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(Information)

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Judgment of the Court (Grand Chamber) of 21 February 2006 (reference for a preliminary ruling from the VAT and Duties Tribunal, London) — Halifax plc, Leeds Permanent Development Services Ltd, County Wide Property Investments Ltd v Commissioners of Customs & Excise

(Case C-255/02) [1]

(Sixth VAT Directive — Article 2(1), Article 4(1) and (2), Article 5(1) and Article 6(1) — Economic activity — Supplies of goods — Supplies of services — Abusive practice — Transactions designed solely to obtain a tax advantage)

(2006/C 131/01)

Language of the case: English

Referring court

VAT and Duties Tribunal, London

Parties to the main proceedings

Applicants: Halifax plc, Leeds Permanent Development Services Ltd, County Wide Property Investments Ltd

Defendant: Commissioners of Customs & Excise

Re:

Reference for a preliminary ruling — VAT and Duties Tribunal, London — Interpretation of Directive 77/388/EEC: Sixth Council Directive 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) — Transactions carried out with the sole intention of obtaining a tax advantage — Transactions without an independent economic purpose

Operative part of the judgment

1. *Transactions of the kind at issue in the main proceedings constitute supplies of goods or services and an economic activity within the meaning of Article 2(1), Article 4(1) and (2), Article 5(1) and Article 6(1) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, as amended by Council Directive 95/7/EC of 10 April 1995, provided that they satisfy the objective criteria on which those concepts are based, even if they are carried out with the sole aim of obtaining a tax advantage, without any other economic objective.*

2. *The Sixth Directive must be interpreted as precluding any right of a taxable person to deduct input VAT where the transactions from which that right derives constitute an abusive practice.*

   For it to be found that an abusive practice exists, it is necessary, first, that the transactions concerned, notwithstanding formal application of the conditions laid down by the relevant provisions of the Sixth Directive and of national legislation transposing it, result in the accrual of a tax advantage the grant of which would be contrary to the purpose of those provisions. Second, it must also be apparent from a number of objective factors that the essential aim of the transactions concerned is to obtain a tax advantage.

3. *Where an abusive practice has been found to exist, the transactions involved must be redefined so as to re-establish the situation that would have prevailed in the absence of the transactions constituting that abusive practice.*

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[1] OJ C 233, 28.09.2002.

Judgment of the Court (Grand Chamber) of 21 February 2006 (reference for a preliminary ruling from the High Court of Justice of England and Wales, Chancery Division) — BUPA Hospitals Ltd, Goldsborough Developments Ltd v Commissioners of Customs & Excise

(Case C-419/02) ([1])

(Sixth VAT Directive — Article 10(2) — Chargeability of VAT — Payment of amounts on account — Prepayments for future supplies of pharmaceutical products and prostheses)

(2006/C 131/02)

Language of the case: English

Referring court

High Court of Justice of England and Wales, Chancery Division

Parties to the main proceedings

Applicant: BUPA Hospitals Ltd, Goldsborough Developments Ltd

Defendant: Commissioners of Customs & Excise

Re:

Reference for a preliminary ruling — High Court of Justice, Chancery Division — 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) — Concepts of 'supply of goods' and 'economic activities' — Contracts between companies for the supply of pharmaceutical products and prostheses having the sole aim of obtaining a tax advantage.

Operative part of the judgment

Prepayments of the kind at issue in the main proceedings whereby lump sums are paid for goods referred to in general terms in a list which may be altered at any time by agreement between the buyer and the seller and from which the buyer may possibly select articles, on the basis of an agreement which he may unilaterally resile from at any time, thereupon recovering the unused balance of the prepayments, do not fall within the scope of the second subparagraph of Article 10(2) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, as amended by Council Directive 95/7/EC of 10 April 1995.

([1]) OJ C 31, 08.02.2003

Judgment of the Court (Grand Chamber) of 21 February 2006 (reference for a preliminary ruling by the Bundesfinanzhof — Hans-Jürgen Ritter-Coulais, Monique Ritter-Coulais v Finanzamt Germersheim

(Case C-152/03) ([1])

(Tax legislation — Income tax — Article 48 EEC (subsequently Article 48 EC, now, after amendment, Article 39 EC) — National rules restricting recognition of rental income losses from immovable property situated in another Member State)

(2006/C 131/03)

Language of the case: German

Referring court

Bundesfinanzhof (Germany)

Parties to the main proceedings

Applicants: Hans-Jürgen Ritter-Coulais, Monique Ritter-Coulais

Defendant: Finanzamt Germersheim

Re:

REFERENCE for a preliminary ruling — Bundesfinanzhof — Interpretation of Articles 43 and 56 EC — National legislation on personal income tax limiting the right to deduct rental income losses from immovable property and applying the negative tax progression clause only to those losses relating to property situated in the national territory

Operative part of the judgment

Article 48 of the EEC Treaty (subsequently Article 48 of the EC Treaty and now, after amendment, Article 39 EC) must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which does not permit natural persons in receipt of income from employment in one Member State, and assessable to tax on their total income there, to have income losses relating to their own use of a private dwelling in another Member State taken into account for the purposes of determining the rate of taxation applicable to their income in the former state, whereas positive rental income relating to such a dwelling is taken into account.

