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(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COURT OF JUSTICE OF THE EUROPEAN UNION

(2010/C 209/01)

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

OJ C 195, 17.7.2010

Past publications

OJ C 179, 3.7.2010

OJ C 161, 19.6.2010

OJ C 148, 5.6.2010

OJ C 134, 22.5.2010

OJ C 113, 1.5.2010

OJ C 100, 17.4.2010

These texts are available on:

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

GENERAL COURT

Conduct of the activities of the General Court between 1 and 13 September 2010

(2010/C 209/02)

At its Plenary Meeting on 8 June 2010, the General Court took note of the fact that, by reason of the Court vacation, the taking of the oath before the Court of Justice by the new Members of the General Court will take place only after the end of that vacation. Consequently, in accordance with the third paragraph of Article 5 of the Statute of the Court of Justice, until the new Members of the General Court take up their duties:

— the President of the General Court will be Mr Jaeger;

— the Presidents of the Chambers of five Judges will be Mr Azizi, Mr Meij, Mr Vilaras, Mr Forwood, Ms Martins Ribeiro, Mr Czúcz, Ms Wiszniewska-Białecka and Ms Pelikánová, Presidents of Chambers;

— the decision of 19 September 2007 on the organisation of the General Court and the composition of the Grand Chamber (OJ 2007 C 269, p. 40), the decision of 16 June 2009 on the criteria for assigning cases to Chambers and on the composition of the Appeal Chamber (OJ 2009 C 153, p. 2), the decision of 7 October 2009 on the assignment of Judges to Chambers (OJ 2009 C 267, p. 6) and the decision of 12 May 2010 on the designation of the Judge replacing the President of the General Court as the Judge hearing applications for interim measures (OJ 2010 C 148, p. 1) will continue to apply.

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Grand Chamber) of 1 June 2010 (reference for a preliminary ruling from the Tribunal Superior de Justicia de Asturias, Spain) — José Manuel Blanco Pérez, María del Pilar Chao Gómez v Consejería de Salud y Servicios Sanitarios (C-570/07), Principado de Asturias (C-571/07)

(Joined Cases C-570/07 and C-571/07) ([1])

(Article 49 TFEU — Directive 2005/36/EC — Freedom of establishment — Public health — Pharmacies — Proximity — Provision of medicinal products to the public — Operating licence — Territorial distribution of pharmacies — Establishment of limits based on population density — Minimum distance between pharmacies — Candidates who have pursued professional activities on part of the national territory — Priority — Discrimination)

(2010/C 209/03)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de Asturias

Parties to the main proceedings

Applicants: José Manuel Blanco Pérez, María del Pilar Chao Gómez

Defendants: Consejería de Salud y Servicios Sanitarios (C-570/07), Principado de Asturias (C-571/07)

Intervening parties: Federación Empresarial de Farmacéuticos Españoles (C-570/07), Plataforma para la Libre Apertura de Farmacias (C-570/07), Celso Fernández Gómez (C-571/07), Consejo General de Colegios Oficiales de Farmacéuticos de España, Plataforma para la Defensa del Modelo Mediterráneo de Farmacias, Muy Ilustre Colegio Oficial de Farmacéuticos de Valencia, Asociación Nacional de Grandes Empresas de Distribución (ANGED)

Re:

References for a preliminary ruling — Tribunal Superior de Justicia de Asturias — Interpretation of Article 43 EC — Legislation laying down the conditions for the opening of new pharmacies

Operative part of the judgment

1. *Article 49 TFEU must be interpreted as not precluding, in principle, national legislation, such as that at issue in the cases before the referring court, which imposes restrictions on the issue of licences for the opening of new pharmacies, by providing that:*

— *in each pharmaceutical area, a single pharmacy may be opened, as a general rule, per unit of 2 800 inhabitants;*

— *a supplementary pharmacy may not be opened until that threshold has been exceeded, that pharmacy being established for the fraction above 2 000 inhabitants; and*

— *each pharmacy must be a minimum distance away from existing pharmacies, that distance being, as a general rule, 250 metres.*

Nevertheless, Article 49 TFEU precludes such national legislation in so far as the basic '2 800 inhabitants' and '250 metres' rules prevent, in any geographical area which has special demographic features, the establishment of a sufficient number of pharmacies to ensure adequate pharmaceutical services, that being a matter for the national court to ascertain.

2. *Article 49 TFEU, read in conjunction with Article 1(1) and (2) of Council Directive 85/432/EEC of 16 September 1985 concerning the coordination of provisions laid down by Law, Regulation or Administrative Action in respect of certain activities in the field of pharmacy, and Article 45(2)(e) and (g) of Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications must be interpreted as precluding criteria, such as those set out in points 6 and 7(c) of the Annex to Decree 72/2001 of 19 July 2001, regulating pharmacies and dispensaries in the Principality of Asturias (Decreto 72/2001 regulador de las oficinas de farmacia y botiquines en el Principado de Asturias), under which licensees for new pharmacies are to be selected.*

([1]) OJ C 79, 29.3.2008.

Judgment of the Court (Grand Chamber) of 8 June 2010 (Reference for a preliminary ruling from the High Court of Justice of England and Wales, Queens's Bench Division (Administrative Court) (United Kingdom)) — The Queen on the application of Vodafone Ltd, Telefónica O2 Europe plc, T-Mobile International AG, Orange Personal Communications Services Ltd v Secretary of State for Business, Enterprise and Regulatory Reform

(Case C-58/08) ([1])

(Regulation (EC) No 717/2007 — Roaming on public mobile telephone networks within the Community — Validity — Legal basis — Article 95 EC — Principles of proportionality and subsidiarity)

(2010/C 209/04)

Language of the case: English

Referring court

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

Parties to the main proceedings

Applicants: The Queen on the application of Vodafone Ltd, Telefónica O2 Europe plc, T-Mobile International AG, Orange Personal Communications Services Ltd

Defendant: Secretary of State for Business, Enterprise and Regulatory Reform

Interested parties: Office of Communications, Hutchison 3G UK Ltd, GSM Association

Re:

Reference for a preliminary ruling — High Court of Justice of England and Wales, Queens's Bench Division (Administrative Court) — Validity of Regulation (EC) No 717/2007 of the European Parliament and of the Council of 27 June 2007 on roaming on public mobile telephone networks within the Community and amending Directive 2002/21/EC (OJ 2007 L 171, p. 32) — Choice of legal basis — Validity of Articles 4, 2(a) and 6(3) of the regulation, imposing a maximum charge for roaming calls, in light of the principles of proportionality and subsidiarity

Operative part of the judgment

Consideration of the questions raised has disclosed no factor of such a kind as to affect the validity of Regulation (EC) No 717/2007 of the European Parliament and of the Council of 27 June 2007 on roaming on public mobile telephone networks within the Community and amending Directive 2002/21/EC.

([1]) OJ C 107, 26.4.2008.

Judgment of the Court (Second Chamber) of 3 June 2010 (reference for a preliminary ruling from the Raad van State (Netherlands)) — The Sporting Exchange Ltd, trading as Betfair v Minister van Justitie

(Case C-203/08) ([1])

(Article 49 EC — Restrictions on the freedom to provide services — Games of chance — Offer of games of chance via the internet — Legislation reserving a licence to a single operator — Renewal of licence without subjecting the matter to competition — Principle of equal treatment and obligation of transparency — Application in the field of games of chance)

(2010/C 209/05)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Applicant: The Sporting Exchange Ltd, trading as Betfair

Defendant: Minister van Justitie

Intervening party: Stichting de Nationale Sporttotalisator

Re:

Reference for a preliminary ruling — Raad van State — Interpretation of Article 49 EC — National legislation prohibiting the unlicensed organisation of gaming and collection of bets and reserving a licence to one single operator in order to safeguard social wellbeing and public health — Refusal to issue a licence to an (internet) operator which is already licensed in other Member States, including the Member State in which it has its registered office — Renewal of such a licence without subjecting the matter to competition — Overriding reasons in the public interest

Operative part of the judgment

1. *Article 49 EC must be interpreted as not precluding legislation of a Member State, such as the legislation at issue in the main proceedings, under which exclusive rights to organise and promote games of chance are conferred on a single operator, and which prohibits any other operator, including an operator established in another Member State, from offering via the internet services within the scope of that regime in the territory of the first Member State.*

2. *Article 49 EC must be interpreted as meaning that the principle of equal treatment and the consequent obligation of transparency are applicable to procedures for the grant of a licence to a single operator or for the renewal thereof in the field of games of chance, in so far as the operator in question is not a public operator whose management is subject to direct State supervision or a private operator whose activities are subject to strict control by the public authorities.*

([1]) OJ C 197, 2.8.2008.

Judgment of the Court (Second Chamber) of 3 June 2010 (reference for a preliminary ruling from the Hoge Raad der Nederlanden — Netherlands) — Ladbrokes Betting & Gaming Ltd, Ladbrokes International Ltd v Stichting de Nationale Sporttotalisator

(Case C-258/08) ([1])

(Article 49 EC — Restrictions on the freedom to provide services — Games of chance — Offer of games of chance via the internet — Legislation reserving a licence to a single operator — Refusal to grant an operating licence to an operator who is licensed in other Member States — Justification — Proportionality — Review of each specific measure applying national legislation)

(2010/C 209/06)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicants: Ladbrokes Betting & Gaming Ltd, Ladbrokes International Ltd

Defendant: Stichting de Nationale Sporttotalisator

Re:

Reference for a preliminary ruling — Hoge Raad der Nederlanden — Interpretation of Article 49 EC — National legislation prohibiting the unlicensed organisation of gaming and collection of bets and reserving a licence to one single operator in order to safeguard social wellbeing and public health — Refusal to issue a licence to an (internet) operator which is already licensed in other Member States, including that in which it has its registered office — overriding reasons in the public interest

Operative part of the judgment

1. *National legislation, such as that at issue in the main proceedings, which seeks to curb addiction to games of chance and to combat fraud, and which in fact contributes to the achievement of those objectives, can be regarded as limiting betting activities in a consistent and systematic manner even where the holder(s) of an exclusive licence are entitled to make what they are offering on the market attractive by introducing new games and by means of advertising. It is for the national court to determine whether unlawful gaming activities constitute a problem in the Member State concerned which might be solved by the expansion of authorised and regulated activities, and whether that expansion is on such a scale as to make it impossible to reconcile with the objective of curbing such addiction.*

2. *For the purpose of applying legislation of a Member State on games of chance which is compatible with Article 49 EC, the national courts are not required to determine, in each case, whether the implementing measure intended to ensure compliance with that legislation is suitable for achieving the objective of that legislation and is compatible with the principle of proportionality, in so far as that measure is necessary to ensure the effectiveness of that legislation and does not include any additional restriction over and above that which arises from the legislation itself. Whether that implementing measure was adopted as a result of action by the public authorities to ensure compliance with national legislation or of an application by an individual in the context of a civil action to protect his rights under that legislation has no bearing on the outcome of the dispute before the national court.*

3. *Article 49 EC must be interpreted as not precluding legislation of a Member State, such as the legislation at issue in the main proceedings, under which exclusive rights to organise and promote games of chance are conferred on a single operator, and which prohibits any other operator, including an operator established in another Member State, from offering via the internet services within the scope of that regime in the territory of the first Member State.*

(1) OJ C 223, 30.08.2008.

Judgment of the Court (First Chamber) of 3 June 2010 (reference for a preliminary ruling from the Tribunal Supremo (Spain)) — Caja de Ahorros y Monte de Piedad de Madrid v Asociación de Usuarios de Servicios Bancarios (Ausbanc)

(Case C-484/08) (1)

(Directive 93/13/EEC — Consumer contracts — Terms defining the main subject-matter of the contract — Assessment by the courts as to their unfairness — Excluded — More stringent national provisions designed to afford a higher level of consumer protection)

(2010/C 209/07)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Applicant: Caja de Ahorros y Monte de Piedad de Madrid

Defendant: Asociación de Usuarios de Servicios Bancarios (Ausbanc)

Re:

Reference for a preliminary ruling — Tribunal Supremo — Interpretation of Articles 2, 3(1)(g) and 4(1) EC and of Articles 4(2) and 8 of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1995 L 95, p. 29) — Stricter national provisions to guarantee the consumer a higher level of protection — Review of terms defining the main subject matter of the contract or the adequacy of the price and remuneration as against the services or goods supplied.

Operative part of the judgment

1. *Articles 4(2) and 8 of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, which authorises a judicial review as to the unfairness of contractual terms which relate to the definition of the main subject-matter of the contract or to the adequacy of the price and remuneration, on the one hand, as against the services or goods to be supplied in exchange, on the other hand, even in the case where those terms are drafted in plain, intelligible language;*

2. *Articles 2 EC, 3(1)(g) EC and 4(1) EC do not preclude an interpretation of Articles 4(2) and 8 of Directive 93/13 according to which Member States may adopt national legislation which authorises a judicial review as to the unfairness of contractual terms which relate to the definition of the main subject-matter of the contract or to the adequacy of the price and remuneration, on the one hand, as against the services or goods to be supplied in exchange, on the other hand, even in the case where those terms are drafted in plain, intelligible language.*

(1) OJ C 19, 24.01.2009.

Judgment of the Court (First Chamber) of 3 June 2010 — European Commission v Kingdom of Spain

(Case C-487/08) (1)

(Failure of a Member State to fulfil obligations — Free movement of capital — Articles 56 EC and 40 of the EEA Agreement — Difference in treatment — Dividends distributed to resident and non-resident companies)

(2010/C 209/08)

Language of the case: Spanish

Parties

Applicant: European Commission (represented by: R. Lyal and I. Martinez del Peral, Agents)

Defendant: Kingdom of Spain (represented by: N. Díaz Abad, Agent)

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 56 EC and 40 EEA — Different treatment given to dividends distributed to domestic and foreign shareholders

Operative part of the judgment

The Court:

1. *Declares that, by making the exemption of dividends distributed by companies resident in Spain subject to a level of holding by the recipient companies in the distributing companies which is higher for recipient companies residing in another Member State than for recipient companies resident in Spain, the Kingdom of Spain has failed to fulfil its obligations under Article 56(1) EC.*

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

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

([1]) OJ C 19, 24.1.2009.

Judgment of the Court (Fourth Chamber) of 10 June 2010 — European Commission v Italian Republic

(Case C-491/08) ([1])

(Failure of a Member State to fulfil obligations — Directive 92/43/EEC — Conservation of natural habitats — Wild fauna and flora — Sites of Community importance — Tourism complex 'Is Arenas')

(2010/C 209/09)

Language of the case: Italian

Parties

Applicant: European Commission (represented by: D. Recchia, acting as Agent)

Defendant: Italian Republic (represented by: I. Bruni, Agent, and G. Aiello, lawyer)

Re:

Failure of a Member State to fulfil obligations — Infringement 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) — Sites of Community importance — Site 'Is Arenas' — Development of a golf course.

Operative part of the judgment

The Court:

1. *Declares that, having regard to the tourism and property complex 'Is Arenas', which affects the site 'Is Arenas';*

   — *by failing to adopt, before 19 July 2006, date when the site 'Is Arenas' was included on the list of sites of Community importance, preservation measures which, having regard to the conservation aim of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, are suitable for the purposes of preserving the relevant ecological interest represented at national level by the proposed site of Community importance, and in particular by failing to prevent an activity likely seriously to endanger the ecological characteristics of the site; and*

   — *by failing to adopt, after 19 July 2006, appropriate measures to prevent the deterioration of natural habitats in respect of which that site of Community importance was designated;*

   the Italian Republic has failed to fulfil its obligations under Council Directive 92/43 and, more specifically, with regard to the second plea in law, Article 6(2) thereof;

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

([1]) OJ C 44, 21.02.2009.

Judgment of the Court (Second Chamber) of 3 June 2010 (reference for a preliminary ruling from the Oberster Gerichtshof — Austria) — Internetportal und Marketing GmbH v Richard Schlicht

(Case C-569/08) ([1])

(Internet — eu Top Level Domain — Regulation (EC) No 874/2004 — Domain names — Phased registration — Special characters — Speculative and abusive registrations — Concept of 'bad faith')

(2010/C 209/10)

Language of the case: German

Referring court

Oberster Gerichtshof, Austria

Parties to the main proceedings

Applicant: Internetportal und Marketing GmbH

Defendant: Richard Schlicht

Re:

Preliminary ruling — Oberster Gerichtshof (Austria) — Interpretation of Article 21(1)(a) and (b), (2) and (3) of Commission Regulation (EC) No 874/2004 of 28 April 2004 laying down public policy rules concerning the implementation and functions of the.eu Top Level Domain and the principles governing registration (OJ 2004 L 162, p. 40) — Speculative and abusive registrations — Concepts of 'rights or legitimate interest' and 'bad faith' — Registration of a domain by the proprietor of a national trade mark acquired with the sole aim of enabling that registration in the first phase of phased registration — Domain differing substantially from the trade mark on which its registration was based, because of the elimination of the special character '&' — Trade mark '&R&E&I&F&E&N&'

Operative part of the judgment

1. *Article 21(3) of Commission Regulation (EC) No 874/2004 of 28 April 2004 laying down public policy rules concerning the implementation and functions of the.eu Top Level Domain and the principles governing registration must be interpreted as meaning that bad faith can be established by circumstances other than those listed in Article 21(3)(a) to (e) of that regulation;*

2. *In order to assess whether there is conduct in bad faith within the meaning of Article 21(1)(b) of Regulation No 874/2004, read in conjunction with Article 21(3) thereof, the national court must take into consideration all the relevant factors specific to the particular case and, in particular, the conditions under which registration of the trade mark was obtained and those under which the.eu top level domain name was registered.*

With regard to the conditions under which registration of the trade mark was obtained, the national court must take into consideration, in particular:

— *the intention not to use the trade mark in the market for which protection was sought;*

— *the presentation of the trade mark;*

— *the fact of having registered a large number of other trade marks corresponding to generic terms; and*

— *the fact of having registered the trade mark shortly before the beginning of phased registration of.eu top level domain names.*

With regard to the conditions under which the.eu top level domain name was registered, the national court must take into consideration, in particular:

— *the abusive use of special characters or punctuation marks, within the meaning of Article 11 of Regulation No 874/2004, for the purposes of applying the transcription rules laid down in that article;*

— *registration during the first part of the phased registration provided for in that regulation on the basis of a mark acquired in circumstances such as those in the main proceedings; and*

the fact of having applied for registration of a large number of domain names corresponding to generic terms..

