carried out by the selection board gives no precise details regarding the parameters used in correction of the tests.

Action brought on 28 December 2006 — Collée v Parliament

(Case F-148/06)

(2007/C 42/85)

Language of the case: French

Parties

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

Defendant: European Parliament

Form of order sought

The applicant claims that the Tribunal should:

— declare the illegality of paragraph I.3 of the 'Instructions on the procedure for the allocation of promotion points' of the European Parliament of 13 June 2002;

— annul the Appointing Authority's decision of 9 January 2006 to allocate two merit points to the applicant under the 2004 promotion procedure;

— order the defendant to pay the costs.

Pleas in law and main arguments

The applicant, a European Parliament official in Grade AST 8, criticises the Appointing Authority for failing to carry out an examination of comparative merits which included all officials of the institution who were eligible for promotion and were classified in the same grade as the applicant. He alleges, inter alia, breach of Articles 5 and 45 of the Staff Regulations and infringement of the principle of equal treatment and non-discrimination. The contested decision, he argues, is also vitiated by a manifest error of assessment and a failure to give reasons.

The applicant pleads, lastly, that paragraph I.3 of the abovementioned Instructions, which concerns the exceptional allocation of promotion points by the Secretary-General, is illegal. In particular, the restrictions imposed by that provision on the Secretary-General do not comply with Article 45 of the Staff Regulations and the principle of equal treatment.

Action brought on 3 January 2007 — Chassagne v Commission

(Case F-1/07)

(2007/C 42/86)

Language of the case: French

Parties

Applicant: Olivier Chassagne (Brussels, Belgium) (represented by: Y. Minatchy, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— annul the decision of the Commission of 17 November 2006 making definitive the list of agents promoted and the measures following therefrom affecting the applicant;

— order all measures necessary to the maintenance of the rights and interests of the applicant;

— order the defendant to pay damages and interest in the sum of EUR 160 184;

— order the defendant to pay the costs.

Pleas in law and main arguments

The applicant challenges the decision of the Commission not to include his name in the list of officials promoted for the 2006 promotion year on the ground that for that year he has not been able to obtain either a staff report — the assessment procedure regarding him was still pending at the date of the contested decision — or promotion points.

The action is brought principally on the basis of the fact that the Appointing Authority excluded the applicant from the 2006 reporting and assessment exercise, thus causing harmful delay to the progress of his career.

The applicant takes the view that the contested decision: (i) infringes a number of general principles of Community law, in particular the protection of the rights of the defence, the obligation to state reasons, the prohibition of manifest errors of assessment, the protection of legitimate expectations, legal certainty and equal treatment; (ii) wrongly applies a number of provisions of Community law, inter alia Articles 43 and 45 of the Staff Regulations and the general implementing provisions which the Commission has adopted for their application.