([1]) OJ C 158, 05.07.2003

Judgment of the Court (Grand Chamber) of 21 February 2006 (reference for a preliminary ruling of VAT and Duties Tribunal, Manchester (United Kingdom)) — University of Huddersfield Higher Education Corporation v Commissioners of Customs & Excise

(Case C-223/03) ([1])

(Sixth VAT Directive — Article 2(1), Article 4(1) and (2), Article 5(1) and Article 6(1) — Economic activity — Supplies of goods — Supplies of services — Transaction designed solely to obtain a tax advantage)

(2006/C 131/04)

Language of the case: English

Referring court

VAT and Duties Tribunal, Manchester (United Kingdom)

Parties to the main proceedings

Applicant: University of Huddersfield Higher Education Corporation

Defendant: Commissioners of Customs & Excise

Re:

Reference for a preliminary ruling — VAT and Duties Tribunal, Manchester — Interpretation of Directive 77/388/EEC: Sixth Council Directive 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) — Concept of supplies of goods and services subject to value added tax — Concept of economic activities — Contracts for lease and lease back having the sole aim of obtaining a tax advantage

Operative part of the judgment

Transactions of the kind at issue in the main proceedings constitute supplies of goods or services and an economic activity within the meaning of Article 2(1), Article 4(1) and (2), Article 5(1) and Article 6(1) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, as amended by Council Directive 95/7/EC of 10 April 1995, provided that they satisfy the objective criteria on which those concepts are based, even if they are carried out with the sole aim of obtaining a tax advantage, without any other economic objective.

([1]) OJ C 213, 06.09.2003

Judgment of the Court (First Chamber) of 23 February 2006 — Commission of the European Communities v Republic of Finland

(Case C-232/03) ([1])

(Failure of a Member State to fulfil its obligations — Workers — Freedom of movement — Use of vehicles registered abroad and made available to the worker by the employer residing abroad)

(2006/C 131/05)

Language of the Case: Finnish

Parties

Applicant: Commission of the European Communities (represented by: D. Martin and I. Koskinen, acting as Agents)

Defendant: Republic of Finland (represented by: A. Guimaraes-Purokoski and T. Pynnä, acting as Agents)

Intervener: United Kingdom of Great Britain and Northern Ireland (represented by: K. Manji, acting as Agent and P. Whipple, barrister)

Re:

Failure of a Member State to fulfil its obligations — Arts. 10 and 39 EC — Conditions for the use for vehicles registered abroad and made available by their employer to workers residing in Finland and employed abroad

Operative part of the judgment

The Court:

1. *Declares that, by preventing cross-frontier workers residing in Finland and employed in another Member State from benefiting from the use of company vehicles which are made available by their employers established in another Member State and registered in the latter State on the sole ground that the cross-frontier workers concerned reside on Finnish territory, into which the vehicles belonging to their employers have been imported,*

   and

   by preventing the cross-frontier workers concerned from benefiting, for professional and private purposes, from the use of company vehicles which are made available by their employers established in another Member State and registered in the latter State, while those vehicles are neither intended to be used mainly in Finland on a permanent basis nor, in fact, used in that way, on the sole ground that those workers reside on Finnish territory, into which the vehicles belonging to their employers have been imported,

   the Republic of Finland has failed to fulfil its obligations under Article 39 EC;

2. *Dismisses the remainder of the application;*

3. *Orders each party to bear its own costs;*

4. *Orders the United Kingdom of Great Britain and Northern Ireland to bear its own costs.*

(1) OJ C 184 of 02.08.2003.

Judgment of the Court (Third Chamber) of 23 February 2006 (reference for a preliminary ruling from the Bundesfinanzhof) — CLT-UFA SA v Finanzamt Köln-West

(Case C-253/03) (1)

(Freedom of establishment — Tax legislation — Tax on company profits)

(2006/C 131/06)

Language of the case: German

Referring court

Bundesfinanzhof (Germany)

Parties to the main proceedings

Applicant: CLT-UFA SA

Defendant: Finanzamt Köln-West

Re:

Reference for a preliminary ruling — Bundesfinanzhof — Interpretation of Article 52 of the EC Treaty (now, after amendment, Article 43 EC) and Article 58 of the EC Treaty (now Article 48 EC) — National legislation on tax on company profits — Taxation of places of business — Rate of taxation of profits made by branches of foreign capital companies higher than the rate of taxation of profits made by subsidiaries and distributed to foreign parent companies

Operative part of the judgment

1. *Article 52 of the EC Treaty (now, after amendment, Article 43 EC) and Article 58 of the EC Treaty (now Article 48 EC) preclude a national law such as the one in dispute in the main proceedings which, in the case of a branch of a company having its seat in another Member State, lays down a tax rate on the profits of that branch which is higher than that on the profits of a subsidiary of such a company where that subsidiary distributes its profits in full to its parent company.*

2. *It is for the national court to determine the tax rate which must be applied to the profits made by a branch, such as the one in dispute in the main proceedings, by reference to the overall tax rate which would have been applicable if the profits of a subsidiary had been distributed to its parent company.*

(1) OJ C 200, 23.08.2003.