([1]) OJ C 69, 21.3.2009.

Judgment of the Court (Fourth Chamber) of 3 June 2010 (reference for a preliminary ruling from the Oberlandesgericht Nürnberg (Germany)) — Coty Prestige Lancaster Group GmbH v Simex Trading AG

(Case C-127/09) ([1])

(Trade-mark law — Regulation (EC) No 40/94 — Article 13(1) — Directive 89/104/EEC — Article 7(1) — Exhaustion of the trade mark proprietor's rights — Concept of 'goods put on the market' — Consent of the proprietor — Bottles of perfume known as 'testers', made available by the trade mark proprietor to an authorised specialist dealer belonging to a selective distribution network)

(2010/C 209/11)

Language of the case: German

Referring court

Oberlandesgericht Nürnberg

Parties to the main proceedings

Applicant: Coty Prestige Lancaster Group GmbH

Defendant: Simex Trading AG

Re:

Reference for a preliminary ruling — Oberlandesgericht Nürnberg — Interpretation of Article 13(1) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1) and Article 7 of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989 L 40, p. 1) — Exhaustion of the right conferred by the trade mark — Interpretation of the expression 'product put on the market' — Perfume testers the packaging of which bears the information that the product is intended for advertising purposes and not for sale, which are made available to contracted distributors on an interim basis and without a transfer of ownership

Operative part of the judgment

In circumstances such as those of the main proceedings, Article 13(1) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark and Article 7(1) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks, as amended by the Agreement on the European Economic Area of 2 May 1992, are to be interpreted as meaning that the rights conferred by the trade mark are exhausted only if, according to an assessment which it is for the national court to make, it may be concluded that the proprietor of the mark expressly or impliedly consented to a putting on the market, either in the European Community or in the European Economic Area, of the goods in respect of which that exhaustion is claimed to exist.

In circumstances such as those of the main proceedings, where 'perfume testers' are made available, without transfer of ownership and with a prohibition on sale, to intermediaries who are contractually bound to the trade mark proprietor for the purpose of allowing their customers to test the contents, where the trade mark proprietor may at any time recall those goods and where the presentation of the goods is clearly distinguishable from that of the bottles of perfume normally made available to the intermediaries by the trade mark proprietor, the fact that those testers are bottles of perfume which bear not only the word 'Demonstration' but also the statement 'Not for Sale' precludes, in the absence of any evidence to the contrary, which it is for the national court to assess, a finding that the trade mark proprietor impliedly consented to putting them on the market.

(1) OJ C 141, 20.6.2009.

Judgment of the Court (Fourth Chamber) of 10 June 2010 (reference for a preliminary ruling from the Tribunale di Genova (Italy)) — Fallimento Traghetti del Mediterraneo SpA v Presidenza del Consiglio dei Ministri

(Case C-140/09) (1)

(State aid — Subsidies paid to a maritime transport undertaking discharging public service obligations — National Law providing for the possibility of making payments on account prior to the approval of an agreement)

(2010/C 209/12)

Language of the case: Italian

Referring court

Tribunale di Genova

Parties to the main proceedings

Applicant: Fallimento Traghetti del Mediterraneo SpA

Defendant: Presidenza del Consiglio dei Ministri

Re:

Reference for a preliminary ruling — Tribunale di Genova — State aid — Compatibility with Articles 86 to 88 EC of national legislation under which State aid can be paid to maritime transport undertakings responsible for the performance of public service contracts, in the absence of agreements between those undertakings and the administrative authorities and without the prior establishment of precise and stringent criteria capable of ensuring that payment of the aid cannot give rise to distortion of competition

Operative part of the judgment

Under European Union law subsidies paid in circumstances such as those in the main proceedings, pursuant to national legislation providing for payments on account prior to the approval of an agreement, constitute State aid if those subsidies are liable to affect trade between Member States and distort or threaten to distort competition, which it is for the national court to determine.

(1) OJ C 153, 4.7.2009.

Judgment of the Court (Third Chamber) of 3 June 2010 (reference for a preliminary ruling from the Cour de cassation (Belgium)) — Belgian State v Nathalie De Fruytier

(Case C-237/09) [1]

(Sixth VAT Directive — Article 13(A)(1)(d) — Exemptions for activities in the public interest — Supply of human organs, blood and milk — Activity of transporting, in a self-employed capacity, human organs and samples for hospitals and laboratories — Concepts of 'supply of goods' and 'supply of services' — Distinguishing criteria)

(2010/C 209/13)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Applicant: Belgian State

Defendant: Nathalie De Fruytier

Re:

Reference for a preliminary ruling — Cour de cassation (Belgium) — Interpretation of Article 13(A)(1)(d) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) — Exemptions for activities in the public interest — Supply of human organs, blood and milk — Possibility of treating the activity of transporting, in a self-employed capacity, human organs and samples for hospitals and laboratories as a supply.

Operative part of the judgment

Article 13(A)(1)(d) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, exempting 'supplies of human organs, blood and milk' from value added tax, must be interpreted as not applying to the activity of transporting, in a self-employed capacity, human organs and samples for hospitals and laboratories.

[1] OJ C 220, 12.9.2009.

Judgment of the Court (Eighth Chamber) of 10 June 2010 — European Commission v Czech Republic

(Case C-378/09) [1]

(Failure of a Member State to fulfil obligations — Directive 85/337/EEC — First, second and third paragraphs of Article 10a — National legislation restricting the right of action against decisions in the environmental field — Failure to transpose within the time-limit prescribed)

(2010/C 209/14)

Language of the case: Czech

Parties

Applicant: European Commission (represented by: M. Šimerdová and J.-B, Laignelot, acting as Agents)

Defendant: Czech Republic (represented by: M. Smolek and J. Jirkalová)

Re:

Failure of a Member State to fulfil obligations — Infringement of the first, second and third paragraphs of Article 10a of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40), as amended by Council Directive 97/11/EC (OJ 1997 L 73, p. 5) and Directive 2003/35/EC of the European Parliament and of the Council (OJ 2003 L 156, p. 17) — National legislation restricting public participation in decision making procedure in the environmental field.

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt within the time-limit prescribed the laws, regulations and administrative provisions necessary to comply with the first, second and third paragraphs of Article 10a of the Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003, the Czech Republic has failed to fulfil its obligations under that directive;*

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

[1] OJ C 312, 19.12.2009.

Appeal brought on 18 January 2010 by Paul Inge Hansen against the judgment delivered on 17 November 2009 in Case T-295/09 Paul Inge Hansen v Commission of the European Communities

(Case C-26/10P)

(2010/C 209/15)

Language of the case: Swedish

Parties

Appellant: Paul Inge Hansen (represented by: P. Löfqvist, advokat, and C. von Quitzow, Juris doktor)

Other party to the proceedings: European Commission

The Court (Seventh Chamber) dismissed the action by order of 6 May 2010.

Action brought on 13 April 2010 — European Commission v Republic of Poland

(Case C-185/10)

(2010/C 209/16)

Language of the case: Polish

Parties

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

Defendant: Republic of Poland

Form of order sought

— declare that, by adopting and maintaining in force Article 4 of the Usatawa 'Prawo farmaceutyczne' (Law on Medicinal Products) of 6 September 2001 as amended by the Law of 30 March 2007 (Dz. U. No 75, heading 492), in so far as that article allows medicinal products imported from abroad having the same active substances, the same dosage and the same form as medicinal products which have obtained marketing authorisation in Poland to be placed on the market in Poland without authorisation issued there if the price of the former medicinal products is competitive in relation to the price of the latter, the Republic of Poland has failed to fulfil its obligations under Article 6 of Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use; [1]

— order the Republic of Poland to pay the costs.

Pleas in law and main arguments

The adoption and application by the Republic of Poland of Article 4(1) and (3a) of the Law on Medicinal Products make it possible for medicinal products to be marketed in Poland when they do not possess a marketing authorisation in Poland issued by the competent national authorities, a situation which is contrary to Article 6(1) of Directive 2001/83.

In the applicant's submission, the Polish provision is not covered by Article 5(1) and Article 126a of Directive 2001/83, which provide for exceptions to the general requirement contained in Article 6(1) of that directive that medicinal products must have a national authorisation.

Above all, Article 4(3a) of the Law on Medicinal Products, according to which the condition for allowing imported medicinal products is their 'competitive price' compared with the price of medicinal products already allowed on the national market, is based exclusively on an economic criterion. A criterion of that kind cannot, however, justify an exception to Article 6(1) of Directive 2001/83. Furthermore, the Polish provision concerns medicinal products with the same active substance, form and dosage as medicinal products already permitted on the national market, and it is therefore not possible to consider them to be unavailable on the national market, a situation which might justify the need for targeted import on the basis of Article 5(1) of the directive.

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

Reference for a preliminary ruling from the Finanzgericht, Düsseldorf (Germany) lodged on 19 April 2010 — KMB Europe BV v Hauptzollamt Duisburg

(Case C-193/10)

(2010/C 209/17)

Language of the case: German

Referring court

Finanzgericht Düsseldorf

Parties to the main proceedings

Applicant: KMB Europe BV

Defendant: Hauptzollamt Duisburg

Question referred

Is heading 8521 of the Combined Nomenclature in the version of Annex I to Council Regulation (EEC) No 2658/87 on the tariff and the statistical nomenclature and on the Common Customs Tariff [1], [as amended] by Commission Regulation (EC) No 1549/2006 of 17 October 2006 [2], to be interpreted as meaning that apparatus such as the MP3 media player described below is not to be classified under that heading because account must be taken of its principal function as sound reproducing apparatus or because its capability of reproducing individual pictures and films is limited by a small display with small resolution and low frame frequency?

[1] OJ 1987 L 256, p. 1.

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

Reference for a preliminary ruling from the Finanzgericht Hamburg (Germany) lodged on 26 April 2010 — Ze Fu Fleischhandel GmbH v Hauptzollamt Hamburg-Jonas

(Case C-201/10)

(2010/C 209/18)

Language of the case: German

Referring court

Finanzgericht Hamburg

Parties to the main proceedings

Applicant: Ze Fu Fleischhandel GmbH

Defendant: Hauptzollamt Hamburg-Jonas

Questions referred

1. Is the application by analogy of the limitation rule in Paragraph 195 BGB, in the version in force until the end of 2001, to claims for the repayment of wrongly paid export refunds incompatible with the Community-law principle of legal certainty?

2. Is the application of the 30-year limitation period in Paragraph 195 BGB in relation to the recovery of wrongly paid export refunds incompatible with the Community-law principle of proportionality?

3. If the reply to the second question is in the affirmative, is the application of a longer national limitation period within the meaning of Article 3(3) of Regulation No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests, [1] which is determined on the basis of an emergency judicial power in particular cases, by way of judicial development of the law, compatible with the Community-law principle of legal certainty?

[1] OJ 1995 L 312, p. 1.

Reference for a preliminary ruling from the Finanzgericht Hamburg (Germany) lodged on 26 April 2010 — Vion Trading GmbH v Hauptzollamt Hamburg-Jonas

(Case C-202/10)

(2010/C 209/19)

Language of the case: German

Referring court

Finanzgericht Hamburg

Parties to the main proceedings

Applicant: Vion Trading GmbH

Defendant: Hauptzollamt Hamburg-Jonas

Questions referred

1. Is the application by analogy of the limitation rule in Paragraph 195 BGB, in the version in force until the end of 2001, to claims for the repayment of wrongly paid export refunds incompatible with the Community-law principle of legal certainty?

2. Is the application of the 30-year limitation period in Paragraph 195 BGB in relation to the recovery of wrongly paid export refunds incompatible with the Community-law principle of proportionality?

3. If the reply to the second question is in the affirmative, is the application of a longer national limitation period within the meaning of Article 3(3) of Regulation No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests, [1] which is determined on the basis of an emergency judicial power in particular cases, by way of judicial development of the law, compatible with the Community-law principle of legal certainty?

[1] OJ 1995 L 312, p. 1.

Reference for a preliminary ruling from the Wojewódzki Sąd Administracyjny w Gliwicach (Republic of Poland), lodged on 3 May 2010 — Logstor ROR Polska Sp. z o.o. v Dyrektor Izby Skarbowej w Katowicach

(Case C-212/10)

(2010/C 209/20)

Language of the case: Polish

Referring court

Wojewódzki Sąd Administracyjny w Gliwicach

Parties to the main proceedings

Applicant: Logstor ROR Polska Sp. z o.o.

Defendant: Dyrektor Izby Skarbowej w Katowicach

Question referred

Did Article 4(2) of Council Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital, [1] as amended with effect from 17 June 1985 by Article 1(1) of Directive 85/303/EEC [2] of 10 June 1985, entitle a Member State to reintroduce, as from 1 January 2007, capital duty on a loan taken up by a capital company, if the creditor is entitled to a share in the profits of that company, in the case where the Member State had previously waived the charging of that duty as from the date of accession, that is to say, from 1 May 2004?

[1] OJ, English Special Edition 1969 (II), p. 412.
[2] Council Directive amending Directive 69/335/EEC concerning indirect taxes on the raising of capital (OJ 1985 L 156, pp. 23-24).

Reference for a preliminary ruling from First-tier Tribunal (Tax Chamber) (United Kingdom) made on 4 May 2010 — Pacific World Limited, FDD International Limited v Commissioners for Her Majesty's Revenue and Customs

(Case C-215/10)

(2010/C 209/21)

Language of the case: English

Referring court

First-tier Tribunal (Tax Chamber)

Parties to the main proceedings

Applicants: Pacific World Limited, FDD International Limited

Defendant: Commissioners for Her Majesty's Revenue and Customs

Questions referred

1. Is Commission Regulation (EC) No 1417/2007 [1] of 28 November 2007 concerning the classification of certain goods in the Combined Nomenclature valid in so far as it classifies under CN code 3926 90 97 the false nails, and thereby the false nail sets, described in Annex 1 to the said Regulation?

2. If the answer to question (1) is in the negative, is the Combined Nomenclature to be interpreted as requiring that the false nail sets in issue be classified as 'beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or suntan preparations; manicure or pedicure preparations.manicure or pedicure preparations' under tariff

heading 3304 30 00 or as 'Other articles of cutlery (for example, hair clippers, butchers' or kitchen cleavers, choppers and mincing knives, paperknives); manicure or pedicure sets and instruments (including nail files).manicure or pedicure sets and instruments (including nail files)' under tariff heading 8214 20 OO?

(1) OJ L 316, p. 4

Action brought on 6 May 2010 — European Commission v Portuguese Republic

(Case C-220/10)

(2010/C 209/22)

Language of the case: Portuguese

Parties

Applicant: European Commission (represented by: P. Guerra e Andrade and S. Pardo Quintillán, Agents)

Defendant: Portuguese Republic

Form of order sought

— A declaration that:

— by identifying as *less sensitive areas* all the coastal waters of the Island of Madeira and all the coastal waters of the Island of Porto Santo without applying the criteria laid down in Annex II to Directive 91/271/EEC, (1) in conjunction with Article 6(1) of that directive, and, in particular, without carrying out comprehensive studies indicating that the respective discharges do not adversely affect the environment, the Portuguese Republic has failed to fulfil its obligations under those provisions of Directive 91/271/EEC;

— by subjecting to treatment less stringent than that prescribed in Article 4 urban waste water from agglomerations with a population equivalent of more than 10 000, such as the agglomerations of Funchal and Câmara de Lobos, discharged into the coastal waters of the Island of Madeira, without carrying out comprehensive studies indicating that those discharges do not adversely affect the environment, the Portuguese Republic has failed to fulfil its obligations under Article 6(2) of Directive 91/271/EEC;

— by failing to ensure, with regard to the agglomeration of Albufeira/Armação de Pêra, the provision of collecting systems for urban waster water in accordance with Article 3 and treatment more stringent than that prescribed in Article 4, in accordance with Article 5 of the Directive, the Portuguese Republic has failed to fulfil its obligations under Articles 3 and 5 of Directive 91/271/EEC;

— by failing to ensure, with regard to the agglomeration of Beja, treatment more stringent than that prescribed in Article 4, in accordance with Article 5 of the Directive, the Portuguese Republic has failed to fulfil its obligations under Article 5 of Directive 91/271/EEC;

— by failing to ensure, with regard to the agglomeration of Chaves, treatment more stringent than that prescribed in Article 4, in accordance with Article 5 of the Directive, the Portuguese Republic has failed to fulfil its obligations under Article 5 of Directive 91/271/EEC;

— by failing to ensure, with regard to five agglomerations along the estuary of the River Tagus, Barreiro/Moita, Fernão Ferro, Montijo, Quinta do Conde and Seixal, the provision of collecting systems for urban waster water in accordance with Article 3; by failing to ensure, in six agglomerations discharging on the left bank of the Tagus estuary, Barreiro/Moita, Corroios/Quinta da Bomba, Fernão Ferro, Montijo, Quinta do Conde and Seixal, treatment more stringent than that prescribed in Article 4, in accordance with Article 5 of the Directive, the Portuguese Republic has failed to fulfil its obligations under Articles 3 and 5 of Directive 91/271/EEC;

— by failing to ensure, with regard to the agglomeration of Elvas, treatment more stringent than that prescribed in Article 4, in accordance with Article 5 of the Directive, the Portuguese Republic has failed to fulfil its obligations under Article 5 of Directive 91/271/EEC;

— by failing to ensure, with regard to the agglomeration of Tavira, treatment more stringent than that prescribed in Article 4, in accordance with Article 5 of the Directive, the Portuguese Republic has failed to fulfil its obligations under Article 5 of Directive 91/271/EEC;

— by failing to ensure, with regard to the agglomeration of Viseu, the provision of collecting systems for urban waster water in accordance with Article 3 and treatment more stringent than that prescribed in Article 4, in accordance with Article 5 of the Directive, the Portuguese Republic has failed to fulfil its obligations under Articles 3 and 5 of Directive 91/271/EEC;

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

Pleas in law and main arguments

There are several agglomerations that do not meet the requirements of the Directive, seven in respect of the requirements under Article 3 and 12 in respect of those under Article 5.

Some of the agglomerations in question undertake no treatment whatsoever of their waste water.

So far as discharges of urban waste water in *sensitive areas* are concerned, the Directive requires treatment of waste water more stringent than that required in respect of water discharged in other areas.

In accordance with Part B of Annex II, a marine water body or area may be identified as a less sensitive area if the discharge of waste water does not adversely affect the environment as a result of morphology, hydrology or specific hydraulic conditions in that area.

