Reference for a preliminary ruling from the Raad van State (Netherlands), lodged on 27 August 2012 — A.M. van der Ham, A.H. van der Ham-Reijersen van Buuren; other party: College van Gedeputeerde Staten van Zuid-Holland

(Case C-396/12)

(2012/C 379/21)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Appellants: A.M. van der Ham, A.H. van der Ham-Reijersen van Buuren

Other party: College van Gedeputeerde Staten van Zuid-Holland

Questions referred

1. How should the term 'intentional non-compliance' in Article 51(1) of Council Regulation (EC) No 1698/2005 ([1]) of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) …, as amended by Council Regulation (EC) No 74/2009 ([2]) of 19 January 2009, in Article 23 of Commission Regulation (EC) No 1975/2006 ([3]) of 7 December 2006 laying down detailed rules for the implementation of Regulation No 1698/2005 …, and in Article 67(1) of Commission Regulation (EC) No 796/2004 ([4]) 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 …, be understood? In order to assume that intentional non-compliance has occurred, is it sufficient that there is non-compliance with long-established, settled policy as described in Article 8(2)(c) of the national Beleidsregels normenkader randvoorwaarden Gemeenschappelijk Landbouwbeleid (Netherlands Policy Rules governing the Cross-Compliance Standards Framework for the Common Agricultural Policy)?

2. Does European Union law preclude a ruling in a Member State that there is 'intentional' non-compliance with a scheme, within the terms of those regulations, on the ground that one or more of the following circumstances obtained:

   (a) intent has already been assumed in the cross-compliance requirement in respect of which there has been non-compliance;

   (b) the cross-compliance requirement concerned is complex;

   (c) long-established, settled policy exists;

   (d) there has been an active performance of an act, or a conscious omission of an act;

   (e) the farmer was previously informed of compliance deficiencies in respect of the cross-compliance requirement concerned; and

   (f) the extent of the non-compliance with the cross-compliance requirement points to intentional non-compliance?

3. Can 'intent' with regard to the 'non-compliance' be attributed to the beneficiary of the subsidy if a third party carries out the work on the instructions of that beneficiary?

([1]) OJ 2005 L 277, p. 1.
([2]) OJ 2009 L 30, p. 100.
([3]) OJ 2006 L 368, p. 74.
([4]) OJ 2004 L 141, p. 18.

Reference for a preliminary ruling from the Audiencia Provincial de Salamanca (Spain) lodged on 11 September 2012 — Asociación de Consumidores Independientes de Castilla y León

(Case C-413/12)

(2012/C 379/22)

Language of the case: Spanish

Referring court

Audiencia Provincial de Salamanca

Parties to the main proceedings

Appellant: Asociación de Consumidores Independientes de Castilla y León

Questions referred

1. Does the protection afforded to the consumer under Council Directive 93/13/EEC ([1]) on unfair terms in consumer contracts allow the Audiencia Provincial, as a national court of appeal, to hear and determine, in spite of the absence of any relevant domestic legal rule, the appeal brought against the decision of the court of first instance assigning to a court of the place where the defendant has its address territorial jurisdiction to hear and determine the action for an injunction brought by a consumer association of restricted territorial scope, which is not associated or federated with other associations and which has a small budget and a small number of members?

2. Must Articles 4, 12, 114 and 169 of the Treaty and Article 38 of the Charter of Fundamental Rights of the European Union, read in conjunction with Directive 93/13 and the case-law of the Court of Justice relating to the high level of protection of the interests of consumers, as well as to the practical effect of directives and the principles of equivalence and effectiveness, be interpreted as meaning that the court of the place where that association has its address, and not the court of the place where the defendant has its address, is to have territorial jurisdiction to hear and determine an action for an injunction against the use of unfair terms, to protect the collective or general interests of consumers and users, brought by a consumer association with restricted territorial scope, which is not associated or federated with other associations and which has a small budget and a small number of members?

(1) 5 April 1993 OJ L 95, p. 29.

Reference for a preliminary ruling from the Bundesgerichtshof (Germany), lodged on 14 September 2012 — Wikom Elektrik GmbH v VG Media Gesellschaft zur Verwertung der Urheber- und Leistungsschutzrechte mbH

(Case C-416/12)

(2012/C 379/23)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Claimant: Wikom Elektrik GmbH

Defendant: VG Media Gesellschaft zur Verwertung der Urheber- und Leistungsschutzrechte mbH

Question referred

Does the concept of communication to the public within the meaning of Article 3(1) of Directive 2001/29/EC (1) include the rebroadcasting, by wire, of a broadcast work in the case where the original broadcast can also be received by wireless means in the catchment area, the work is rebroadcast to the owners of reception equipment who receive the broadcast personally or within their own private or family circles, and the rebroadcasting is carried out for profit-making purposes by a broadcasting organisation other than the original one?

(1) 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 2001 L 167, p. 10).

Appeal brought on 17 September 2012 by Industrias Alen SA de CV against the judgment of the General Court (Fourth Chamber) delivered on 10 July 2012 in Case T-135/11 Clorox v OHIM — Industrias Alen (Cloralex)

(Case C-422/12 P)

(2012/C 379/24)

Language of the case: Spanish

Parties

Appellant: Industrias Alen SA de CV (represented by: A. Padial Martinez, abogada)

Other parties to the proceedings: The Clorox Company and the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court (Fourth Chamber) of 10 July 2012 in Case T-135/11;

— uphold the decision adopted on 16 December 2010 by the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) and, consequently, reject the opposition lodged by THE CLOROX COMPANY;

— order THE CLOROX COMPANY, the opponent, to pay the costs.

Pleas in law and main arguments

Infringement of Article 8(1)(b) of Council Regulation (EC) No 40/94 of 20 December 1993 (1) on the Community trade mark ('the CTMR').

— Error of the General Court in the comparison of the signs CLOROX and CLORALEX.

— Error of the General Court in the assessment of the likelihood of confusion.

— Current coexistence in OHIM's register of the term CLOR in Classes 3 and 5.

— Agreements for co-existence of the marks concluded by the parties in relation to the marks CLOROX/CLORALEX in other countries.

(1) OJ 1994 L 11, p. 1.