Judgment of the Court (Grand Chamber) of 21 February 2006 (reference for a preliminary ruling from the Oberster Gerichtshof (Austria)) — Silvia Hosse v Land Salzburg

(Case C-286/03) (1)

(Social security for migrant workers — Regulation (EEC) No 1408/71 — Article 4(2b) — Special non-contributory benefits — Austrian benefit intended to cover the risk of reliance on care — Classification of the benefit and lawfulness of the residence condition from the point of view of Regulation No 1408/71 — Dependant of the insured person)

(2006/C 131/07)

Language of the case: German

Referring court

Oberster Gerichtshof (Austria)

Parties to the main proceedings

Applicant: Silvia Hosse

Defendant: Land Salzburg

Re:

Reference for a preliminary ruling — Oberster Gerichtshof — Interpretation of Articles 4(2b) and 19 of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996 (OJ 1997 L 28, p. 1), and of Council Regulation (EEC) No 574/72 of 21 March 1972 laying down the procedure for implementing Regulation No 1408/71, as amended and updated by Regulation No 118/97 — Legislation of a province (Salzburg) under which the right to benefits covering the risk of dependency of a handicapped child who is a member of the family of a worker is subject to a residence condition — Concept of special non-contributory benefit — Interpretation of Article 7 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition 1968(II), p. 75) — Social advantage

Operative part of the judgment

1. *A care allowance such as that provided for by the Salzburger Pflegegeldgesetz does not constitute a special non-contributory benefit within the meaning of Article 4(2b) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community but a sickness benefit within the meaning of Article 4(1)(a) of that regulation.*

2. *A member of the family of a worker employed in the Province of Salzburg who lives with his family in Germany may, where he fulfils the other conditions of grant, claim from the competent institution of the worker's place of employment payment of a care allowance such as that paid under the Salzburger Pflegegeldgesetz, as a sickness benefit in cash as provided for in Article 19 of Regulation No 1408/71, in so far as the member of the family is not entitled to a similar benefit under the legislation of the State in whose territory he resides.*

([1]) OJ C 226, 20.09.2003

Judgment of the Court (Second Chamber) of 9 March 2006 — Commission of the European Communities v Kingdom of Spain

(Case C-323/03) ([1])

(Failure of a Member State to fulfil obligations — Regulation (EEC) No 3577/92 — Maritime cabotage — Whether applicable to passenger transport services in the Vigo estuary — Twenty-year concession to a single operator — Compatibility — Possibility of concluding public service contracts or imposing public service obligations — Standstill clause)

(2006/C 131/08)

Language of the Case: Spanish

Parties

Applicant: Commission of the European Communities (represented by: I. Martínez del Peral and K. Simonsson, Agents)

Defendant: Kingdom of Spain (represented by: L. Fraguas Gadea and J.M. Rodríguez Cárcamo, Agents)

Re:

Failure of a Member State to fulfil obligations — Infringement of Arts 1, 4, 7 and 9 of Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage) (OJ 1992 L 364, p. 7) and the EC Treaty — National rules which allow maritime transport services in the Vigo estuary to be entrusted to a single operator for 20 years and which permit a more restrictive regime which is subject to public-service obligations.

Operative part of the judgment

The Court:

1. *Declares that: by maintaining in force legislation which:*

   — *allows a concession for maritime transport services in the Vigo estuary to be granted to a single operator for a period of 20 years and which includes as a criterion for the award of that concession experience in transport acquired in that estuary,*

   — *allows the imposition of public service obligations on seasonal transport services with the islands and regular transport services between mainland ports,*

   — *was not the subject of any consultation with the Commission of the European Communities prior to being approved,*

   the Kingdom of Spain has infringed Articles 1, 4 and 9 of Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage) and has failed to fulfil its obligations under that regulation;

2. *Dismisses the remainder of the application;*

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

([1]) OJ C 239, 04.10.2003.

Judgment of the Court (Third Chamber) of 23 February 2006 (reference for a preliminary ruling from the Tribunale di Cagliari, Tribunale ordinario di Cagliari) — Giuseppe Atzeni, Francesco Atzori, Giuseppe Ignazio Boi v Regione autonoma della Sardegna

(Joined Cases C-346/03 and C-529/03) ([1])

(State aid — Decision 97/612/EC — Preferential loans in favour of agricultural undertakings — Article 92(2)(b) and (3)(a) and (c) of the EC Treaty (now, after amendment, Article 87(2)(b) and (3)(a) and (c) EC) — Admissibility — Legal basis — Legitimate expectations)

(2006/C 131/09)

Language of the case: Italian

Referring court

Tribunale di Cagliari, Tribunale ordinario di Cagliari

Parties to the main proceedings

Applicants: Giuseppe Atzeni, Francesco Atzori, Giuseppe Ignazio Boi

Defendants: Regione autonoma della Sardegna

Re:

Reference for a preliminary ruling — Tribunale di Cagliari, Tribunale ordinario di Cagliari — Validity of Commission Decision 97/612/EC of 16 April 1997 on aid granted by the Region of Sardinia, Italy, in the agricultural sector (OJ L 248, p. 27).