Article 6(2) of the Directive lays down the conditions on which urban waste water discharged into less sensitive areas may be subject to less stringent treatment. In particular, it provides that urban waste water from agglomerations with a population equivalent of between 10 000 and 15 000 discharged into coastal waters may be subjected to less stringent treatment only if comprehensive studies have been carried out and indicate that such discharges will not adversely affect the environment and if the Commission has been provided with the relevant information concerning those studies.

(1) Council Directive 91/271/EEC of 21 May 1991 concerning urban waste water treatment (OJ 1991 L 135, p. 40).

Reference for a preliminary ruling from the Amtsgericht Köln (Germany) lodged on 11 May 2010 — Hannelore Adams v Germanwings GmbH

(Case C-226/10)

(2010/C 209/23)

Language of the case: German

Referring court

Amtsgericht Köln

Parties to the main proceedings

Applicant: Hannelore Adams

Defendant: Germanwings GmbH

Question referred

Does Article 4(3) of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (1) apply to a passenger with a confirmed reservation for an outward and a return flight who does not present herself for boarding for the return flight owing to the following circumstances:

— The operating air carrier denied the passenger, who had presented herself punctually for boarding for the outward flight, boarding against her will and announced its intention of denying her boarding on the return flight.

— Boarding was denied because of the operating air carrier's mistaken assumption that, because of a chargeback, it was entitled to a processing fee, which the passenger had not yet paid?

(1) OJ 2004 L 46, p. 1.

Action brought on 7 May 2010 — European Commission v Republic of Estonia

(Case C-227/10)

(2010/C 209/24)

Language of the case: Estonian

Parties

Applicant: European Commission (represented by P. Oliver and J.-B. Laignelot, acting as Agents, and A. Salumets, vandeadvokaat)

Defendant: Republic of Estonia

Form of order sought

— declare that, by failing to adopt as required the necessary provisions to comply with Article 2(a) and Article 6(1) and (3) of Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment, [1] the Republic of Estonia has failed to fulfil its obligations under that directive;

— order the Republic of Estonia to pay the costs.

Pleas in law and main arguments

Incomplete transposition of the first indent of Article 2(a) of the directive

The Commission's view is that, although the definition in Paragraph 31 of the Estonian Law on environmental impact assessment and environment management (Keskkonnamõju hindamise ja keskkonnajuhtimise seadus, KeHJS) is broader than that of the directive in relation to the second indent of Article 2(a) of the directive, it is none the less narrower in relation to the first indent, since it excludes plans and programmes (with possible effects on the environment) which are subject to preparation by an authority but have not been laid down by a legal act. It is therefore possible under the Estonian national law for plans and programmes which are required by legislative or administrative provisions (although this condition of the directive is not laid down in the Estonian law) not to come under an environmental impact assessment.

Defects in the transposition of Article 6(1) of the directive

The Commission's view is that the requirement in Paragraph 37(2)(3) of the KeHJS to make public either the draft plan/programme or only the terms of reference is not consistent with the directive. The Commission submits that in general the terms of reference of a strategic planning document are too general and do not make it possible to ascertain and evaluate all the effects on the environment and the health of humans.

Incomplete transposition of Article 6(3) of the directive

Article 6(3) of the directive lays down a clear obligation to designate the authorities which are likely to be concerned by the environmental effects of implementing plans and programmes. That provision is also referred to in Articles 3(6), 5(4) and 6(1) and (2) of the directive. Paragraphs 36(3) and 35(4) of the KeHJS both list the same authorities which must be consulted (the Ministry of Social Affairs, the Ministry of Culture, the Ministry of the Environment, the environment service or a local authority body), but there is no requirement in the Estonian law to consult any other authority. That means, however, that there is no general requirement to consult all the authorities which *by reason of their specific environmental responsibilities are likely to be concerned by the environmental effects of implementing plans and programmes.* It is also not clear, on the basis of those paragraphs of the KeHJS, which authorities must be consulted in addition to the authorities listed. In the Commission's view, the Estonian law is unclear and the freedom of choice in designating authorities in accordance with Article 6(3) of the directive is too great. It is possible that there may be other authorities which are likely to be concerned by the environmental effects of plans or programmes. While the Estonian law provides for other authorities to be consulted where appropriate, it is possible that they may not be consulted even if they are likely to be concerned by the environmental effects of plans and programmes, because consultation is not obligatory in such a case.

[1] OJ 2001 L 197, p. 30.

Reference for a preliminary ruling from High Court of Justice (Chancery Division) (United Kingdom) made on 10 May 2010 — Union of European Football Associations (UEFA), British Sky Broadcasting Ltd v Euroview Sport Ltd

(Case C-228/10)

(2010/C 209/25)

Language of the case: English

Referring court

High Court of Justice (Chancery Division)

Parties to the main proceedings

Applicants: Union of European Football Associations (UEFA), British Sky Broadcasting Ltd

Defendant: Euroview Sport Ltd

Questions referred

1. Illicit Device

(a) Where a conditional access device is made by or with the consent of a service provider and sold subject to a limited authorisation to use the device only to gain access to the protected service in particular circumstances, does that device become an 'illicit device' within the meaning of Art. 2(e) of Directive 98/84/EC ([1]) if it issued to give access to that protected service in a place or in a manner or by a person outside the authorisation of the service provider?

(b) What is the meaning of 'designed or adapted' within Article 2(e) of the Directive?

2. Cause of Action

When a first service provider transmits programme content in encoded form to a second service provider who broadcasts that content on the basis of conditional access, what factors are to be taken into account in determining whether the interests of the first provider of a protected service are affected, within the meaning of Article 5 of Directive 98/84/EC?

In particular,

Where a first undertaking transmits programme content (comprising visual images, ambient sound and English commentary) in encoded form to a second undertaking which in turn broadcasts to the public the programme content (to which it has added its logo and on occasion an additional audio commentary track):

(a) Does the transmission by the first undertaking constitute a protected service of 'television broadcasting' within the meaning of Article 2(a) of Directive 98/84/EC and Article lea) of Directive 89/552 EEC ([2])?

(b) Is it necessary for the first undertaking to be a broadcaster within the meaning of Article l(b) of Directive 89/552/EEC in order to be considered as providing a protected service of television broadcasting within the first indent of Article 2(a) of Directive 98/841EC?

(c) Is Article 5 of Directive 98/84/EC to be interpreted as conferring a civil right of action on the first undertaking in respect of illicit devices which give access to the programme as broadcast by the second undertaking either:

(i) because such devices are to be regarded as giving access via the broadcast signal to the first undertaking's own service; or

(ii) because the first undertaking is the provider of a protected service whose interests are affected by an infringing activity (because such devices give unauthorised access to the protected service provided by the second undertaking)?

(d) Is the answer to (c) affected by whether the first and second service providers use different decryption systems and conditional access systems?

3. Article 6 Directive 2001/29/EC ([3]) — Technological Measures

In circumstances where:

(i) copyright works are included in a satellite broadcast

(ii) the broadcast is transmitted in encrypted form

(iii) only for access to the satellite broadcaster's subscribers

(iv) subscribers are provided with a decoder card which allows them to access the broadcast

(a) Does encryption constitute 'technological measures' within the meaning of Article 6(3) of Directive 2001/29/EC? If so, is it also 'effective' within the meaning of Article 6(3) of Directive 2001/29/EC?

(b) Does the use of a decoder card, which has been issued by the organisation making the satellite broadcast to a customer pursuant to a subscription agreement in a first Member State in order to obtain access in a second Member State to the broadcast and the copyright works included in the broadcast, amount to 'circumvention' of such technological measures in circumstances where the broadcasting organisation does not consent to such use of the decoder card?

(c) Is a trader who imports decoder cards into the second Member State and advertises them for sale and use there to be regarded as importing or advertising devices, or providing services, which:

(i) are promoted, advertised or marketed for the purpose of circumvention within Article 6(2)(a) of the Directive?

(ii) have only a limited commercially significant purpose or use other than to circumvent within Article 6(2)(b) of the Directive?

(iii) are primarily designed, produced, adapted or performed for the purpose of enabling or facilitating circumvention within Article 6(2)(c) of the Directive?

(d) Are the above circumstances excluded from the scope of Article 6 of Directive 2001/29/EC by reason of the fact that they are more specifically covered by Directive 98/84/EC?

4. Reproduction Right

Where sequential fragments of a film, broadcast, literary work, musical work or sound recording (in this case frames of digital video and audio) are created (i) within the memory of a decoder or (ii) in the case of a film, broadcast and literary work on a television screen and the whole work is reproduced if the sequential fragments are considered together but only a limited number of fragments exist at any point in time:

(a) Is the question of whether those works have been reproduced in whole or in part to be determined by the rule of national copyright law relating to what constitutes an infringing reproduction of a copyright work or is it a matter of interpretation of Article 2 of Directive 2001/29/EC?

(b) If it is a matter of interpretation of Article 2 of Directive 2001/29/EC, should the national court consider all of the fragments of each work as a whole or only the limited number of fragments which exist at any point in time? If the latter, what test should the national court apply to the question of whether the works have been reproduced in substantial part within the meaning of that Article?

(c) Does the reproduction right in Article 2 of Directive 2001/29/EC extend to the creation of transient images on a television screen?

5. Independent Economic Significance

(a) Are transient copies of a work created within a satellite television decoder box or on a television screen linked to the decoder box whose sole purpose is to enable a use of the work not otherwise restricted by law to be regarded as having 'independent economic significance' within the meaning of Article 5(1) of Directive 2001/29/EC by reason of the fact that such copies provide the only basis upon which the rights holder can extract remuneration for the use of his rights?

(b) Is the answer to Question 5(a) affected by (i) whether the transient copies have any inherent value or (ii) whether the transient copies comprise a small part of a collection of works and/or other subject matter which otherwise may be used without infringement of copyright; or (iii) whether the exclusive licensee of the rights holder in another Member State has already received remuneration for use of the work in that Member State?

6. Communication to public by wire or wireless means

(a) Is a copyright work communicated to the public by wire or wireless means within the meaning of Article 3 of Directive 2001/29/EC where a satellite broadcast is received at a commercial premises for example a bar and communicated or shown at those premises via a single television screen and speakers to members of the public present?

(b) Is the answer to Question 6(a) affected if:

(i) the members of the pubic present constitute a new public not contemplated by the broadcaster (in this case because a domestic decoder card for use in one Member State is used for a commercial audience in another Member State)?

(ii) The members of the public are not a paying audience according to national law?

(c) If the answer to any part of (b) is Yes, what factors should be taken into account in determining whether there is a communication of the work which has originated from a place where members of the audience are not present?

7. Fixation Right

Where sequential fragments of a broadcast (in this case frames of digital video and audio) are created (i) within the memory of a decoder or (ii) on a television screen and an extensive section of the broadcast is reproduced if the sequential fragments are considered together but only a limited number of fragments exist at any point in time:

(a) Is the question of whether those sequential fragments are a fixation of the broadcast to be determined by the rule of national copyright law relating to what constitutes an infringing reproduction of a copyright work or is it a matter of interpretation of Article 7 of Directive 2006/115 ([4])?

(b) If it is a matter of interpretation of Article 7 of Directive 2006/115, can such transient copies be considered a 'fixation' at all, and if so should the national court consider all of the fragments of each work as a whole or only the limited number of fragments which exist at any point in time? If the latter, what test should the national court apply to the question of whether the a fixation of the broadcast has been made within the meaning of that Article?

(c) Does the fixation right in Article 7 of Directive 2006/115 extend to the creation of transient images on a television screen?

8. Defence under Directive 93/83 ([5])

Is it compatible with Directive 93/83/EEC or with Articles 34 and 36 or 56 TFEU if national copyright law provides that when transient copies of works included in a satellite broadcast or of the broadcast itself are created inside a decoder box or on a television screen, there is an infringement of copyright under the law of the country of reception of the broadcast?

Does it affect the position if the broadcast is decoded using a satellite decoder card which has been issued by the provider of a satellite broadcasting service in another Member State on the condition that the satellite decoder card is only authorised for use in that other Member State?

9. Whether UEFA is a broadcaster under Directive 93/83

Where an organisation ('the First Organisation') either transmits or has transmitted on its behalf, signals carrying visual images and audio feed from a live sporting event via an encrypted satellite multilateral feed to an authorised group of broadcasters in different countries, and those broadcasters then transmit (either by terrestrial TV signals or by satellite) programmes of the live sporting event containing the visual images and audio feed but also their own station identifying logo and (according to their own editorial discretion) their own audio commentaries and their own materials during before and after match play and during half-time breaks ('the Downstream Programmes'):

(a) Does the encrypted multilateral feed constitute a 'communication to the public by satellite' within Article 1(2)(a) and 1(2)(c) of Directive 93/83, where decryption means for the feed itself are not made available to the public, but decryption means are made available to decrypt the signals carrying the Downstream Programmes where they are carried by satellite and the Downstream Programmes are unencrypted where they are transmitted from terrestrial transmitters?

(b) Is the First Organisation introducing into its multilateral feed 'the programme-carrying signals intended for reception by the public into an uninterrupted chain of communication leading to the satellite and down towards the earth'?

(c) Where Article 1(2)(a) refers to the act of introducing being 'under the control and responsibility of the broadcasting organisation', is the First Organisation the or a relevant broadcasting organisation for this purpose, or alternatively can the signals be regarded as being introduced into the multilateral feed under the control and responsibility of the downstream broadcasters?

10. Defence under Article 34 and/or 56 TFEU

(a) If the answer to Question 1 is that a conditional access device made by or with the consent of the service provider becomes an illicit device within the meaning of Article 2(2) of Directive 98/84/EC when it is used outside the scope of the authorisation of the service provider to give access to a protected service, what is the specific matter of the right by reference to its essential function conferred by the Conditional Access Directive?

(b) Do Article 34 or 56 TFEU preclude enforcement of a provision of national law in a first Member State which makes it unlawful to import or sell a satellite decoder card which has been issued by the provider of a satellite broadcasting service in another Member State on the condition that the satellite decoder card is only authorised for use in that other Member State?

(c) Is the answer affected if the satellite decoder card is authorised only for private and domestic use in that other Member State but used for commercial purposes in the first Member State?

(d) If the answer to Question 3 is that the use of a decoder card in the circumstances stated in that Question amounts to the circumvention of an effective technological measure, do Articles 34 or 56 TFEU nonetheless preclude the enforcement of a provision of national law transposing Article 6 of Directive 2001/29/EC?

11. Whether the protection afforded to the musical and literary works can be broader than that afforded to the rest of the broadcast

(a) Do Articles 34 and 36 or 56 TFEU preclude enforcement of a provision of national copyright law which makes it unlawful to perform or play in public a musical work where that work is included in a protected service which is accessed and played in public by use of a satellite decoder card where that card has been issued by the service provider in another Member State on the condition that the decoder card is only authorised for use in that other Member State? Does it make a difference if the musical work is an unimportant element of the protected service as a whole and the showing or playing in public of the other elements of the service are not protected by national copyright law?

(b) Do Articles 34 and 36 or 56 TFEU preclude enforcement of a provision of national copyright law which makes it unlawful to perform or play in public literary works where those works are included in a protected service which is accessed and played in public by use of a satellite decoder card where that card has been issued by the service provider in another Member State on the condition that the decoder card is only authorised for use in that other Member State? Does it make a difference if the literary works are an unimportant element of the protected service as a whole and the showing or playing in public of the other elements of the service are not protected by national copyright law?

12. Defence under Article 101 TFEU

Where a programme content provider enters into a series of exclusive licences each for the territory of one or more Member States under which the broadcaster is licensed to broadcast the programme content only within that territory (including by satellite) and a contractual obligation is included in each licence requiring the broadcaster to prevent its satellite decoder cards which enable reception of the licensed programme content from being used outside the licensed territory, what legal test should the national court apply and what circumstances should it take into consideration in deciding whether the contractual restriction contravenes the prohibition imposed by Article 101(1) TFEU?

In particular,

(a) Must Article 101(1) TFEU be interpreted as applying to that obligation by reason only of it being deemed to have the object of preventing, restricting of distorting competition?

(b) If so, must it also be shown that the contractual obligation appreciably prevents, restricts or distorts competition in order to come within the prohibition imposed by Article 101(1) TFEU?

(1) Directive 98/84/EC of the European Parliament and of the Council of 20 November 1998 on the legal protection of services based on, or consisting of, conditional access
OJ L 320, p. 54
(2) Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by Law, Regulation or Administrative Action in Member States concerning the pursuit of television broadcasting activities
OJ L 298, p. 23
(3) Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society
OJ L 167, p. 10
(4) Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (codified version)
OJ L 376, p. 28
(5) Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission
OJ L 248, p. 15

Reference for a preliminary ruling from the Juzgado de lo Contencioso-Administrativo nº 3, de Almería (Spain) lodged on 11 May 2010 — Águeda María Sáenz Morales v Consejería para la Igualdad y Bienestar Social de la Junta de Andalucía

(Case C-230/10)

(2010/C 209/26)

Language of the case: Spanish

Referring court

Juzgado de lo Contencioso-Administrativo Nº3, de Almería

Parties to the main proceedings

Applicant: Águeda María Sáenz Morales

Defendant: Consejería para la Igualdad y Bienestar Social de la Junta de Andalucía

Question referred

Is Directive 1999/70/EC (1) applicable to the civil service of the administration of the Junta de Andalucía (temporary staff) and, if so, are civil servants entitled to receive three-yearly increments corresponding to periods when they were working as temporary civil servants?

(1) Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p. 43).

Action brought on 10 May 2010 — European Commission v Republic of Poland

(Case C-232/10)

(2010/C 209/27)

Language of the case: Polish

Parties

Applicant: European Commission (represented by: A. Nijenhuis and Ł. Habiak, Agents)

Defendant: Republic of Poland

Form of order sought

— declare that, by not adopting all of the laws, regulations and administrative provisions necessary to implement in full Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 92/49/EEC and Directives 2002/83/EC, 2004/39/EC, 2005/68/EC and 2006/48/EC as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector, (1) or in any event by not informing the Commission of those provisions, the Republic of Poland has failed to fulfil its obligations under that directive;

— order the Republic of Poland to pay the costs of the proceedings.

Pleas in law and main arguments

The period within which Directive 2007/44/EC had to be implemented expired on 21 March 2009.

(1) OJ 2007 L 247, p. 1.