Operative part of the judgment

Examination of Commission Decision 97/612/EC of 16 April 1997 on aid granted by the Region of Sardinia, Italy, in the agricultural sector has revealed no ground capable of affecting the validity of that decision.

([1]) OJ C 264, 01.11.2003.
OJ C 71, 20.03.2004

Judgment of the Court (Third Chamber) of 9 March 2006 (reference for a preliminary ruling from the Oberlandesgericht Köln) — Siegfried Aulinger v Bundesrepublik Deutschland

(Case C-371/03) ([1])

(Foreign and security policy — Common commercial policy — Embargo on the Republics of Serbia and Montenegro — Regulation (EEC) No 1432/92 — Carriage of persons)

(2006/C 131/10)

Language of the case: German

Referring court

Oberlandesgericht Köln

Parties to the main proceedings

Applicant: Siegfried Aulinger

Defendant: Bundesrepublik Deutschland

Re:

Reference for a preliminary ruling — Oberlandesgericht Köln —

Operative part of the judgment

Article 1(d) of Council Regulation (EEC) No 1432/92 of 1 June 1992 prohibiting trade between the European Economic Community and the Republics of Serbia and Montenegro must be interpreted as meaning that the commercial carriage of persons to or from Serbia and Montenegro in the form of split transport was prohibited.

'Split transport' is to be understood as meaning the carriage of persons to or from the territory covered by the embargo, organised by means of a joint operation between an undertaking established in a Member State of the Community and an undertaking established in the territory covered by the embargo whereby the former provides carriage to or from the area bordering the territory covered by the embargo and the latter provides carriage from that point into the territory covered by the embargo or from inside that territory to that point (with passengers changing vehicles).

([1]) OJ C 289 of 29.11.2003.

Judgment of the Court (Third Chamber) of 23 February 2006 (reference for a preliminary ruling from the Gerechtshof te 's-Hertogenbosch) — Heirs of M.E.A. van Hilten-van der Heijden v Inspecteur van de Belastingdienst/Particulieren/Ondernemingen buitenland te Heerlen

(Case C-513/03) ([1])

(Capital movements — Article 73b(1) of the EC Treaty (now Article 56(1) EC) — Inheritance tax — Legal fiction that a national of a Member State who dies within 10 years of ceasing to reside in that Member State is deemed to have been resident there at the time of his death — Non-member State)

(2006/C 131/11)

Language of the case: Dutch

Referring court

Gerechtshof te 's-Hertogenbosch

Parties to the main proceedings

Applicant: Heirs of M.E.A. van Hilten-van der Heijden

Defendant: Inspecteur van de Belastingdienst/Particulieren/Ondernemingen buitenland te Heerlen

Re:

Reference for a preliminary ruling — Gerechtshof te 's-Hertogenbosch — Interpretation of Articles 57(1) EC and 58(3) EC and of Declaration (No 7) on Article 58 (formerly Article 73d) of the Treaty establishing the European Community annexed to the Final Act of the Maastricht Treaty — Tax provision of a Member State concerning inheritance duty under which a national of that State who had resided in that State and died within ten years of leaving the national territory is deemed to have been resident in that State for purposes of the application of that duty — National residing in a non-member country at the time of death

Operative part of the judgment

Article 73b of the EC Treaty (now Article 56 EC) is to be interpreted as meaning that it does not preclude legislation of a Member State, such as that in question in the main proceedings, by which the estate of a national of that Member State who dies within 10 years of ceasing to reside in that Member State is to be taxed as if that national had continued to reside in that State, while enjoying relief in respect of inheritance taxes levied by other States.

([1]) OJ C 85, 03.04.2004.

Judgment of the Court (Third Chamber) of 23 March 2006 (reference for a preliminary ruling from the High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court)) — The Queen on the application of Unitymark Ltd and North Sea Fishermen's Organisation v Department for Environment, Food and Rural Affairs

(Case C-535/03) ([1])

(Fisheries — Cod — Limitation of fishing effort — Open gear beam trawls — Principles of proportionality and non-discrimination)

(2006/C 131/12)

Language of the case: English

Referring court

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

Parties to the main proceedings

Claimants: Unitymark Ltd and North Sea Fishermen's Organisation

Defendant: Department for Environment, Food and Rural Affairs

Re:

Reference for a preliminary ruling — High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court) — Validity of paragraphs 4(b) and 6(a) of Annex XVII to Council Regulation (EC) No 2341/2002 of 20 December 2002 fixing for 2003 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where catch limitations are required (OJ 2003 L 356, p. 12); Validity of Article 1 of Commission Decision 2003/185/EC of 14 March 2003 on the allocation of additional days absent from port to Member States in accordance with Annex XVII to Council Regulation (EC) No 2341/2002 — Compatibility with Articles 28, 29, 33 and 34 EC — Principles of proportionality and non-discrimination — Fundamental freedom to pursue a trade or business

Operative part of the judgment

Examination of the question asked has disclosed no factor of such a kind at to affect the validity of:

— *paragraphs 4(b) and 6(a) of Annex XVII to Council Regulation (EC) No 2341/2002 of 20 December 2002 fixing for 2003 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where catch limitations are required;*

— *paragraphs 4(b) and 6(a) of that annex as amended by Council Regulation (EC) No 671/2003 of 10 April 2003;*

— *Article 1 of Commission Decision 2003/185/EC of 14 March 2003 on the allocation of additional days absent from port to Member States in accordance with Annex XVII to Regulation No 2341/2002.*

([1]) OJ C 47, 21.02.2004.