Reference for a preliminary ruling from the Cour de cassation (Luxembourg) lodged on 12 May 2010 — David Claes v Landsbanki Luxembourg SA (in liquidation)

(Case C-235/10)

(2010/C 209/28)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Applicant: David Claes

Defendant: Landsbanki Luxembourg SA (in liquidation)

Questions referred

1. Are Articles 1, 2 and 3 of Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies ([1]) to be interpreted as applying to a termination of activities as a result of a declaration that the employer is insolvent or a judicial decision ordering the dissolution and winding-up, on grounds of insolvency, of the credit institution which is the employer on the basis of Article 61(l)(a) and (b) of the amended Law of 5 April 1993 relating to the financial sector, in respect of which termination the national legislation provides for the termination of employment contracts with immediate effect?

2. If the answer to the first question is in the affirmative, are Articles 1, 2 and 3 of Directive 98/59/EC to be interpreted as meaning that the administrator or liquidator is to be deemed to be in the same position as an employer who is contemplating collective redundancies and who is capable of carrying out, to that end, the acts referred to in Articles 2 and 3 of Directive 98/53/EC and of effecting such redundancies (judgment in Case C-323/08, paragraphs 39, 40 and 41)? ([2])

([1]) OJ 1998 L 225, p. 16.
([2]) Judgment of 10 December 2009 in Case C-323/08 *Rodríguez Mayor and Others*

Reference for a preliminary ruling from the Cour de Cassation (Luxembourg) lodged on 12 May 2010 — Sophie Jeanjean v Landsbanki Luxembourg SA (in liquidation)

(Case C-236/10)

(2010/C 209/29)

Language of the case: French

Referring court

Cour de Cassation

Parties to the main proceedings

Applicant: Sophie Jeanjean

Defendant: Landsbanki Luxembourg SA (in liquidation)

Questions referred

1. Are Articles 1, 2 and 3 of Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies ([1]) to be interpreted as applying to a termination of activities as a result of a declaration that the employer is insolvent or a judicial decision ordering the dissolution and winding-up, on grounds of insolvency, of the credit institution which is the employer on the basis of Article 61(l)(a) and (b) of the amended Law of 5 April 1993 relating to the financial sector, in respect of which termination the national legislation provides for the termination of employment contracts with immediate effect?

2. If the answer to the first question is in the affirmative, are Articles 1, 2 and 3 of Directive 98/59/EC to be interpreted as meaning that the administrator or liquidator is to be deemed to be in the same position as an employer who is contemplating collective redundancies and who is capable of carrying out, to that end, the acts referred to in Articles 2 and 3 of Directive 98/53/EC and of effecting such redundancies (judgment in Case C-323/08, paragraphs 39, 40 and 41)? ([2])

([1]) OJ 1998 L 225, p. 16.
([2]) Judgment of 10 December 2009 in Case C-323/08 *Rodríguez Mayor and Others*

Reference for a preliminary ruling from the Cour de cassation (Luxembourg) lodged on 12 May 2010 — Miguel Remy v Landsbanki Luxembourg SA (in liquidation)

(Case C-237/10)

(2010/C 209/30)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Applicant: Miguel Remy

Defendant: Landsbanki Luxembourg SA (in liquidation)

Questions referred

1. Are Articles 1, 2 and 3 of Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies [1] to be interpreted as applying to a termination of activities as a result of a declaration that the employer is insolvent or a judicial decision ordering the dissolution and winding-up, on grounds of insolvency, of the credit institution which is the employer on the basis of Article 61(l)(a) and (b) of the amended Law of 5 April 1993 relating to the financial sector, in respect of which termination the national legislation provides for the termination of employment contracts with immediate effect?

2. If the answer to the first question is in the affirmative, are Articles 1, 2 and 3 of Directive 98/59/EC to be interpreted as meaning that the administrator or liquidator is to be deemed to be in the same position as an employer who is contemplating collective redundancies and who is capable of carrying out, to that end, the acts referred to in Articles 2 and 3 of Directive 98/53/EC and of effecting such redundancies (judgment in Case C-323/08, paragraphs 39, 40 and 41)? [2]

[1] OJ 1998 L 225, p. 16.
[2] Judgment of 10 December 2009 in Case C-323/08 *Rodríguez Mayor and Others*

Reference for a preliminary ruling from the Cour de cassation (Luxembourg) lodged on 12 May 2010 — Volker Schneider v Landsbanki Luxembourg SA (in liquidation)

(Case C-238/10)

(2010/C 209/31)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Applicant: Volker Schneider

Defendant: Landsbanki Luxembourg SA (in liquidation)

Questions referred

1. Are Articles 1, 2 and 3 of Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies [1] to be interpreted as applying to a termination of activities as a result of a declaration that the employer is insolvent or a judicial decision ordering the dissolution and winding-up, on grounds of insolvency, of the credit institution which is the employer on the basis of Article 61(l)(a) and (b) of the amended Law of 5 April 1993 relating to the financial sector, in respect of which termination the national legislation provides for the termination of employment contracts with immediate effect?

2. If the answer to the first question is in the affirmative, are Articles 1, 2 and 3 of Directive 98/59/EC to be interpreted as meaning that the administrator or liquidator is to be deemed to be in the same position as an employer who is contemplating collective redundancies and who is capable of carrying out, to that end, the acts referred to in Articles 2 and 3 of Directive 98/53/EC and of effecting such redundancies (judgment in Case C-323/08, paragraphs 39, 40 and 41)? [2]

[1] OJ 1998 L 225, p. 16.
[2] Judgment of 10 December 2009 in Case C-323/08 *Rodríguez Mayor and Others*

Reference for a preliminary ruling from the Cour de cassation (Luxembourg) lodged on 12 May 2010 — Xuan-Mai Tran v Landsbanki Luxembourg SA (in liquidation)

(Case C-239/10)

(2010/C 209/32)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Applicant: Xuan-Mai Tran

Defendant: Landsbanki Luxembourg SA (in liquidation)

Questions referred

1. Are Articles 1, 2 and 3 of Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies [1] to be interpreted as applying to a termination of activities as a result of a declaration that the employer is insolvent or a judicial decision ordering the dissolution and winding-up, on grounds of insolvency, of the credit institution which is the employer on the basis of Article 61(l)(a) and (b) of the amended Law of 5 April 1993 relating to the financial sector, in respect of which termination the national legislation provides for the termination of employment contracts with immediate effect

2. If the answer to the first question is in the affirmative, are Articles 1, 2 and 3 of Directive 98/59/EC to be interpreted as meaning that the administrator or liquidator is to be deemed to be in the same position as an employer who is contemplating collective redundancies and who is capable of carrying out, to that end, the acts referred to in Articles 2 and 3 of Directive 98/53/EC and of effecting such redundancies (judgment in Case C-323/08, paragraphs 39, 40 and 41)? [2]

[1] OJ 1998 L 225, p. 16.
[2] Judgment of 10 December 2009 in Case C-323/08 *Rodríguez Mayor and Others*

Reference for a preliminary ruling from the Tribunale Amministrativo Regionale per la Lombardia — Sezione Terza (Italy) lodged on 17 May 2010 — ENEL Produzione SpA v Autorità per l'Energia Elettrica e il Gas

(Case C-242/10)

(2010/C 209/33)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per la Lombardia, Sezione Terza

Parties to the main proceedings

Applicant: Enel Produzione SpA

Defendant: Autorità per l'Energia Elettrica e il Gas

Question referred

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

Action brought on 18 May 2010 — European Commission v Italian Republic

(Case C-243/10)

(2010/C 209/34)

Language of the case: Italian

Parties

Applicant: European Commission (represented by: D. Grespan and B. Stromsky, acting as Agents)

Defendant: Italian Republic

Form of order sought

The applicant claims that the Court should:

— declare that, by not taking within the prescribed period all the measures necessary to abolish the State aid scheme found to be unlawful and incompatible with the common market by Commission Decision 2008/854/EC of 2 July 2008 on a State aid scheme (C 1/04 (ex NN 158/03 and CP 15/2003)): Misuse of aid measure N 272/98, Regional Act No 9 of 1998, (notified on 4 July 2008 under No C(2008) 2997 and published in OJ L 302 of 13.11.2008, p. 9), the Italian Republic has failed to fulfil its obligations under Articles 2, 3 and 4 of that decision and under the Treaty on the Functioning of the European Union;

— order the Italian Republic to pay the costs.

Pleas in law and main arguments

1. Decision 2008/854 declares to be incompatible with the common market the aid scheme which results from Ruling No 33/6 of 27 July 2000 of the Sardinian Regional Council, applied in conjunction with Article 2 of Regional Law No 9 of 11 March 1998, because it enables aid to be granted which has no incentive effect. In consequence, the Commission ordered recovery of the aid granted under that scheme (see Articles 2, 3 and 4).

2. However, it emerges from the voluminous correspondence between the Italian authorities and the Commission, following notification of Decision 2008/854, that at a point almost 2 years on from the adoption of that decision, the Italian authorities still have to recover the unlawful and incompatible aid granted under that scheme, together with interest. Manifestly, therefore, the national procedures which have been followed have not been such as to enable 'immediate and effective' recovery and, accordingly, Italy has failed to meet its obligations under Articles 2 and 3 of Decision 2008/854.

3. It also emerges that none of the information requested was provided by the Italian authorities by the deadline set in Article 4(1) of Decision 2008/854. The inescapable conclusion is that Italy has not complied with Article 4 of the decision.

Appeal brought on 18 May 2010 by Zhejiang Aokang Shoes Co., Ltd against the judgment of the General Court (Eighth Chamber) delivered on 4 March 2010 in Case T-407/06: Zhejiang Aokang Shoes Co., Ltd v Council of the European Union

(Case C-247/10 P)

(2010/C 209/35)

Language of the case: English

Parties

Appellant: Zhejiang Aokang Shoes Co., Ltd (represented by: M. Sánchez Rydelski, Rechtsanwalt)

Other parties to the proceedings: Wenzhou Taima Shoes Co., Ltd, Council of the European Union, European Commission, Confédération européenne de l'industrie de la chaussure (CEC), BA.LA. di Lanciotti Vittorio & C. Sas, Calzaturificio Elisabet Srl, Calzaturificio Iacovelli di Iacovelli Giuseppe & C. Snc, Calzaturificio Leopamy Srl, Calzaturificio Lunella Srl, Calzaturificio Mia Shoe Snc di Gattafoni Carlo & C., Calzaturificio Primitempi di Monaldi Geri, Calzaturificio R. G. di Rossi & Galiè Srl, Calz. S. G. di Seghetta Giampiero e Sergio Snc, Carim Srl, Florens Shoes SpA, Gattafoni Shoe Snc di Gattafoni Giampaolo & C., Grif Srl, Missouri Srl, New Swing Srl, Podosan Medical Shoes di Cirilli Michela, Viviane Sas

Form of order sought

The appellant claims that the Court should:

— Set aside the Judgment of the General Court of 4 March 2010 in Case T-407/06

— Annul Council Regulation (EC) No 1472/2006 ([1]) imposing a definitive anti-dumping duty on imports of certain leather footwear from China and Vietnam in so far as it concerns the Appellant; and

— Order the Council of the European Union to pay the Applicant's costs in this appeal and with regard to the procedure in Case T-407/06 in the General Court.

Pleas in law and main arguments

The appellant submits:

That the General Court erred in law, when it decided that the Commission could lawfully decide pursuant to Article 17(3) of Council Regulation (EC) No 384/96 ([2]) on protection against dumped imports from countries not members of the

European Community ('Basic Regulation'), not to examine and make a determination on the Appellant's claims for market economy treatment ('MET') and individual treatment ('IT').

That the General Court erred in law concerning whether the Appellant's rights of defence were breached in connection with the established infringement of Article 20(5) of the Basic Regulation.

(1) 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
OJ L 275, p. 1
(2) OJ L 56, p. 1

Action brought on 19 May 2010 — European Commission v Hellenic Republic

(Case C-248/10)

(2010/C 209/36)

Language of the case: Greek

Parties

Applicant: European Commission (represented by: K. Karanasou-Apostolopoulou and A. Nijenhuis)

Defendant: Hellenic Republic

Form of order sought

The Court is asked to:

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply fully with Directive 2007/44/EC (1) of the European Parliament and of the Council of 5 September 2007 amending Council Directive 92/49/EEC and Directives 2002/83/EC, 2004/39/EC, 2005/68/EC and 2006/48/EC as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector, or in any event by failing to inform the Commission of those measures, the Hellenic Republic has failed to fulfil its obligations under that directive;

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

The time-limit for transposing Directive 2007/44/EC into domestic law expired on 21 March 2009.

(1) OJ L 247 of 21.9.2007, p. 1

Appeal brought on 18 May 2010 by Brosmann Footwear (HK) Ltd, Seasonable Footwear (Zhongshan) Ltd, Lung Pao Footwear (Guangzhou) Ltd, Risen Footwear (HK) Co. Ltd against the judgment of the General Court (Eighth Chamber) delivered on 4 March 2010 in Case T-401/06: Brosmann Footwear (HK) Co. Ltd v Council of the European Union

(Case C-249/10 P)

(2010/C 209/37)

Language of the case: English

Parties

Appellants: Brosmann Footwear (HK) Ltd, Seasonable Footwear (Zhongshan) Ltd, Lung Pao Footwear (Guangzhou) Ltd, Risen Footwear (HK) Co. Ltd (represented by: L. Ruessmann, A. Willems, avocats)

Other parties to the proceedings: Council of the European Union, European Commission, Confédération européenne de l'industrie de la chaussure (CEC)

Form of order sought

The appellants claim that the Court should:

— Set aside the Judgment of the General Court of 4 March 2010 insofar as the General Court did not annul the contested Regulation and insofar as it ordered the Appellants to bear the costs incurred for the procedure before the General Court;

— Adopt a definitive ruling and annul the contested Regulation in its entirety;

— Order the Council to pay the costs of the appeal and of the procedure before the General Court.

Pleas in law and main arguments

The appellant submits that the General Court:

Erred in law in finding that Articles 2(7) and 9(5) of the Basic Anti-Dumping Regulation ([1]) do not oblige the Institutions to make market economy treatment ('MET') and individual treatment ('IT') determinations in situations where they apply sampling;

Erred in law in failing to find that the Institutions violated Article 2(7)(c) of the Basic Anti-Dumping Regulation by not issuing the MET/IT determinations of the sampled Chinese exporting producers within three months of the initiation of the investigation;

Erred in law in failing to find that the Institutions violated Article 2(7)(c) of the Basic Anti-Dumping Regulation by not informing the non-sampled Chinese exporting producers regarding the examination of their MET/IT claims within three months of the initiation of the investigation;

Erred in law in failing to find that the Institutions did not establish cooperation during the investigation and therefore that the Community industry did not meet the standing requirement imposed by Article 4(1) juncto Article 5(4) of the Basic Anti-Dumping Regulation, resulting in an erroneous injury and causation assessment in terms of Article 3 of the Basic Anti-Dumping Regulation;

Erred in law in finding that Article 6(1) of the Basic Anti-Dumping Regulation does not prohibit the Institutions from collecting sampling information prior to the initiation of the investigation;

In the alternative, erred in law in failing to find that the Institutions did not violate Article 6(9) of the Basic Anti-Dumping Regulation by exceeding the 15-month deadline for concluding an anti-dumping investigation;

Erred in law when making its characterisation of the legal effects of various information on the injury analysis pursuant to Article 3 of the Basic Anti-Dumping Regulation;

Erred in law in failing to find that the Institutions did not respect their duty to carefully and impartially examine all relevant aspects of the anti-dumping investigation;

Erred in law when making its characterisation of the legal effects of certain information on the obligation of the investigating authority to state reasons;

Erred in law in failing to find that the Institutions' failure to assess the impact on the Community industry of factors other than the imports concerned violated Article 3 of the Basic Anti Dumping Regulation.

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

Reference for a preliminary ruling from the Tribunale di Roma (Italy), made on 23 March 2010 — Criminal proceedings against Alessandro Sacchi

(Case C-255/10)

(2010/C 209/38)

Language of the case: Italian

Referring court

Tribunale di Roma

Party to the main proceedings

Alessandro Sacchi

Question referred

What interpretation is to be given to Articles 43 EC and 49 EC with reference to freedom of establishment and freedom to provide services in the sector of betting on sports events, regard being had also to the principle of effective judicial protection, in order to establish whether or not those Treaty provisions permit national rules establishing a State monopoly and a system of licences and authorisations which, within the context of a given number of licences,: (a) tend generally to protect holders of licences issued at an earlier period on the basis of a procedure that unlawfully excluded certain operators; (b) ensure the de facto maintenance of commercial positions

acquired at the conclusion of a procedure that unlawfully excluded certain operators (by, for example, prohibiting new licensees from locating their betting outlets within a specified distance from those already in existence); (c) lay down cases in which the licence may lapse, with forfeiture of large guarantee deposits, including the case in which the licensee directly or indirectly carries on cross-border gaming activities analogous to those under the licence?

Reference for a preliminary ruling from Court of Appeal (Civil Division) (England & Wales) made on 26 May 2010 — Commissioners for Her Majesty's Revenue and Customs v The Rank Group PLC

(Case C-259/10)

(2010/C 209/39)

Language of the case: English

Referring court

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

Parties to the main proceedings

Applicant: Commissioners for Her Majesty's Revenue and Customs

Defendant: The Rank Group PLC

Questions referred

1. Where there is differential VAT treatment:

   (i) as between supplies that are identical from the point of view of the consumer; or

   (ii) as between similar supplies that meet the same needs of the consumer; is that of itself sufficient to establish an infringement of the principle of fiscal neutrality or is it relevant to consider (and, if so, how)

   (a) the regulatory and economic context;

   (b) whether or not there is competition between the identical services or, as the case may be, the similar services in question; and/or

   (c) whether or the different VAT treatment has caused distortion of competition?

2. Is a taxpayer whose supplies are, as a matter of national law, subject to VAT (by reason of the exercise by a Member State of its discretion under Article 13B(f) of the Sixth Directive ([1])) entitled to claim a repayment of VAT paid on those supplies on the basis of an infringement of the principle of fiscal neutrality arising out of the VAT treatment of other supplies ('comparator supplies') where:

   (a) as a matter of national law, the comparator supplies were subject to VAT but

   (b) the taxing authority of the Member State had a practice of treating comparator supplies as exempt from VAT?