Judgment of the Court (Second Chamber) of 23 February 2006 — Commission of the European Communities v Kingdom of Spain

(Case C-546/03) ([1])

(Failure of a Member State to fulfil its obligations — Community' own resources — Community Customs Code — Procedures for collecting import or export duties — Late payment of own resources relating to those duties and failure to pay default interest)

(2006/C 131/13)

Language of the case: Spanish

Parties

Applicant: Commission of the European Communities (represented by: M. Diaz-Llano La Roche and G. Wilms, acting as Agents)

Defendant: Kingdom of Spain (represented by: M. Muñoz Perez, acting as Agent)

Interveners in support of the defendant: Republic of Denmark (represented by: J. Molde, acting as Agent), Republic of Finland (represented by: A. Guimaraes-Purokoski, acting as Agent), Kingdom of Sweden (represented by: K. Wistrand, acting as Agent)

Re:

Failure of a Member State to fulfil its obligations — Article 220 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1) and Article 5 of Council Regulation (EEC) No 1854/89 of 14 June 1989 on the entry in the accounts and terms of payment of the amounts of the import duties or export duties resulting from a customs debt (OJ L 1989, p. 1) — Late payment of part of the European Communities' own resources in the case of recovery *a posteriori* of customs duty — Refusal to pay default interest due as a consequence of the delay in making the entry in the Commission's account

Operative part of the judgment

The Court:

1. *Declares that*

   (a) *by failing to comply with the time-limits for late entry in the accounts of duties arising from a customs debt laid down in Article 5 of Council Regulation (EEC) No 1854/89 of 14 June 1989 on the entry in the accounts and terms of payment of the amounts of the import duties or export duties resulting from a customs debt, and, from 1 January 1994, with Article 220(1) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, leading to a delay in making available of own resources, and*

   (b) *by failing to pay to the Commission of the European Communities the interest under Article 11 of Council Regulation (EEC, Euratom) No 1552/89 of 29 May 1989 implementing Decision 88/376/EEC, Euratom on the system of the Communities' own resources, and, from 31 May 2000 of Article 11 of Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources,*

   the Kingdom of Spain has failed to fulfil its obligations under all of those provisions;

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

3. *Orders the Kingdom of Denmark, the Republic of Finland and the Kingdom of Sweden to bear their own costs.*

([1]) OJ C 59 of 06.03.2004.

Judgment of the Court (First Chamber) of 16 March 2006 (reference for a preliminary ruling from the Rechtbank Utrecht) — Poseidon Chartering BV v Marianne Zeeschip VOF, Albert Mooij, Sjoerdtje Sijswerda, Gerrit Schram

(Case C-3/04) ([1])

(Directive 86/653/EEC — Self-employed commercial agents — Meaning of commercial agent — Conclusion and extensions of a single contract over several years)

(2006/C 131/14)

Language of the case: Dutch

Referring court

Rechtbank Utrecht

Parties to the main proceedings

Applicant(s): Poseidon Chartering BV

Defendant(s): Marianne Zeeschip VOF, Albert Mooij, Sjoerdtje Sijswerda, Gerrit Schram

Re:

Reference for a preliminary ruling — Rechtbank Utrecht — Interpretation of Article 1(2) of Council Directive 86/653/EEC of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents (OJ 1986 L 382, p. 17) — Meaning of commercial agent — Self-employed intermediary, who has negotiated a charter for a ship-owner, and its extension from year to year, in return for a commission

Operative part of the judgment

Article 1(2) of Council Directive 86/653/EEC of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents is to be interpreted as meaning that, where a self-employed intermediary had authority to conclude a single contract, subsequently extended over several years, the condition laid down by that provision that the authority be continuing requires that the principal should have conferred continuing authority on that intermediary to negotiate successive extensions to that contract.

([1]) OJ C 59 of 6.3.2004.

Judgment of the Court (First Chamber) of 9 March 2006 — Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland

(Case C-65/04) ([1])

(Failure by a Member State to fulfil its obligations — EAEC Treaty — Scope — Directive 89/618/Euratom — Health and safety — Ionising radiations — Use of nuclear energy for military purposes — Repairs to a nuclear-powered submarine)

(2006/C 131/15)

Language of the case: English

Parties

Applicant: Commission of the European Communities (represented by: L. Ström van Lier and J. Grunwald, Agents)

Defendant: United Kingdom of Great Britain and Northern Ireland (represented by: C. Jackson and C. Gibbs, Agents, and D. Wyatt QC and S. Tromans, Barrister)

Intervener: French Republic (represented by R. Abraham, G. de Bergues, E. Puisais and C. Jurgensen, agents)

Re:

Failure of a Member State to fulfil its obligations — Infringement of Article 5(3) of Council Directive 89/618/Euratom of 27 November 1989 on informing the general public about health protection measures to be applied and steps to be taken in the event of a radiological emergency (OJ 1989 L 357, p. 31)

Operative part of the judgment

1. *The application is dismissed;*

2. *The Commission of the European Communities is ordered to pay the costs;*

3. *The French Republic is ordered to bear its own costs.*

([1]) OJ C 94, 17.04.2004.