3. If the answer to Question 2 is in the affirmative, what conduct amounts to a relevant practice, and in particular:

   (a) is it necessary that the taxing authority has made a clear and unambiguous statement that comparator supplies would be treated as exempt from VAT;

   (b) is it relevant that at the time the taxing authority made any statement it had an incomplete or incorrect understanding of facts relevant to the correct VAT treatment of the comparator supplies; and

   (c) is it relevant that VAT was not accounted for by the taxpayer, or sought by the taxing authority, in respect of the comparator supplies, but that the taxing authority has subsequently sought to recover that VAT, subject to the normal domestic limitation periods?

4. If the difference in fiscal treatment results from a consistent practice of the domestic tax authorities based on a generally accepted understanding of the true meaning of domestic legislation, does it make any difference to the existence of a breach of the principle of fiscal neutrality if:

   (i) the tax authorities subsequently change their practice;

(ii) a national court subsequently holds that the amended practice reflects the correct meaning of domestic legislation;

(iii) the Member State is precluded by domestic and/or European law principles, including legitimate expectation, estoppel, legal certainty and non-retroactivity, and/or by limitation periods from collecting the VAT on the supplies previously regarded as exempt?

(1) Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment
OJ L 145, p. 1

Reference for a preliminary ruling from The Upper Tribunal (Tax and Chancery Chamber) (United Kingdom) made on 26 May 2010 — Commissioners for Her Majesty's Revenue and Customs v The Rank Group PLC

(Case C-260/10)

(2010/C 209/40)

Language of the case: English

Referring court

The Upper Tribunal (Tax and Chancery Chamber) (United Kingdom)

Parties to the main proceedings

Applicant: Commissioners for Her Majesty's Revenue and Customs

Defendant: The Rank Group PLC

Questions referred

1. Where a Member State in the exercise of its discretion under Article 13B(f) of the Sixth VAT Directive (1) subjected certain types of machines used for gambling ('Part III gaming machines') to VAT, while retaining exemption for other such machines (which included fixed odds betting terminals, 'FOBTs'), and where it is contended that in so doing the Member State infringed the principle of fiscal neutrality: is it

(i) determinative, or (ii) relevant, when comparing Part III gaming machines and FOBTs that

(a) FOBTs offered activities that were 'betting' under domestic law (or activities that the relevant regulatory authority, for the purposes of exercising its regulatory powers, was prepared to treat as 'betting' under domestic law)

and

(b) Part III gaming machines offered activities subject to a different classification under domestic law, namely 'gaming' and that gaming and betting were subject to different regulatory regimes under that Member State's law relating to the control and regulation of gambling? If so, what are the differences between the regulatory regimes in question to which the national court should have regard?

2. In determining whether the principle of fiscal neutrality requires the same tax treatment of the types of machine referred to in Question 1 (FOBTs and Part III gaming machines), what level of abstraction should be adopted by the national court in determining whether the products are similar? In particular, to what extent is it relevant to take into account the following matters:

(a) similarities and differences in the permitted maximum stakes and prizes as between FOBTs and Part III gaming machines;

(b) that FOBTs could be played only on certain types of premises licensed for betting, which were different, and subject to regulatory constraints that were different from those applicable to, premises licensed for gaming (although FOBTs and up to two Part III gaming machines could be played alongside each other in premises licensed for betting);

(c) that the chances of winning the prize on FOBTs were directly related to the published fixed odds, whereas the chances of winning on Part III gaming machines could in some cases be varied by a device that ensured a particular percentage return to the operator and player over time;

(d) similarities and differences in the formats available on FOBTs and Part III gaming machines;

(e) similarities and differences as between FOBTs and Part III gaming machines in the interaction which could occur between the player and the machine;

(f) whether or not the matters referred to above were either known to the generality of players of the machines or regarded by them as relevant or important;

(g) whether the difference in VAT treatment is justified by any of the above?

3. In a situation where a Member State, in the exercise of its discretion under Article 13B(f) of the Sixth VAT Directive, exempted gambling from VAT but subjected a defined class of machines used for gambling to VAT: -

(a) is there in principle a defence of due diligence available to a Member Sate to a claim that the principle of fiscal neutrality has been infringed by that Member Sate; and

(b) if the answer to (a) is 'yes', what factors are relevant in determining whether or not the Member Sate is entitled to rely on that defence?

(1) Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment
OJ L 145, p. 1

Reference for a preliminary ruling from the Înalta Curte de Casație și Justiție (Romania) lodged on 28 May 2010 — Criminal proceedings against Gheorghe Kita

(Case C-264/10)

(2010/C 209/41)

Language of the case: Romanian

Referring court

Înalta Curte de Casație și Justiție

Parties to the main proceedings

Gheorghe Kita

Question referred

Is Article 5(3) of Council Framework Decision 2002/584/JHA (1) of 13 June 2002 to be interpreted as meaning that the return (transfer) of the sentenced person, surrendered earlier in accordance with a European arrest warrant for the purposes of criminal proceedings, to the State of which he is a national takes place automatically, even without his consent, consent that is a condition imposed by the European Convention on the Transfer of Sentenced Persons?

(1) Council Framework Decision on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1).

Action brought on 2 June 2010 — European Commission v Czech Republic

(Case C-276/10)

(2010/C 209/42)

Language of the case: Czech

Parties

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

Defendant: Czech Republic

Form of order sought

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to transpose Directive 2006/118/EC (1) of the European Parliament and of the Council of 12 December 2006 on the protection of groundwater against pollution and deterioration or, in any event, by failing to inform the Commission thereof, the Czech Republic has failed to fulfil its obligations under Article 12 of that directive;

— order Czech Republic to pay the costs.

Pleas in law and main arguments

The time-limit for transposition of the directive into national law expired on 16 January 2009.

(1) OJ 2006 L 372, p. 19.

Action brought on 3 June 2010 — European Commission v Hellenic Republic

(Case C-278/10)

(2010/C 209/43)

Language of the case: Greek

Parties

Applicant: European Commission (represented by: A.. Margelis and I. Dimitriou)

Defendant: Hellenic Republic

Form of order sought

The Court is asked to:

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2008/103/EC [1] of the European Parliament and of the Council of 19 November 2008 amending Directive 2006/66/EC on batteries and accumulators and waste batteries and accumulators as regards placing batteries and accumulators on the market, or in any event by failing to inform the Commission of those measures, the Hellenic Republic has failed to fulfil its obligations under Article 2 of that directive;

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

The time-limit for transposing Directive 2008/103/EC into domestic law expired on 5 January 2009.

[1] OJ L 327 of 5.12.2008, p. 7

Reference for a preliminary ruling from the Tribunale del Riesame di Verbania (Italy) lodged on 4 June 2010 — Criminal proceedings against Matteo Minesi

(Case C-279/10)

(2010/C 209/44)

Language of the case: Italian

Referring court

Tribunale del Riesame di Verbania

Party to the main proceedings

Matteo Minesi

Question referred

The Court of Justice is requested to interpret Articles 43 and 49 of the Treaty establishing the European Union with reference to freedom of establishment and freedom to provide services in the sector of betting on sports events in order to establish whether or not those Treaty provisions permit national rules establishing a State monopoly and a system of licences and authorisations which, within the context of a given number of licences: (a) tend generally to protect holders of licences issued at an earlier period on the basis of a procedure that unlawfully excluded some operators; (b) in fact ensure the maintenance of commercial positions acquired following a procedure that unlawfully excluded certain operators (by, for example, prohibiting new licensees from locating their kiosks within a specified distance of those already in existence); (c) provide cases in which the licence may lapse with forfeiture of very large guarantee deposits, including the case in which the licensee directly or indirectly carries on cross-border gaming activities analogous to those under the licence.

GENERAL COURT

Judgment of the General Court of 9 June 2010 — Éditions Jacob v Commission

(Case T-237/05) [1]

(Access to documents of the institutions — Regulation (EC) No 1049/2001 — Documents relating to a procedure concerning a merger between undertakings — Regulation (EC) No 4064/89 — Regulation (EC) No 139/2004 — Regulation (EC) No 802/2004 — Refusal to grant access — Exception relating to the protection of investigations and audits — Exception relating to the protection of commercial interests — Exception relating to the protection of the decision-making process — Exception relating to the protection of legal advice)

(2010/C 209/45)

Language of the case: French

Parties

Applicant: Éditions Odile Jacob SAS (Paris, France) (represented by: initially W. van Weert and O. Fréget, later O. Fréget, lawyers)

Defendant: European Commission (represented by: X. Lewis, P. Costa de Oliveira and O. Beynet, agents)

Intervener in support of the defendant: Lagardère SCA (represented by initially A. Winckler, S. Sorinas Jimeno and I. Girgenson, later A. Winckler, F. de Bure and J. B. Pinçon, lawyers)

Re:

Annulment of the Commission decision of 7 April 2005 dismissing in part the applicant's request seeking access to certain documents relating to a procedure concerning a merger between undertakings (Case No COMP/M.2978 — Lagardère/Natexis/VUP),

Operative part of the judgment

The Court:

1. *Declares that there is no further need to rule on the lawfulness of the Decision D(2005) 3286 of the Commission of the European Communities of 7 April 2005, as it refused total or partial access to the documents set out at paragraph 1(a) to (c) and at paragraph 2(h) and (j) of this judgment*

2. *Annuls Decision D(2005) 3286 in so far as it refuses to grant total access to the documents referred to in paragraph 1(d), (e), (g), (h) and (i) and paragraph 2(b) to (d), (f), (g) and (i) of the present judgment, with the exception of the opinion of the Commission's legal service referred to in paragraph 1(g) of the present judgment.*

3. *Annuls Decision D(2005) 3286 in so far as it refuses to grant partial access to the documents referred to in paragraph 1(d),(e),(g) and (h) and paragraph 2(b) to (d), (f),(g) and (i) of the present judgment.*

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

5. *Orders the Commission to bear its own costs and to pay nine tenths of the costs incurred by Éditions Odile Jacob SAS.*

6. *Orders Lagardère SCA to bear its own costs.*

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[1] OJ C 205 of 20.8.2005.

Judgment of the General Court of 15 June 2010 — Mediaset v Commission

(Case T-177/07) [1]

(State aid — Telecommunications — Subsidised purchase of digital decoders — Decision declaring the aid incompatible with the common market and ordering its recovery — Concept of State aid — Exclusion of decoders for the reception of television programmes broadcast by satellite — Advantage — Selective nature — Adverse effect on competition — Obligation to state reasons)

(2010/C 209/46)

Language of the case: English

Parties

Applicant: Mediaset SpA (Milan, Italy) (represented by: K. Adamantopoulos, G. Rossi, E. Petritsi and A. Nucara, lawyers, and by D. O'Keeffe and P. Boyle, Solicitors)

Defendant: European Commission (represented by: B. Martenczuk, G. Conte and E. Righini, acting as Agents)

Intervener in support of the defendant: Sky Italia Srl (Rome, Italy) (represented intially by: F.E. González Díaz and D. Gerard, and subsequently by F.E. González Díaz, lawyers)

Re:

Application for the annulment of Commission Decision 2007/374/EC of 24 January 2007 on State aid C 52/2005 (ex NN 88/2005, ex CP 101/2004) implemented by the Italian Republic for the subsidised purchase of digital decoders (OJ 2007 L 147, p. 1)

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Mediaset SpA to bear its own costs and to pay those of the European Commission and Sky Italia Srl.*

([1]) OJ C 170, 21.7.2007.

Judgment of the General Court of 17 June 2010 — CEVA v Commission

(Joined Cases T-428/07 and T-455/07) ([1])

(Arbitration clause — Contracts entered into under a specific research, technological development and demonstration programme in the field of 'Quality of life and management of living resources (1998-2002)' — Seahealth and Biopal projects — Debit notes — Applications for annulment — Reclassification of the actions — Admissibility — Rule that the parties should be heard and rights of the defence — Recovery of all the financial contributions paid by the European Union — Serious financial irregularities)

(2010/C 209/47)

Language of the case: French

Parties

Applicant: Centre d'étude et de valorisation des algues SA (CEVA) (Pleubian, France) (represented by: J.-M. Peyrical, lawyer)

Defendant: European Commission (represented by: initially by L. Escobar Guerrero and W. Roels, then by W. Roels, acting as Agents, and E. Bouttier, lawyer)

Re:

Application for annulment, in Case T-428/07, of debit note No 3240908670 of 20 September 2007, relating to the Seahealth project and, in Case T-455/07, of debit note No 3240909271 of 4 October 2007, relating to the Biopal contract, and that the Commission be ordered to reimburse those debit notes in favour of CEVA.

Operative part of the judgment

The Court:

1. *Dismisses the actions;*

2. *Orders each party to bear half of its own costs and half of the costs incurred by the other party.*

([1]) OJ C 22, 26.1.2008.

Judgment of the General Court of 15 June 2010 — Actega Terra v OHIM (TERRAEFFEKT matt & gloss)

(Case T-118/08) ([1])

(Community trade mark — Application for the Community word mark TERRAEFFEKT matt & gloss — Absolute ground for refusal — Descriptive character — Article 7(1)(c) of Regulation (EC) No 40/94 (now Article 7(1)(c) of Regulation (EC) No 207/2009))

(2010/C 209/48)

Language of the case: German

Parties

Applicant: Actega Terra GmbH (Lehrte, Germany) (represented by: A. Andorfer-Erhard, lawyer)

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

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 7 January 2008 (Case R 1467/2007-1) concerning an application for registration of the word sign TERRAEFFEKT matt & gloss as a Community trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Actega Terra GmbH to pay the costs.*

([1]) OJ C 107, 26.4.2008.

Judgment of the General Court of 22 June 2010 — Shenzhen Taiden v OHIM — Bosch Security Systems (Communications Equipment)

(Case T-153/08) [1]

(Community design — Invalidity proceedings — Registered Community design representing communications equipment — Earlier international design — Ground for invalidity — No individual character — No different overall impression — Informed user — Degree of freedom of the designer — Evidence that the earlier design was made available to the public — Article 4(1), Article 6(1)(b) and (2), Article 7(1) and Article 25(1)(b) of Regulation (EC) No 6/2002)

(2010/C 209/49)

Language of the case: English

Parties

Applicant: Shenzhen Taiden Industrial Co. Ltd (Shenzhen, Guangdong, China) (represented by: M. Hartmann and M. Helmer, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the General Court: Bosch Security Systems BV (Eindhoven, Netherlands) (represented by: C. Gielen, M. Bom and B. van Hunnik, lawyers)

Re:

Action brought against the decision of the Third Board of Appeal of OHIM of 11 February 2008 (Case R 1437/2006-3) relating to invalidity proceedings between Bosch Security Systems BV and Shenzhen Taiden Industrial Co. Ltd.

Operative part of the order

The Court:

1. *Dismisses the action;*

2. *Orders Shenzhen Taiden Industrial Co. Ltd to pay the costs, including the costs necessarily incurred by Bosch Security Systems BV for the purposes of the proceedings before the Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM).*

[1] OJ C 158, 21.6.2008.

Judgment of the General Court of 22 June 2010 — Montero Padilla v OHIM — Padilla Requena (JOSE PADILLA)

(Case T-255/08) [1]

(Community trade mark — Opposition proceedings — Application for the Community word mark JOSE PADILLA — Earlier marks and sign JOSE PADILLA — Relative grounds for refusal — No well-known trade mark within the meaning of Article 6 bis of the Paris Convention or trade mark with a reputation — Article 8(2)(c) and Article 8(5) of Regulation (EC) No 40/94 (now Article 8(2)(c) and Article 8(5) of Regulation (EC) No 207/2009) — No earlier sign used in the course of trade — Article 8(4) of Regulation No 40/94 (now Article 8(4) of Regulation No 207/2009))

(2010/C 209/50)

Language of the case: Spanish

Parties

Applicant: Eugenia Montero Padilla (Madrid, Spain) (represented by: initially G. Aguillaume Gandasegui and P. Linde Puelles, and subsequently A. Salerno and M. Di Stefano, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (represented by: J.F. Crespo Carrillo, Agent)

Other party to the proceedings before the Board of Appeal of OHIM, intervening before the General Court: José María Padilla Requena (Santa Eulalia, Spain) (represented by: J.F. Gallego Jiménez and J.R. Gil Cantons, lawyers)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 1 March 2008 (Case R 516/2007-2), concerning opposition proceedings between Eugenia Montero Padilla and José María Padilla Requena

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Eugenia Montero Padilla to bear her own costs and to pay those incurred by the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) and by José María Padilla Requena.*

[1] OJ C 209, 15.8.2008.

Judgment of the General Court of 10 June 2010 — Atlas Transport v OHIM — Hartmann (ATLAS TRANSPORT)

(Case T-482/08) [1]

(Community trade mark — Revocation proceedings — Community word mark ATLAS TRANSPORT — Genuine use of the trade mark — Articles 15 and 50(1) of Regulation No 40/94 (now Articles 15 and 51(1) of Regulation No 207/2009))

(2010/C 209/51)

Language of the case: German

Parties

Applicant: Atlas Transport GmbH (Düsseldorf, Germany) (represented by: U. Hildebrandt, K. Schmidt-Hern and B. Weichhaus, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Alfred Hartmann (Leer, Germany) (represented by C. Drews, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 9 September 2008 (Case R 1858/2007-4) relating to revocation proceedings between Alfred Hartmann and Atlas Transport GmbH.

Operative part of the judgment

The Court:

1. *Annuls the Decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 9 September 2008 in Case R 1858/2007-4;*

2. *Orders OHIM to bear its own costs as well as those incurred by Atlas Transport GmbH;*

3. *Orders Alfred Hartmann to bear his own costs.*

[1] OJ C 32, 7.2.2009.

Judgment of the General Court of 16 June 2010 — Kureha Corp v OHIM — Sanofi-Aventis (KREMEZIN)

(Case T-487/08) [1]

(Community trade mark — Opposition proceedings — Application for Community word mark KREMEZIN — Earlier international word mark KRENOSIN — Relative ground for refusal — Likelihood of confusion — Similarity of the signs — Similarity of the goods — Article 8(1)(b) of Regulation (EC) No 40/94 (now Article 8(1)(b) of Regulation (EC) No 207/2009) — Proof of existence of the earlier trade mark — Time-limits — Rules 19 and 20 of Regulation (EC) No 2868/95 — Proof of genuine use of the earlier mark — Article 43(2) and (3) of Regulation No 40/94 (now Article 42(2) and (3) of Regulation No 207/2009))

(2010/C 209/52)

Language of the case: English

Parties

Applicant: Kureha Corp. (Tokyo, Japan) (represented by: W. von der Osten-Sacken and O. Sude, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Sanofi-Aventis SA (Paris, France) (represented by: R. Gilbey, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 15 September 2008 (Case R 1631/2007-4), concerning opposition proceedings between Sanofi-Aventis SA and Kureha Corp.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Kureha Corp. to pay its own costs and those of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM);*

3. *Orders Sanofi-Aventis SA to bear its own costs.*

[1] OJ C 19, 24.1.2009.

Judgment of the General Court of 22 June 2010 — CM Capital Markets v OHIM — Carbon Capital Markets (CARBON CAPITAL MARKETS Emissions Compliance Solutions & Carbon Finance)

(Case T-490/08) [1]

(Community trade mark — Opposition proceedings — Application for Community figurative mark CARBON CAPITAL MARKETS Emissions Compliance Solutions & Carbon Finance — Earlier Community and national figurative marks CM Capital Markets — Relative ground for refusal — No likelihood of confusion — No similarity between the signs — Article 8(1)(b) of Regulation (EC) No 40/94 (now Article 8(1)(b) of Regulation (EC) No 207/2009))

(2010/C 209/53)

Language of the case: English

Parties

Applicant: CM Capital Markets Holding, SA (Madrid, Spain) (represented by: T. Villate Consonni and J. Calderón Chavero, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (represented by: J. F. Crespo Carrillo, Agent)

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Carbon Capital Markets Ltd (Oxford, United Kingdom) (represented by: E. Hardcastle, Solicitor)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 3 September 2008 (Case R 16/2008-1) concerning opposition proceedings between CM Capital Markets Holding, SA and Carbon Capital Markets Ltd

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders CM Capital Markets Holding, SA to pay the costs.*

[1] OJ C 6, 10.1.2009.

Judgment of the General Court of 15 June 2010 — X Technology Swiss v OHIM (Orange colouring of the toe of a sock)

(Case T-547/08) [1]

(Community trade mark — Application for a Community trade mark — Orange colouring of the toe of a sock — Absolute ground for refusal — Absence of distinctive character — Article 7(1)(b) of Regulation (EC) No 40/94 (now Article 7(1)(b) of Regulation (EC) No 207/2009))

(2010/C 209/54)

Language of the case: German

Parties

Applicant: X Technology Swiss GmbH (Wollerau, Switzerland) (represented by: A. Herbertz and R. Jung, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: C. Jenewein and G. Schneider, Agents)

Re:

Action brought against decision R 846/2008-4 of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (OHIM) of 6 October 2008 relating to an application to register the sign consisting of the orange colouring of the toe of a sock as a Community trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders X Technology Swiss GmbH to pay the costs.*

[1] OJ C 55, 7.3.2009.

Judgment of the General Court of 18 June 2010 — Luxembourg v Commission

(Case T-549/08) [1]

(ESF — Suspension of financial aid — Campaign against discrimination and inequality in the employment market — Serious failings in the system of management and monitoring which could lead to systemic irregularities — Article 39(2)(c) of Regulation (EC) No 1260/1999 — Legitimate expectations)

(2010/C 209/55)

Language of the case: French

Parties

Applicant: Grand Duchy of Luxembourg (represented by: M. Fisch, acting as Agent, and P. Kinsch, lawyer)

Defendant: European Commission (represented by: A. Steiblytė and B. Conte, acting as Agents)

Re:

Application for annulment of Commission Decision C(2008) 5383 of 24 September 2008 on the suspension of interim payments from the European Social Fund (ESF) to the single programming document for Community structural interventions falling under Objective No 3 to Luxembourg, and Commission Decision C(2008) 5730 of 6 October 2008 on the suspension of interim payments from the Community initiative to combat discrimination and inequality in the employment market (EQUAL) to Luxembourg.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the Grand Duchy of Luxembourg to pay the costs.*

[1] OJ C 44, 21.2.2009.

Judgment of the General Court of 22 June 2010 — CM Capital Markets v OHIM — Carbon Capital Markets (CARBON CAPITAL MARKETS)

(Case T-563/08) [1]

(Community trade mark — Opposition proceedings — Application for Community word mark CARBON CAPITAL MARKETS — Earlier Community and national figurative marks CM Capital Markets — Relative ground for refusal — No likelihood of confusion — No similarity between the signs — Article 8(1)(b) of Regulation (EC) No 40/94 (now Article 8(1)(b) of Regulation (EC) No 207/2009))

(2010/C 209/56)

Language of the case: English

Parties

Applicant: CM Capital Markets Holding, SA (Madrid, Spain) (represented by: T. Villate Consonni and J. Calderón Chavero, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (represented by: J.F. Crespo Carrillo, Agent)

Other party to the proceedings before the Board of Appeal of OHIM intervening before the General Court: Carbon Capital Markets Ltd (Oxford, United Kingdom) (represented by: E. Hardcastle, Solicitor)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 26 September 2008 (Case R 15/2008-1) concerning opposition proceedings between CM Capital Markets Holding, SA and Carbon Capital Markets Ltd.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders CM Capital Markets Holding, SA to pay the costs.*

[1] OJ C 44, 21.2.2009.

Judgment of the General Court of 9 June 2010 — Muñoz Arraiza v OHIM — Consejo Regulador de la Denominación de Origen Calificada Rioja (RIOJAVINA)

(Case T-138/09) [1]

(Community trade mark — Opposition proceedings — Application for Community word mark RIOJAVINA — Earlier Community collective figurative mark RIOJA — Relative ground for refusal — Article 8(1)(b) of Regulation (EC) No 40/94 (now Article 8(1)(b) of Regulation (EC) No 207/2009))

(2010/C 209/57)

Language of the case: Spanish

Parties

Applicant: Félix Muñoz Arraiza (Logroño, Spain) (represented by: J. Grimau Muñoz and J. Villamor Muguerza, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (represented by: J.F. Crespo Carrillo, Agent)

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the Court: Consejo Regulador de la Denominación de Origen Calificada Rioja (Logroño) (represented by: J.I. Martínez De Torre, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 29 January 2009 (Case R 721/2008-2) concerning opposition proceedings between the Consejo Regulador de la Denominación de Origen Calificada Rioja and Félix Muñoz Arraiza.

Operative part of the judgment

The Court:

1. *Dismisses the application;*

2. *Orders Félix Muñoz Arraiza to pay the costs.*

[1] OJ C 153, 4.7.2009.

Order of the General Court of 9 June 2010 — Hoelzer v OHIM (SAFELOAD)

(Case T-315/09) [1]

(Community trade mark — Application for the figurative Community trade mark SAFELOAD — Absolute ground for refusal — Descriptive character — Article 7(1)(c) of Regulation (EC) No 207/2009)

(2010/C 209/58)

Language of the case: German

Parties

Applicant: Oliver Hoelzer (Remscheid, Germany) (represented by: Rother, J. Vogtmeier, P. Mes, C. Graf von der Groeben, J. Bühling, A. Verhauwen, J. M. Künzel, D. Jestaedt and M. Bergermann, lawyers)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 3 June (Case R 1157/2008-4), concerning an application for registration of the figurative sign SAFELOAD as a Community trade mark

Operative part of the order

The Court:

1. *Dismisses the application;*

2. *Orders Hoelzer to pay the costs.*

[1] OJ C 267 of 7.11.2009

Order of the General Court of 3 June 2010 — Z v Commission

(Case T-173/09) [1]

(Access to documents — Inadmissibility — Injunction)

(2010/C 209/59)

Language of the case: German

Parties

Applicant: Z (Hannoversch Münden, Germany) (represented by: C. Grau and N. Jäger, lawyers)

Defendant: European Commission (represented by: A. Bouquet, V. Bottka and R. Sauer, agents)

Re:

Require the Commission, first, to indicate to the applicant, by granting it access the file of the procedure in Case COMP/39.406 (Tuyaux marins) and in particular by making available a copy of Commission's decision of 28 January 2009 imposing a fine, if the applicant is mentioned by name in that decision and, if so, to state the context in which its name is mentioned, second, to remove, in a manner to be specified after the granting of access to the file, the mention of its name in the Commission's decision of 28 January 2009 and, third, not to mention it by name and refrain from making any reference to its name in the non-confidential version of the decision of 28 January 2009.

Operative part of the order

The Court:

1. *Dismissed the action as inadmissible.*

2. *Orders Z to pay the costs, including those of the application for interim measures*

([1]) OJ C 167, 18.7.2009.

Order of the President of the General Court of 9 June 2010 — COLT Télécommunications France v Commission

(Case T-79/10 R)

(Application for interim measures — State aid — Operation of a very-high-speed broadband electronic communications network — Compensation for public service costs — Decision finding that the notified measure does not constitute aid — Application for suspension of operation of a measure — Lack of urgency)

(2010/C 209/60)

Language of the case: French

Parties

Applicant: COLT Télécommunications France SAS (Paris, France) (represented by: M. Debroux, lawyer)

Defendant: Commission (represented by B. Stromsky and C. Urraca Caviedes, acting as Agents)

Re:

Application for suspension of operation of Commission Decision C(2009) 7426 final of 30 September 2009 on a plan to grant compensation for public service costs of EUR 59 million for the establishment and operation of a very-high-speed broadband electronic communications network in the department of Hauts-de-Seine (France).

Operative part of the order

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

2. *Costs are reserved.*

Action brought on 7 April 2010 — Samskip Multimodal Container Logistics v Commission

(Case T-166/10)

(2010/C 209/61)

Language of the case: English

Parties

Applicant: Samskip Multimodal Container Logistics BV ('s-Gravenzande, Netherlands) (represented by: K. Platteau, Y. Maasdam and P. Broers, lawyers)

Defendant: European Commission

Form of order sought

— annul Commission Decision C(2010) 580 of 27 January 2010 on the financial assistance for proposals for actions submitted in the 2009 selection procedure in the European Union programme granting the Community financial assistance to improve the environmental performance of the freight transport system (Marco Polo II) ([1]), in so far as it selects Proposal No TREN/B4/SUB/01-2009 MP-II/6, the G2G@2XL project, for funding amounting to EUR 2 190 539;

— order the Commission to pay the costs of the procedure pursuant to Article 87(2) of the Rules of Procedure.

Pleas in law and main arguments

In support of its application, the applicant puts forward two pleas in law on the following grounds.

In its first plea, the applicant claims that the contested funding infringes the funding conditions and requirements provided by Article 5(2) of Regulation 1692/2006 as

— it causes an unacceptable distortion of competition contrary to the common interest within the market of freight forwarding services by the alternative modes of transport proposed by the G2G@2XL project, namely rail and short sea shipping from Italy, Switzerland and Austria to the United Kingdom; and

— the G2G@2XL project will not stay viable after the prescribed period of 36 months.

In its second plea the applicant claims that the contested funding infringes Article 1 of Regulation 1692/2006 as it does not contribute to the common interest goals that are pursued by the Marco Polo II Programme. The contested funding will merely result in a shift from an existing multimodal operator to another multimodal operator and not from road transport to rail transport. As a result, no extra road freight traffic will be shifted to environmentally friendly modes. Hence, the contested funding will not contribute to an actual reduction in international road freight transport and will therefore not reduce congestion nor contribute to the pursued improvement of the environmental performance of the transport system (i.e. the common interest goals that are pursued by the Marco Polo II Programme and which are provided in Article 1 of Regulation 1692/2006).

([1]) Regulation (EC) No 1692/2006 of the European Parliament and of the Council of 24 October 2006 establishing the second Marco Polo programme for the granting of Community financial assistance to improve the environmental performance of the freight transport system (Marco Polo II) and repealing Regulation (EC) No 1382/2003, OJ 2006 L 328, p. 1

Action brought on 18 May 2010 — Commission v EU Research Projects

(Case T-220/10)

(2010/C 209/62)

Language of the case: English

Parties

Applicant: European Commission (represented by: N. Bambara, agent and C. Erkelens, lawyer)

Defendant: EU Research Projects Ltd (Hungerford, United Kingdom)

Form of order sought

— Order the defendant to reimburse to the Commission the principal amount of EUR 102 039,32 plus the accrued interest of default to be calculated at a rate of 4,80 % from 28 December 2006 until the date of payment of the due amount; and

— Order the defendant to pay the costs, including those incurred by the Commission.

Pleas in law and main arguments

The Commission brought the present application, pursuant to Article 272 TFEU, in order to seek reimbursement of the amount allegedly overpaid to the defendant, which is EUR 102 039,32, plus interest calculated at the rate of 4,80 % from the date on which the debt was due, i.e. 28 December 2006.

Under the European Community's fifth framework programme for research, technological development and demonstration activities (1998-2002), the Commission signed with, among others, the defendant a 'contract for research and technological development projects', identified by number IST-2001-34850. The sum claimed by the applicant under the said contract is equivalent to the difference between the advance payment paid to the defendant and the total eligible costs accepted by the applicant, in accordance with the relevant provisions of the contract, as a consequence of the defendant's request of withdrawal from the project and further to its non-compliance with the relevant contractual obligations.

In support of its application, the Commission raises a single plea in law: the Commission contends that the defendant has breached its contractual obligations by failing to reimburse to the Commission the difference between the Commission's financial contribution due to defendant and the total amount of advance funding already received by it. The financial contribution due to the defendant is less than the total amount paid by the applicant by means of an advance payment. Furthermore, under Belgian law, which the law applicable to the contract, what has been paid without it being due (undue payment) can be claimed back. The Commission contends therefore that the defendant is liable for the sum due.

Action brought on 17 May 2010 — Association Belge des Consommateurs Tests-Achats v Commission

(Case T-224/10)

(2010/C 209/63)

Language of the case: English

Parties

Applicant: Association Belge des Consommateurs Test-Achats ASBL/Belgische Verbruikersunie Test-Aankoop VZW (Brussels, Belgium) (represented by: F. Filpo and A. Fratini, lawyers)

Defendant: European Commission

Form of order sought

— Annul Commission Decisions No C(2009) 9059 and No C(2009) 8954, both of 12 November 2009, in Case COMP/M.5549 — EDF/SEGEBEL; and

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

Pleas in law and main arguments

By means of its application, the applicant seeks, pursuant to Article 263 TFEU, the annulment of the contested decisions in so far as the Commission decided not to partially refer the concentration between Electricité de France S.A. and Segebel to the Belgian Competition Authority under Article 9 of the Regulation (EC) No 139/2004 [1] (the EC Merger Regulation) and declared the concentration compatible with the common market subject to commitments, under Article 6(1)(b) of the Merger Regulation, without initiating proceedings under Article 6(1)(c) of the Merger Regulation.

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

In its first plea, the applicant claims that the contested decisions lack adequate statements of reason, violate Article 6(2) of the Merger Regulation, and are affected by manifest errors of evaluation, in so far as the Commission does not take adequately into account the competitive relation between the merged entity and the incumbent operator GDF Suez.

In its second plea, the applicant claims that the Commission has infringed its procedural rights to participate in the procedure.

In its third plea, the applicant maintains that the Commission did not have the compelling and decisive elements to conclude that the transaction would not raise serious doubts as to its compatibility with the common market, without initiating proceedings under Article 6(1)(c) of the Merger Regulation. Furthermore, the applicant claims that these defects also affect the decision not to refer the case to the Belgian Competition Authority, as the Commission did not have sufficient elements to establish whether or not it was the best placed authority to deal with the notified transaction.

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

Action brought on 14 May 2010 — Prezes Urzędu Komunikacji Elektronicznej v Commission

(Case T-226/10)

(2010/C 209/64)

Language of the case: Polish

Parties

Applicant: Prezes Urzędu Komunikacji Elektronicznej (Warsaw, Poland) (represented by: H. Gruszecka and D. Pawłowska, legal advisers)

Defendant: European Commission

Form of order sought

— annul the decision of the European Commission of 3 March 2010 in Case PL/2009/1019, concerning the national wholesale market for IP traffic exchange (IP transit), and in Case PL/2009/1020, concerning the national wholesale market for IP traffic exchange (IP peering) with the network of Telekomunikacja Polska S.A.;

— order the European Commission to pay the costs.

Pleas in law and main arguments

The application seeks the annulment of Decision C(2010) 1234 of the European Commission of 3 March 2010 adopted pursuant to Article 7(4) of Directive 2002/21/EC of the European Parliament and of the Council (Framework Directive), ([1]) in which the Commission has required the Prezes Urzędu Komunikacji Elektronicznej (President of the Office for Electronic Communications) to withdraw draft decisions concerning the wholesale market for IP traffic exchange (IP transit) and the wholesale market for IP peering with the network of Telekomunikacja Polska S.A, which were notified to the Commission on 27 November 2009 and registered under the numbers PL/2009/1019 and PL/2009/1020.

The applicant sets out three pleas in law in support of his action.

The applicant submits in the first plea that, in adopting the contested decision, the Commission infringed essential procedural requirements, including the principle of good administration, the principle of effective cooperation and the consultation mechanism laid down in Article 7 of the Framework Directive, on the ground that the determination made in the contested decision was based on an incorrect translation of the draft decisions submitted by the applicant in the notification procedure, thereby causing the Commission to make erroneous findings on the factual situation which constitutes the framework for the determination notified. Furthermore, the Commission infringed essential procedural requirements by not stating adequate reasons for the contested decision, by reason of the lack of a detailed and objective analysis of the grounds which led the Commission to make the determination requiring withdrawal of the draft decisions notified.

Second, the applicant pleads that the Commission made a manifest error of assessment in finding that IP peering and IP transit services are mutually substitutable. IP peering and IP transit services are not mutually substitutable because they differ as to the extent of IP traffic exchanged between telecommunications undertakings, as to methods for calculating payments for services provided, as to the very definition of service provider (ISP) and as to service quality.

Third, in the applicant's submission, the Commission also infringed Article 4(3) TEU and Article 102 TFEU in conjunction with Articles 7(4), 8(2)(b) and (c), 14(2), 15(3) and 16(4) of the Framework Directive in considering that the wholesale markets for IP traffic exchange in Poland (IP transit and IP peering) are not two separate markets, that they are not susceptible to *ex ante* regulation and that Telekomunikacja Polska S.A does not have significant power on both those markets. The applicant contends that, in accordance with the requirements contained in the recommendation ([2]) and the guidelines, ([3]) he carried out a market analysis from the point of view of the justification for *ex ante* regulation and incontestably examined the three relevant criteria. That examination fully confirmed that the markets for IP peering and IP transit traffic exchange are susceptible to *ex ante* regulation because they are characterised by high and non-transitory barriers, their structure does not tend towards effective competition within the relevant time horizon and application of competition law alone would not adequately address the market failures concerned.