Judgment of the Court (First Chamber) of 23 February 2006 — Commission of the European Communities v European Parliament, Council of the European Union

(Case C-122/04) ([1])

(Powers of the Commission — Procedures for the exercise of implementing powers — Implementation of the Forest Focus programme)

(2006/C 131/16)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by C.-F. Durand and M. van Beek, acting as Agents)

Defendants: European Parliament (represented by K. Bradley and M. Gómez-Leal), Council of the European Union (represented by I. Díez Parra and M. Balta, acting as Agents)

Interveners: Kingdom of Spain (represented by M. Muñoz Pérez, Agent), Republic of Finland (represented by T. Pynnä, Agent)

Re:

Annulment of Article 17(2) of Regulation (EC) No 2152/2003 of the European Parliament and of the Council of 17 November 2003 concerning monitoring of forests and environmental interactions in the Community (Forest Focus) (OJ 2003 L 324, p. 1), in so far as it makes the adoption of the implementing measures for the Forest Focus Programme subject to the regulatory procedure set out in Article 5 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (OJ 1999 L 184, p. 23) — Limit on the Council's choice between the implementing procedures laid down by Decision 1999/468/EC

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

3. *Orders the Kingdom of Spain and the Republic of Finland to bear their own costs.*

([1]) OJ C 94, 17.04.2004.

Judgment of the Court (Second Chamber) of 16 February 2006 (reference for a preliminary ruling from the Regeringsrätten) — Amy Rockler v Försäkringskassan, formerly Riksförsäkringsverket

(Case C-137/04) ([1])

(Freedom of movement for workers — Officials and servants of the European Communities — Parental benefits — Taking into account of the period of affiliation to the Joint Sickness Insurance Scheme of the European Communities)

(2006/C 131/17)

Language of the case: Swedish

Referring court

Regeringsrätten

Parties to the main proceedings

Applicant: Amy Rockler

Defendant: Försäkringskassan, formerly Riksförsäkringsverket

Re:

Reference for a preliminary ruling — Regeringsrätten — Interpretation of Article 39 EC — Right to parental benefit ('föräldrapenning') — No account taken of period of cover by the Joint Sickness Insurance Scheme provided for by the Staff Regulations of Officials of the European Communities

Operative part of the judgment

Article 48 of the EC Treaty (now, after amendment, Article 39 EC) is to be interpreted as meaning that, where national legislation such as that at issue in the main proceedings applies, the period during which a worker was affiliated to the Joint Sickness Insurance Scheme of the European Communities must be taken into account.

([1]) OJ C 106, 30.04.2004.

Judgment of the Court (Grand Chamber) of 14 March 2006 — Commission of the European Communities v French Republic

(Case C-177/04) ([1])

(Failure of a Member State to fulfil obligations — Directive 85/374/EEC — Product liability — Judgment of the Court finding a failure to fulfil obligations — Failure to take measures to comply — Article 228 EC — Financial penalties — Partial compliance with the judgment during the proceedings)

(2006/C 131/18)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by G. Valero Jordana and B. Stromsky, Agents)

Defendant: French Republic (represented by G. de Bergues and R. Loosli, Agents)

Re:

Failure of a Member State to fulfil obligations — Failure to give effect to the judgment delivered by the Court on 25 April 2002 in Case C-52/00 concerning the incorrect transposition of Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products (OJ 1985 L 210, p. 29) — Failure to amend the provisions of the French Civil Code — Application for imposition of a penalty payment

Operative part of the judgment

The Court:

1. *Declares that, by continuing to regard the supplier of a defective product as liable on the same basis as the producer where the producer cannot be identified, even though the supplier has informed the injured person within a reasonable time of the identity of the person who supplied him with the product, the French Republic has failed to take the necessary measures to comply fully with the judgment in Case C-52/00 Commission v France as regards the transposition of Article 3(3) of Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products, and has thereby failed to fulfil its obligations under Article 228 EC;*

2. *Orders the French Republic to pay to the Commission of the European Communities, into the 'European Community own resources' account, a penalty payment of EUR 31 650 for each day of delay in taking the necessary measures to comply fully with the judgment in Case C-52/00 Commission v France from delivery of the present judgment until full compliance with the judgment in that case;*

3. *Orders the French Republic to pay the costs.*

([1]) OJ C 118, 30.04.2004.