([1]) Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (OJ 2008 L 108, p. 33).

([2]) Commission Recommendation of 17 December 2007 on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services (notified under document number C(2007) 5406) (OJ 2007 L 344, p. 65).

([3]) Commission guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications networks and services (OJ 2002 C 165, p. 6).

Action brought on 21 May 2010 — Spain v Commission

(Case T-230/10)

(2010/C 209/65)

Language of the case: Spanish

Parties

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

Defendant: European Commission

Form of order sought

— Annul Commission Decision 2010/152/EU of 11 March 2010 excluding from European Union financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD), to the extent that it is the subject of this action for annulment, and

— order the European Commission to pay the costs.

Pleas in law and main arguments

This action is brought against two of the financial corrections decided by the Commission, and is based on the infringement of the provisions of Council Regulation (EC) No 2200/96 of 28 October 1996 on the common organization of the market in fruit and vegetables, [1] Commission Regulation (EC) No 1433/2003 of 11 August 2003 laying down detailed rules for the application of Council Regulation (EC) No 2200/96 as regards operational funds, operational programmes and financial assistance, [2] and Commission Regulation (EC) No 1432/2003 of 11 August 2003 laying down detailed rules for the application of Council Regulation (EC) No 2200/96 regarding the conditions for recognition of producer organisations and preliminary recognition of producer groups, [3] relied on by the Commission as the basis for those corrections:

As regards the exclusion of the costs of environmental management of packaging, the Commission interprets Article 15(5) of Regulation 2200/96 and Annex I of Regulation 1433/2003 as meaning that, when fixing the flat rate for aid, Member States must comply with the rule that aid is only granted in respect of expenditure borne by the producer organisations, and direct evidence is required of that fact.

The Kingdom of Spain considers that, taking into consideration the objectives and the wording of the abovementioned provisions, it cannot be necessary to require reliable proof that the costs have been borne by the producer organisations. Further, in any event, the reality is that the producer organisations do bear the costs of environmental management of packaging, given that the distributors pass the cost to them by means of paying a lower price for their products.

As regards weaknesses in the system for the control of recognition of the SAT Royal producer organisation, the Commission considers that the rule that no single member of a producer organisation may have more than 20 % of the voting rights must also apply to the natural persons who are shareholders in bodies which, in turn, are members of a producer organisation. The Kingdom of Spain considers that the rule laid down in Article 14(2) of Regulation 1432/2003 applies only to those who are members of the organisation, and there is no requirement to analyse the share structure of the bodies which make up the producer organisation.

[1] OJ L 297, 21.11.1996, p. 1
[2] OJ L 203, 12.8.2003, p. 25
[3] OJ L 203, 12.8.2003, p. 18

Action brought on 21 May 2010 — Merlin and Others v OHIM — Dusyma (Games)

(Case T-231/10)

(2010/C 209/66)

Language in which the application was lodged: German

Parties

Applicants: Merlin Handelsgesellschaft mbH (Forchtenberg, Germany), Rolf Krämer (Forchtenberg), BLS Basteln, Lernen, Spielen GmbH (Forchtenberg), Andreas Hohl (Künzelsau, Germany), represented by: R. Kramer, 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: Dusyma Kindergartenbedarf GmbH (Schorndorf, Germany)

Form of order sought

— annul the decision of the Third Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 17 March 2010 in Case R 879/2009-3 and declare Community design No 526 801-0011 invalid;

— in the alternative, annul the decision of the Third Board of Appeal and refer the case back to the Board of Appeal;

— order the defendant to pay the costs.

Pleas in law and main arguments

Registered Community design in respect of which a declaration of invalidity has been sought: Community design No 526 801-0011 for the products 'Games (including educational games)'.

Proprietor of the Community trade mark: Dusyma Kindergartenbedarf GmbH.

Applicant for the declaration of invalidity: the Applicants.

Decision of the Cancellation Division: Rejection of the application for a declaration of invalidity.

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

Pleas in law: Infringement of Article 3 of Council Regulation (EC) No 6/2002 ([1]) on Community designs, because the Board of Appeal misinterpreted the provisions of that article concerning definitions and did not take into consideration the fact that a Community design can also consist in the appearance of a part of a product.

([1]) Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs (OJ 2002 L 3, p. 1).

Action brought on 21 May 2010 — Timehouse v OHIM (Shape of a watch)

(Case T-235/10)

(2010/C 209/67)

Language in which the application was lodged: German

Parties

Applicant: Timehouse GmbH (Eystrup, Germany) (represented by V. Knies, lawyer)

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

Form of order sought

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 11 March 2010 in case R 0942/2009-1; and

— Order the defendant to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: A three-dimensional trade mark, representing a watch for goods in Class 14.

Decision of the Examiner: Rejection of the application for registration.

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

Pleas in law: Infringement of Article 7(1)(b) and of Council Regulation No 207/2009 ([1]), as the trade mark is distinctive.

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

Action brought on 26 May 2010 — Vuitton Malletier v OHMI — Friis Group International (Representation of a lock device)

(Case T-237/10)

(2010/C 209/68)

Language in which the application was lodged: English

Parties

Applicant: Louis Vuitton Malletier SA (Paris, France) (represented by: P. Roncaglia, G. Lazzeretti, M. Boletto and E. Gavuzzi, lawyers)

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

Other party to the proceedings before the Board of Appeal: Friis Group International ApS (Copenhagen, Denmark)

Form of order sought

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 24 February 2010 in case R 1590/2008-1, in so far as it declared the invalidity of Community trade mark No 3693116 for the goods in classes 9, 14 and 18;

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

— Order the other party to the proceedings before the Board of Appeal to pay the costs of the proceedings, including those incurred by the applicant before the Board of Appeal and the Cancellation Division, should it become an intervening party in this case.

Pleas in law and main arguments

Registered Community trade mark subject of the application for a declaration of invalidity: A figurative mark representing a lock device for goods in classes 9, 14, 18 and 25 — Community trade mark application No 3693116

Proprietor of the Community trade mark: The applicant

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

Trade mark right of the party requesting the declaration of invalidity: The party requesting the declaration of invalidity grounded its request on absolute grounds for refusal pursuant to Article 52(1)(a) of Council Regulation (EC) No 207/2009

Decision of the Cancellation Division: Rejected the application for declaration of invalidity of the Community trade mark

Decision of the Board of Appeal: Upheld the appeal partially

Pleas in law: The applicant advances two pleas in law in support of its application.

On the basis of its first plea, the applicant claims that the contested decision infringes Article 7(1)(b) of Council Regulation (EC) No 207/2009, as the Board of Appeal erred in concluding that the provision of this article is applicable to the contested Community trade mark with respect to the goods in classes 9, 14 and 18. In particular, the Board of Appeal: (i) wrongly addressed the issue of the distinctiveness of the contested Community trade mark as if it were a mark consisting of the shape of the goods covered, and (ii) erroneously found lack of inherent distinctiveness.

By its second plea, the applicant considers that the contested decision violates Article 52(2) of Council Regulation (EC) No 207/2009, as the Board of Appeal erred in concluding that the provision of this article does not apply in the present case.

Action brought on 24 May 2010 — Scatizza v OHIM — Jacinto (HORSE COUTURE)

(Case T-238/10)

(2010/C 209/69)

Language in which the application was lodged: English

Parties

Applicant: Stephanie Scatizza (Lugano, Switzerland) (represented by: P. Perani and P. Pozzi, lawyers)

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

Other party to the proceedings before the Board of Appeal: Manuel Jacinto, Lda (S. Paio de Oleiros, Portugal)

Form of order sought

— Annul the decision of the Second Board of Appeal of the Office For Harmonisation in the Internal Market (Trade Marks and Designs) of 5 March 2010 in case R 723/2009-2;

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

— Order the other party to the proceedings before the Board of Appeal to pay the costs of the proceedings, should it become an intervening party in this case.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The figurative mark 'HORSE COUTURE', for goods in class 18 — Community trade mark application No 6030399

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

Mark or sign cited: Portuguese trade mark registration No 379879 of the figurative mark 'HORSE', for goods in class 18

Decision of the Opposition Division: Upheld the opposition partially

Decision of the Board of Appeal: Dismissed the appeal

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

Action brought on 27 May 2010 — Republic of Hungary v European Commission

(Case T-240/10)

(2010/C 209/70)

Language of the case: Hungarian

Parties

Applicant(s): Republic of Hungary (represented by: M. Fehér, K. Szíjjártó, Agents)

Defendant(s): European Commission

Form of order sought

— Annulment of Commission Decision 2010/135/EU of 2 March 2010 concerning the placing on the market, in accordance with Directive 2001/18/EC of the European Parliament and of the Council, of a potato product (Solanum tuberosum L. line EH92-527-1) genetically modified for enhanced content of the amylopectin component of starch.

— Annulment of Commission Decision 2010/136/EU of 2 March 2010 authorising the placing on the market of feed produced from the genetically modified potato EH92-527-1 (BPS-25271-9) and the adventitious or technically unavoidable presence of the potato in food and other feed products under Regulation (EC) No 1829/2003 of the European Parliament and of the Council.

— In the alternative, if the claim for annulment of Decision 2010/136/EU is dismissed, annulment of Article 2(b) and (c) thereof.

— An order that the Commission pay the costs.

Pleas in law and main arguments

The applicant takes issue with Commission Decisions 2010/135/EU ([1]) and 2010/136/EU ([2]) of 2 March 2010.

In the grounds for its application the applicant alleges, as its first plea in law, that the Commission made a manifest error of assessment and infringed the precautionary principle in authorising the placing on the market of the genetically modified potato known as 'Amflora' ('GM potato') despite the fact that, when the risks were assessed, well-founded objections were raised to the effect that the authorisation — having regard to the objectives of guaranteeing a high level of protection of health and the environment — could cause damage to the health of humans and animals and to the environment. In the view of the applicant, the marketing authorisation is based on a risk assessment which is unsubstantiated or deficient in many respects, which has implications for the legality of the Commission Decisions.

As regards the risks to health caused by the GM potato at issue, the applicant alleges that the antibiotic-resistence marker gene present in the GM potato and the transfer of that gene from GM crops to bacteria entail a risk to human and animal health and the environment which is unacceptable, especially having regard to the obligation to ensure a high level of protection for health and the environment, and that there is, at the least, significant scientific uncertainty regarding the risks, which the Commission has not adequately allayed. The applicant concludes that the marketing authorisation infringes the precautionary principle and breaches Article 4(2) of Directive 2001/18/EC, ([3]) which gives that principle concrete legal expression. Moreover, the scientific opinion issued by the European Food Safety Authority (EFSA) which served as a basis for the Commission Decisions also contradicts the views held in this matter by the World Health Organisation, the World Organisation for Animal Health and the European Medicines Agency.

In the view of the applicant, the assessment of the risk to the environment posed by the GM potato is deficient and inadequate having regard to:

— The lack of any open-air trials relating to all the biogeographical regions of the European Union;

— The lack of any assessment of impact, or of cumulative long term impact, on untargeted organisms, or of impact on the dynamic of species populations and genetic diversity;

— The inadequacy of the assessment of possible impact on animal health and possible consequences for the food chain.

As its second plea in law the applicant alleges that the Commission breached Regulation No 1829/2003/EC. ([4]) In that regard, the applicant argues that Article 2(b) and (c) of Decision 2010/136/EU, which authorises the adventitious or technically unavoidable presence, in food or crops, of genetically modified organisms in a proportion no higher

than 0,9 %, is contrary to law, given that, as far as authorisation is concerned, Regulation No 1829/2003/EC does not envisage any safety margin or allow the Commission to apply any safety margin in the event of the adventitious or technically unavoidable presence of genetically modified organisms.

(1) Commission Decision 2010/135/EU of 2 March 2010 concerning the placing on the market, in accordance with Directive 2001/18/EC of the European Parliament and of the Council, of a potato product (Solanum tuberosum L. line EH92-527-1) genetically modified for enhanced content of the amylopectin component of starch (notified under document C(2010) 1193) (OJ 2010 L 53, p. 11).

(2) Commission Decision 2010/136/EU of 2 March 2010 authorising the placing on the market of feed produced from the genetically modified potato EH92-527-1 (BPS-25271-9) and the adventitious or technically unavoidable presence of the potato in food and other feed products under Regulation (EC) No 1829/2003 of the European Parliament and of the Council (notified under document C(2010) 1196) (OJ 2010 L 53, p. 15).

(3) Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC (OJ 2001 L 106, p. 1).

(4) Regulation (EC) No 1829/2003 of the European Parliament and of the Council of 22 September 2003 on genetically modified food and feed (OJ 2003 L 268, p. 1).

Action brought on 24 May 2010 — Poland v Commission

(Case T-241/10)

(2010/C 209/71)

Language of the case: Polish

Parties

Applicant: Republic of Poland (represented by: M. Szpunar, Agent)

Defendant: European Commission

Form of order sought

— declare invalid Commission Decision 2010/152/EU of 11 March 2010 (notified under document C(2010) 1317) excluding from European Union financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD), (1) in so far as it excludes from Community financing the amounts of PLN 279 794 442,15 and EUR 25 583 996,81 in expenditure incurred by the payment agency accredited by the Republic of Poland;

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

Pleas in law and main arguments

The contested decision provides for a financial correction resulting from alleged failings in the system for the identification and monitoring of agricultural land parcels in 2005 and 2006 relating to: non-completion of land parcel system vectorisation; acceptance of ineligible land for payments; excessively low number of on-the-spot checks in regions with high error rates (Województwo Opolskie (Opole Province)); and erroneous application of provisions of intentional non-compliance.

The applicant questions the existence of all of the failings alleged and raises the following heads of complaint against the contested decision.

First, the applicant alleges that there has been a breach of the first subparagraph of Article 7(4) of Regulation (EC) No 1258/1999 (2) and of Article 31(1) of Regulation (EC) No 1290/2005, (3) as well as a breach of Guidelines No VI/5330/97, by reason of the application of a financial correction based on a misconstruction of the facts and a misinterpretation of the law, despite the fact that the expenditure was effected by the Polish authorities in accordance with European Union rules.

In the applicant's view, none of the alleged failings underlying the financial correction effected actually occurred, while the expenditure excluded from financing by the European Union on the basis of the contested decision was effected in accordance with European Union rules.

The applicant contends that the system for identifying agricultural parcels which was applied in Poland in 2005 and 2006 complied in full with the requirements laid down in Article 20 of Council Regulation (EC) No 1782/2003 (4) and in Article 6 of Commission Regulation (EC) No 796/2004, (5) significantly exceeding those requirements in several respects and guaranteeing a rigorous protection of the financial interests of the European Union.

It further argues that the national procedures applied in 2005 and 2006 made it possible to establish, in an effective and objective manner, whether there had been intentional or unintentional action on the part of an applicant in the event of a declaration of areas of land for payment, providing, in cases of doubt, for judicial resolution and respecting the principle of the presumption of innocence.

The applicant also submits that the acceptance of land for payment was in accordance with the conditions relating to the eligibility of land, regard being had to the fact that, in accordance with the Act of Accession, a condition for the eligibility of land is that it was being maintained in good agricultural condition (GAC) on 30 June 2003, whereas maintenance of the land in good agricultural and environmental condition (GAEC) on the day of monitoring was not a condition governing eligibility of the land but rather a condition, failure to comply with which would lead to a reduction in the rate of payment.

In addition, the applicant contends that the number of on-the-spot checks in 2005 in the Opolski Province was effected on a basis which was in compliance with the requirements of Article 26 of Regulation No 796/2004.

Second, the applicant argues that there has been a breach of the fourth subparagraph of Article 7(4) of Regulation (EC) No 1258/1999 and of Article 31(2) of Regulation (EC) No 1290/2005, a breach of Guidelines No VI/5330/97 and infringement of the principle of proportionality by reason of the application of a correction in an amount which was flagrantly excessive in relation to the risk of potential financial loss to the budget of the European Union.

In the view of the applicant, even if it were to be established that there were certain breaches in the control and penalty system established by the Polish authorities — which is denied –such breaches would be so insignificant that the risk of possible losses for the Union budget would be many times lower than the level of the correction applied by the Commission in the contested decision. This in particular relates to the level of the correction applied by the Commission by reason of the non-completion of the vectorisation system for identification of land parcels and by reason of the allegedly inadequate number of on-the-spot checks in Opole Province in 2005.

(1) OJ 2010 L 63, p. 7.
(2) Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy (OJ 1999 L 160, p. 103).
(3) Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy (OJ 2005 L 209, p. 1).
(4) Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) No 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 (OJ 2003 L 270, p. 1).
(5) Commission Regulation (EC) No 796/2004 of 21 April 2004 laying down detailed rules for the implementation of cross-compliance, modulation and the integrated administration and control system provided for in Council Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers (OJ 2004 L 141, p. 18).

Action brought on 28 May 2010 — medi v OHIM — Deutsche Medi Präventions (deutschemedi.de)

(Case T-247/10)

(2010/C 209/72)

Language in which the application was lodged: German

Parties

Applicant: medi GmbH & Co KG (Bayreuth, Germany) (represented by: D. Terheggen, H. Lindner and T. Kiputh, 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: Deutsche Medi Präventions GmbH (Düsseldorf, Germany)

Form of order sought

— annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 16 March 2010 in Case R 1366/2008-4;

— reject the application for Community trade mark EM 5 089 099 in its entirety;

— order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Deutsche Medi Präventions GmbH.

Community trade mark concerned: word mark 'deutschemedi.de' for services in Class 35.

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

Mark or sign cited in opposition: German word mark 'medi.eu' for goods and services in Classes 5, 10, 35, 39, 41, 42 and 44; German word mark 'medi welt' for goods and services in Classes 5, 10, 35, 38, 39, 41, 42, 43 and 44; German word mark 'medi-Verband' for goods and services in Classes 5, 10, 35, 38, 39, 41, 42, 43 and 44; Community word mark 'World of medi' for goods and services in Classes 3, 5, 10, 35, 41 and 42; German figurative mark, containing the word elements 'medi Ich fühl mich besser', for goods and services in Classes 5, 10, 35, 38, 39, 41, 42, 43 and 44; a trade and commercial name in commercial use containing the word element 'medi' for all goods and services to which the abovementioned marks relate in the territory of the European Union.

Decision of the Opposition Division: Opposition upheld.

Decision of the Board of Appeal: Appeal allowed and opposition rejected.

Pleas in law: Infringement of Article 8(1) and (4) of Regulation (EC) No 207/2009, [1] because there is a likelihood of confusion between the trade marks at issue and the applicant has proved that it owns the commercial rights including the right to a commercial name, and infringement of the right to a hearing under Article 73 of Regulation No 207/2009.

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

Action brought on 26 May 2010 — Italy v Commission and EPSO

(Case T-248/10)

(2010/C 209/73)

Language of the case: Italian

Parties

Applicant: Italian Republic (represented by: P. Gentili, avvocato dello Stato)

Defendant: European Commission and European Personnel Selection Office (EPSO)

Form of order sought

The applicant claims that the Court should:

— annul the notice of open competition EPSO/AD/177/10 — Administrators (AD 5) published in the *Official Journal of the European Union* on 16 March 2010 (OJ 2010 C 64A);

— order the Commission 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-218/09 *Italy* v *Commission*. [1]

[1] OJ C 180 of 1.8.09, p. 59.

Action brought on 31 May 2010 — Kitzinger v OHIM — Mitteldeutscher Rundfunk, Zweites Deutsches Fernsehen (KICO)

(Case T-249/10)

(2010/C 209/74)

Language in which the application was lodged: German

Parties

Applicant: Kitzinger & Co (GmbH & Co. KG) (Hamburg, Germany) (represented by: S. Kitzinger, 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: Mitteldeutscher Rundfunk (body governed by public law) (Leipzig, Germany), Zweites Deutsches Fernsehen (body governed by public law) (Mainz, Germany)

Form of order sought

— annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 25 March 2010 in Case R 1388/2008-4 to the extent that the decision of the Opposition Division of 28 July 2008 on opposition No B 1 133 612 is annulled and the opposition rejected;

— in the alternative, annul the contested decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 25 March 2010 in Case R 1388/2008-4;

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

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant.

Community trade mark concerned: Figurative mark in blue and grey colours, which contains the word element 'KICO' for goods and services in Classes 16, 36 and 39.

Proprietor of the mark or sign cited in the opposition proceedings: Mitteldeutscher Rundfunk (body governed by public law) and Zweites Deutsches Fernsehen (body governed by public law).

Mark or sign cited in opposition: Community word mark 'KIKA' for goods and services in Classes 8, 9, 11, 16, 18, 20, 21, 24, 25, 28, 29, 30, 32, 38 and 41 and German figurative mark in black and white colours which contains the word element 'KIKA' for goods and services in Classes 8, 9, 11, 16, 18, 20, 21, 24, 25, 28, 29, 30, 32, 38, 41 and 42.

Decision of the Opposition Division: Opposition upheld.

Decision of the Board of Appeal: Appeal dismissed.

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

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

Action brought on 31 May 2010 — KNUT IP Management v OHIM — Zoologischer Garten Berlin (KNUT — DER EISBÄR)

(Case T-250/10)

(2010/C 209/75)

Language in which the application was lodged: German

Parties

Applicant: KNUT IP Management Ltd. (London, England) (represented by: C. Jaeckel, 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: Zoologischer Garten Berlin AG (Berlin, Germany)

Form of order sought

— annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 17 March 2010 in Case R 650/2009-1;

— order the defendant to pay the costs including those of the proceedings before the Board of Appeal.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant.

Community trade mark concerned: Word mark 'KNUT — DER EISBÄR' for goods and services in Classes 9, 16, 25, 28 and 41.

Proprietor of the mark or sign cited in the opposition proceedings: Zoologischer Garten Berlin AG.

Mark or sign cited in opposition: German word mark 'KNUD' for goods and services in Classes 9, 16 and 28; German word mark 'Knut — der Eisbär' for goods and services in Classes 16, 25, 28 and 41; German word mark 'KNUT' for goods and services in Classes 3, 4, 5, 8, 9, 11, 12, 14, 16, 18, 20, 21, 24, 25, 28, 29, 30, 32, 33, 35, 39, 41, 42 and 43; German word mark 'KNUT' for goods and services in Classes 16, 18, 21, 25, 28, 35, 41 and 42.

Decision of the Opposition Division: Opposition upheld in part.

Decision of the Board of Appeal: Appeal allowed and opposition upheld in full.

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

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

Action brought on 28 May 2010 — Cross Czech v Commission

(Case T-252/10)

(2010/C 209/76)

Language of the case: English

Parties

Applicant: Cross Czech a.s. (Prague, Czech Republic) (represented by: T. Schollaert, lawyer)

Defendant: European Commission

Form of order sought

— Annul Commission Decision No INFSO-02/FD/GVC/Isc D (2010) 208676 of 12 March 2010; and

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

Pleas in law and main arguments

By means of its application, the applicant seeks, pursuant to Article 263 TFEU, the annulment of Commission Decision No INFSO-02/FD/GVC/Isc D (2010) 208676 of 12 March 2010, reference No 09-BA74-006, a letter confirming the findings of audit report B74-06 concerning the audit of the financial statements for the period from 1 February 2005 until 30 April 2008 for the projects eMapps.com, CEEC IST NET and TRANSFER EAST, concluded in the framework of the 6th EU Framework Programme for Research and Technological Development (2002-2006).

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

The applicant contends that the contested decision constitutes an infringement of the Treaty or of any rule of law relating to its application, as it:

— is based on incorrect and insufficient fact finding by the Commission;

— reflects the incorrect application of the contracts relating to the projects in question, in particular in respect of the finding that the applicant committed a breach of these contracts;

— is based on manifest errors of assessment of the facts relating to the alleged breach of the contracts relating to these projects, resulting in a failure to comply with the necessary legal standards and thus in an error of law;

— is based on defects of reasoning; and

— constitutes a breach of the applicant's procedural rights in the procedure preceding the issuing of the contested decision and a breach of the principle of due care.

Order of the General Court of 7 June 2010 — Bulgaria v Commission

(Case T-500/07) [1]

(2010/C 209/77)

Language of the case: Bulgarian

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

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[1] OJ C 64, 8.3.2008.

Order of the General Court of 1 June 2010 — Spain v Commission

(Case T-65/08) [1]

(2010/C 209/78)

Language of the case: Spanish

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

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[1] OJ C 92, 12.4.2008.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Judgment of the Civil Service Tribunal (1st Chamber) of 11 May 2010 — Nanopoulos v Commission

(Case F-30/08) [1]

(Staff cases — Officials — Jurisdiction of the Civil Service Tribunal — Admissibility — Act adversely affecting an official — Non-contractual liability — Leaks in the press — Principle of the presumption of innocence — Non-material damage — Decision to institute disciplinary proceedings — Manifest error of assessment — Duty to provide assistance — Article 24 of the Staff Regulations)

(2010/C 209/79)

Language of the case: Greek

Parties

Applicant: Fotios Nanopoulos (Itzig, Luxembourg) (represented by: V. Christianos, D. Gouloussis and V. Vlassi, lawyers)

Defendant: European Commission (represented by: J. Currall and K. Herrmann initially, then by J. Currall and K. Herrmann, Agents, and by E. Bourtzalas and I. Antypas, lawyers)

Re:

Application for an order that the Commission pay the applicant a sum by way of compensation for the damage suffered on account of the infringement of his fundamental rights undermining his honour and his reputation.

Operative part of the judgment

The Tribunal:

1. *Orders the European Commission to pay Mr Nanopoulos EUR 90 000;*

2. *Dismisses the remainder of the action;*

3. *Orders the European Commission to pay all the costs.*

[1] OJ C 171, 05.07.2008, p. 50.

Judgment of the Civil Service Tribunal (Third Chamber) of 4 May 2010 — Petrilli v Commission

(Case F-100/08) [1]

(Civil Service — Officials — Pensions — Concept of residence — Principal residence — Documents in support)

(2010/C 209/80)

Language of the case: French

Parties

Applicant: Alessandro Petrilli (Grottammare, Italy) (represented by: J.-L. Lodomez and J. Lodomez, lawyers)

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

Re:

Annulment of the appointing authority's decision concerning the fixing of the applicant's main place of residence.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

2. *Orders Mr Petrilli to pay the costs.*

[1] OJ C 55, 7.3.2009, p. 52.

Judgment of the Civil Service Tribunal (2nd Chamber) of 12 May 2010 — Peláez Jimeno v Parliament

(Case F-13/09) [1]

(Staff case — Officials — Previous complaint — Time-limit for the complaint — Lateness — Proof — Former member of the temporary staff — Appointment as an official — Article 5(4) of Annex XIII to the Staff Regulations — Equal treatment)

(2010/C 209/81)

Language of the case: French

Parties

Applicant: Peláez Jimeno (Relegem-Asse, Belgium) (represented by: M. Casado García-Hirschfeld, lawyer)

Defendant: European Parliament (represented by: C. Burgos and K. Zejdová initially, then by K. Zejdová and S. Seyr, Agents)

Re:

Annulment of the appointing authority's decision to classify the applicant, as a probationary official, in a grade and step lower than that which she occupied as a member of the temporary staff

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

2. *Orders Ms Peláez Jimeno to pay all the costs.*

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[1] OJ C 90, 18.04.2009, p, 40.

Judgment of the Civil Service Tribunal (Second Chamber) of 15 June 2010 — Lebedef-Caponi v Commission

(Case F-45/09) [1]

(Staff case — Officials — Appraisal — Career development review — 2007 appraisal procedure — Action for annulment — Manifest error of assessment — Staff representatives — Opinion of ad hoc group)

(2010/C 209/82)

Language of the case: French

Parties

Applicant: Lebedef-Caponi (Senningerberg, Luxembourg) (represented by: F. Frabetti, lawyer)

Defendant: European Commission (represented by: C. Berardis-Kayser and G. Berscheid, agents)

Re:

Annulment of the applicant's career development report for 2007.

Operative part of the judgment

The Tribunal:

1. *dismisses the action;*

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

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[1] OJ C 153 of 04.07.2009, p. 51.

Action brought on 19 May 2010 — Lebedef v Commission

(Case F-33/10)

(2010/C 209/83)

Language of the case: French

Parties

Applicant: Giorgio Lebedef (Senningerberg, Luxembourg) (represented by: F. Frabetti, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

Application to annul the applicant's career development report in respect of the period from 1.1.2005 to 31.12.2005, as it was drawn up following its annulment by the Civil Service Tribunal in Case F-36/07

Form of order sought

The applicant claims that the Tribunal should:

— annul the applicant's career development report (CDR) in respect of the period from 1.1.2005 to 31.12.2005, as it was drawn up following its annulment by the Civil Service Tribunal by the judgment of 7 May 2008 in Case F-36/07 *Lebedef* v *Commission*;

— order the European Commission to pay the costs.

Action brought on 26 May 2010 — Adriaansen v EIB

(Case F-35/10)

(2010/C 209/84)

Language of the case: French

Parties

Applicant: Mary Lucie Adriaansen (Luxembourg, Luxembourg) (represented by: A.-M. Schmit, lawyer)

Defendant: European Investment Bank

Subject-matter and description of the proceedings

Annulment of the EIB's decision refusing to provide the applicant with information on the value of the pension to which her former husband is entitled.

Form of order sought

The applicant claims that the Tribunal should:

— annul the EIB's decision of 18 March 2010;

— order the EIB to pay the costs;

— order the interim execution of the judgement to be given, notwithstanding appeal and without security;

— reserve to the applicant all other rights, dues, pleas in law and actions

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Action brought on 27 May 2010 — Rapone v Commission

(Case F-36/10)

(2010/C 209/85)

Language of the case: Italian

Parties

Applicant: Chiara Rapone (Rome, Italy) (represented by: A. Rapone, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

Application for annulment of the decision by which EPSO refused to register the applicant's application to participate in competition EPSO/AD/177/10-LAW.

Form of order sought

— Annul the decision refusing registration of the applicant's new application to participate in competition EPSO/AD/177/10-LAW, which was confirmed in a communication from EPSO of 12 April 2010.

— Order the defendant to pay the costs.

Action brought on 31 May 2010 — Vakalis v Commission

(Case F-38/10)

(2010/C 209/86)

Language of the case: French

Parties

Applicant: Ioannis Vakalis (Luvinate, Italy) (represented by: S. Pappas, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the decision of the Office for Administration and Payment of Individual Entitlements determining the pension rights of the applicant on their transfer to the European Union scheme.

Form of order sought

— Declare that the Commission decision No 60/2004 of 28 April 2004 is vitiated by illegality;

— annul decision PMO-4/TP D(2009)/434514716;

— annul the decision rejecting the complaint;

— order the European Commission to pay the costs.

Action brought on 7 June 2010 — Lebedef v Commission

(Case F-40/10)

(2010/C 209/87)

Language of the case: French

Parties

Applicant: Giorgio Lebedef (Senningerberg, Luxembourg) (represented by: F. Frabetti, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the Commission's decision stating that the applicant exceeded his annual leave entitlement without authorisation by 5,5 days in 2009.

Form of order sought

The applicant claims that the Tribunal should:

— annul the decision of 11 August 2009, by which the General Director of Eurostat gave instructions to his Human Resource Management unit to inform the competent departments of the Office for the Administration and Payment of Individual Entitlements that the applicant had exceeded his annual leave entitlement by 5,5 days in 2009, to cause him to lose his remuneration for that period;

— order the European Commission to pay the costs.

Action brought on 7 June 2010 — Bermejo Garde v EESC

(Case F-41/10)

(2010/C 209/88)

Language of the case: French

Parties

Applicant: Moises Bermejo Garde (Brussels, Belgium) (represented by: L. Levi, lawyer)

Defendant: European Economic and Social Committee

Subject-matter and description of the proceedings

Annulment of several decisions terminating the applicant's service as the Head of Unit of the Legal Service with immediate effect, reassigning him to the Directorate for Logistics and refusing his formal application for assistance and the application for damages.

Form of order sought

The applicant claims that the Tribunal should:

— annul the decision of the President of the EESC No 88/10 A of 3 March 2010 rejecting the application brought by the applicant on 7 December 2009 and deciding to reassign him;

— annul the Addendum to Decision No 88/10 of 25 March 2010;

— annul Decision No 133/10 A of 24 March 2010 terminating the applicant's service as Head of Unit of the Legal Service with immediate effect and his reassignation as Head of Unit, with his post, to another department from 6 April 2010;

— annul the decision of the President of the EESC No 184/10 A of 13 April 2010 reassigning the applicant to the Directorate for Logistics, that decision taking effect on 6 April 2010;

— grant the applicant damages;

— order the EESC to pay the costs.

Action brought on 3 June 2010 — Skareby v Commission

(Case F-42/10)

(2010/C 209/89)

Language of the case: English

Parties

Applicant: Carina Skareby (Leuven, Belgium) (represented by: S. Rodrigues and C. Bernard-Glanz, lawyers)

Defendant: European Commission

The subject matter and description of the proceedings

The annulment of the decision of the Decision of the Commission rejecting the applicant's claim that she was subjected to and experienced psychological harassment during the years she spent at the Regionalised Delegation of the Commission in Kyrgyzstan.

Form of order sought

The applicant claim that the Court should:

— Ask the Commission to produce the report of IDOC, with supporting evidence;

— annul the decision of the Commission of 23 July 2009 and, so far as necessary, the decision rejecting the complaint;

— order the Commission to pay the costs.

Action brought on 4 June 2010 — Cerafogli v ECB

(Case F-43/10)

(2010/C 209/90)

Language of the case: English

Parties

Applicant: Maria-Concetta Cerafogli (Frankfurt am Main, Germany) (represented by: L. Levi and M. Vandenbussche, lawyers)

Defendant: European Central Bank

The subject matter and description of the proceedings

The annulment of the decision of the ECB rejecting the claims of the appellant concerning the discrimination and attempts to her dignity due to the behaviour of her management and a claim for damages.

Form of order sought

— The annulment of the decision of the European Central Bank dated 24 November 2009 rejecting the claims of the Appellant of discrimination and attempts to her dignity because of the behaviour of her management and, if necessary, the annulment of the decision dated 24 March 2010 rejecting the special appeal;

— by consequence, to give the Appellant the benefit of her requests as stated in her administrative review and more particular:

— to stop any form of discrimination and mobbing against Mrs Cerafogli be it in verbal acts and in working assignments and arrangements.

— to receive the written withdrawal by Mr G. of his offensive and threatening statements;

— in any case, the compensation of the moral and material prejudice suffered;

— the order that the ECB pays all the costs;

— the order that the ECB provides the full internal administrative inquiry report with all its annexes, including the minutes of the hearings. Furthermore, the order that the ECB provides also all communication between the inquiry panel and the Executive Board and/or the ECB President;

— the summoning of Mrs L. previous Social Counselor of the Defendant, as a witness.

Action brought on 11 June 2010 — Lebedef v Commission

(Case F-44/10)

(2010/C 209/91)

Language of the case: French

Parties

Applicant: Giorgio Lebedef (Senningerberg, Luxembourg) (represented by: F. Frabetti, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the Commission's decision rejecting the applicant's request for authorisation to stay in a place other than his place of employment during sick leave.

Form of order sought

The applicant claims the Tribunal should:

— annul the decision of 13 August 2009 rejecting the request brought by the applicant for authorisation to stay in a place other than his place of employment during his sick leave from 3 August to 3 September 2009 and, in particular, during the period from 13 to 30 August 2009;

— grant the applicant damages for non-material harm equivalent to 5 days' remuneration, calculated on the basis of one twentieth of his monthly remuneration per day compensated;

— order the European Commission to pay the costs.

Order of the Civil Service Tribunal (Second Chamber) of 15 June 2010 — Petrilli v Commission

(Case F-51/09) ([1])

(2010/C 209/92)

Language of the case: French

The President of the Second Chamber has ordered that the case be removed from the register, following amicable settlement.

([1]) OJ C 205, 29.8.2009, p. 48.

Order of the Civil Service Tribunal (Second Chamber) of 5 May 2010 — Nikolchov v Commission

(Case F-70/09) ([1])

(2010/C 209/93)

Language of the case: French

The President of the Second Chamber has ordered that the case be removed from the register, following amicable settlement.

([1]) OJ C 244, 10.10.2009, p. 16.

Order of the Civil Service Tribunal (Second Chamber) of 5 May 2010 — Nikolchov v Commission

(Case F-94/09) ([1])

(2010/C 209/94)

Language of the case: French

The President of the Second Chamber has ordered that the case be removed from the register, following amicable settlement.

([1]) OJ C 11, 16.1.2010, p. 42.

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