Judgment of the Court (Second Chamber) of 16 February 2006 (reference for a preliminary ruling from the Länsrätten i Stockholms län) — Ulf Öberg v Försäkringskassan, länskontoret Stockholm, formerly Stockholms läns allmänna försäkringskassa

(Case C-185/04) ([1])

(Freedom of movement for workers — Officials and servants of the European Communities — Parental benefits — Taking into account of the period of affiliation to the Joint Sickness Insurance Scheme of the European Communities)

(2006/C 131/19)

Language of the case: Swedish

Referring court

Länsrätten i Stockholms län

Parties to the main proceedings

Applicant: Ulf Öberg

Defendant: Försäkringskassan, länskontoret Stockholm, formerly Stockholms läns allmänna försäkringskassa

Re:

Reference for a preliminary ruling — Länsrätten i Stockholms län — Interpretation of Articles 12, 17(2), 18 and 39 EC, Article 7(1) and 7(2) of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (English Special Edition: 1968(II), p. 475) and Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC (OJ 1996 L 145, p. 4) — Entitlement to parental benefit (föräldrapenning) — Account not taken of a period during which the worker was covered by the Joint Sickness insurance scheme pursuant to the Staff Regulations of Officials of the European Communities.

Operative part of the judgment

Article 39 EC is to be interpreted as meaning that, where national legislation such as that at issue in the main proceedings applies, the period during which a worker was affiliated to the Joint Sickness Insurance Scheme of the European Communities must be taken into account.

([1]) OJ C 179, 10.07.2004.

Judgment of the Court (Second Chamber) of 23 February 2006 (reference for a preliminary ruling from the Hof van Beroep te Antwerpen) — Belgische Staat v Molenbergnatie NV

(Case C-201/04) ([1])

(Community Customs Code — Post-clearance recovery of import or export duties — Duty to notify the debtor of the amount of duty owed as soon as it has been entered in the accounts and before the expiry of a period of three years from the date when the debt was incurred — Definition of 'appropriate procedures')

(2006/C 131/20)

Language of the case: Dutch

Referring court

Hof van Beroep te Antwerpen

Parties to the main proceedings

Applicant: Belgische Staat

Defendant: Molenbergnatie NV

Re:

Reference for a preliminary ruling — Hof van Beroep te Antwerpen — Interpretation of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1) — Temporal application — Recovery of a customs debt incurred before the regulation became applicable — Interpretation of Article 221 of the Community Customs Code — Duty to notify the debtor of the amount of duty owed as soon as it has been entered in the accounts and to effect such notification no later than three years from the date when the customs debt was incurred.

Operative part of the judgment

1. *Only the procedural rules set out in Articles 217 to 232 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code apply to the recovery, commenced after 1 January 1994, of a customs debt incurred prior to that date.*

2. *Article 221(1) of Regulation No 2913/92 requires the amount of import or export duty to be entered in the accounts before it is communicated to the debtor.*

3. *On expiry of the period prescribed by Article 221(3) of Regulation No 2913/92, an action for recovery of a customs debt is time-barred subject to the exception laid down in that article, which amounts to the debt itself being time-barred and, consequently, extinguished. In the light of the rule thus established, Article 221(3) must be considered, unlike Article 221(1) and (2), to be a substantive provision and cannot, therefore, be applied to recovery of a customs debt incurred prior to 1 January 1994. Where the customs debt was incurred prior to 1 January 1994, that debt can be governed only by the rules on limitation in force at that date, even if the procedure for recovery of the debt was commenced after 1 January 1994.*

4. *Member States are not required to adopt specific procedural rules on the manner in which communication of the amount of import or export duties is to be made to the debtor where national procedural rules of general application can be applied to that communication, which ensure that the debtor receives adequate information and which enable him, with full knowledge of the facts, to defend his rights.*

([1]) OJ C 179, 10.07.2004.

Judgment of the Court (Second Chamber) of 23 February 2006 — Commission of the European Communities v Kingdom of Spain

(Case C-205/04) ([1])

(Failure of a Member State to fulfil its obligations — Freedom of movement for workers — Failure to take account of seniority and professional experience acquired in the public service of other Member States — Article 39 EC — Article 7 of Regulation (EEC) No 1612/68)

(2006/C 131/21)

Language of the case: Spanish

Parties

Applicant: Commission of the European Communities (represented by: G. Rozet, acting as Agent)

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

Re:

Failure of a Member State to fulfil its obligations — Article 39 EC and Article 7 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (English Special Edition 1968 (II), p. 475) — Access to the Spanish civil service — Obligation to recognise from an economic point of view the services undertaken by Community citizens in the public service of another Member State

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt a law which expressly provides, in respect of the Spanish civil service, for account to be taken, for financial purposes, of previous periods of employment in the public service of another Member State, the Kingdom of Spain has failed to fulfil its obligations under Article 39 of the EC Treaty and Article 7 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community;*

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

([1]) OJ C 168 of 26.06.2004.

Judgment of the Court (First Chamber) of 23 March 2006 — Mülhens GmbH & Co. KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs), Zirh International Corp.

(Case C-206/04 P) ([1])

(Appeal — Community trade mark — Article 8(1)(b) of Regulation (EC) No 40/94 — Likelihood of confusion — Word mark ZIRH — Opposition by the proprietor of the Community trade mark SIR)

(2006/C 131/22)

Language of the case: English

Parties

Appellant: Mülhens GmbH & Co. KG (represented by: T. Schulte-Beckhausen and C. Musiol, lawyers)

Other party to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: S. Laitinen and A. von Mühlendahl, Agents)

Intervener: Zirh International Corp., (represented by L. Kouker)

Re:

Appeal against the judgment of the Court of First Instance (Fourth Chamber) of 3 March 2004 in Case T-355/02 Mülhens v OHIM, by which it dismissed an action for annulment of the rejection of the opposition by the proprietor of an earlier mark to the registration of a trade mark — Similarity of the marks — Art. 8(1)(b) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Mülhens GmbH & Co. KG to pay the costs.*

([1]) OJ C 179, 10.07.2004.

Judgment of the Court (Second Chamber) of 23 March 2006 — Commission of the European Communities v Republic of Austria

(Case C-209/04) ([1])

(Failure of a Member State to fulfil obligations — Directive 79/409/EEC — Conservation of wild birds — Corncrake — Special protection area in the Lauteracher Ried national nature reserve — Exclusion of the Soren and Gleggen-Köblern sites — Directive 92/43/EEC — Conservation of natural habitats — Wild fauna and flora — Procedure for a construction plan or project — Procedure for determining the road line of a dual carriageway — Procedure for environmental impact study — Procedural breaches relating to the project for the construction of the federal S 18 dual carriageway in Austria — Temporal application of Directive 92/43)

(2006/C 131/23)

Language of the case: German

Parties

Applicant: Commission of the European Communities (represented by: M. van Beek and B. Schima, agents)

Defendant: Republic of Austria (represented by: E. Riedl, J. Müller and K. Humer, Agents)

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 4(1) and (2) of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (OJ 1979 L 103, p. 1) and Article 6(4) in conjunction with Article 7 of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7) — Drawing of the boundaries of the special protection area 'Lauteracher Ried' on the basis of inaccurate scientific criteria, wrongly excluding the two sites 'Soren' and 'Gleggen-Köblern', which are important for the protection of the corncrake (*Crex crex*) and other migratory birds nesting in the meadows — Authorisation of a road-construction project likely to affect that area, without complying with the obligations under Article 6(4) of Directive 92/43/EEC.

Operative part of the judgment

1. *Declares that, by failing to include in the special protection area at the Lauteracher Ried national nature reserve the Soren and Gleggen-Köblern sites which, according to scientific criteria, are, together with that special protection area, among the most suitable territories in number and size for the purposes of Article 4(1) and (2) of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds, as amended by Commission Directive 97/49/EC of 29 July 1997, the Republic of Austria has failed to fulfil its obligations under those provisions of that directive;*

2. *Dismisses the remainder of the action;*

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

([1]) OJ C 179, 10.04.2004.

Judgment of the Court (Second Chamber) of 23 March 2006 (reference for a preliminary ruling from the Corte Suprema di Cassazione (Italy)) — Ministero dell'Economia e delle Finanze, Agenzia delle Entrate v FCE Bank plc

(Case C-210/04) ([1])

(Sixth VAT Directive — Articles 2 and 9 — Fixed establishment — Non-resident company — Legal relationship — Cost-sharing agreement — OECD Convention on double taxation — Meaning of 'taxable person' — Supply of services effected for consideration — Administrative practice)

(2006/C 131/24)

Language of the case: Italian

Referring court

Corte Suprema di Cassazione

Parties to the main proceedings

Applicant: Ministero dell'Economia e delle Finanze, Agenzia delle Entrate

Defendant: FCE Bank plc

Re:

Reference for a preliminary ruling — Corte Suprema di Cassazione — Interpretation of Articles 2(1) and 9(1) of the Sixth VAT 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) — Subsidiary, organised as a producer unit of a company established in another Member State — Whether the branch can be considered an independent person and the 'arm's length' standard laid down in the OECD model Convention on double taxation can be applied

Operative part of the judgment

Articles 2(1) and 9(1) 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, must be interpreted as meaning that a fixed establishment, which is not a legal entity distinct from the company of which it forms part, established in another Member State and to which the company supplies services, should not be treated as a taxable person by reason of the costs imputed to it in respect of those supplies.

([1]) OJ C 190, 24.07.2004.

Judgment of the Court (First Chamber) of 16 March 2006 (reference for a preliminary ruling of Landesgericht Innsbruck (Austria)) — Rosmarie Kapferer v Schlank & Schick GmbH

(Case C-234/04) ([1])

(Jurisdiction in civil matters — Regulation (EC) No 44/2001 — Interpretation of Article 15 — Jurisdiction over consumer contracts — Prize notification — Misleading advertising — Judgment on jurisdiction — Res judicata — Review on appeal — Legal certainty — Primacy of Community law — Article 10 EC)

(2006/C 131/25)

Language of the case: German

Referring court

Landesgericht Innsbruck (Austria)

Parties to the main proceedings

Applicant: Rosmarie Kapferer

Defendant: Schlank & Schick GmbH

Re:

REFERENCE for a preliminary ruling — Landesgericht Innsbruck — Interpretation of Art. I0 EC — Duty of court of appeal to review and set aside a final first instance judicial decision on jurisdiction where there is an infringement of Community law — Interpretation of Art. 15(1)(c) of Council Regulation (EC) No 44/100 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters (OJ 2001 L 12, p.1) — National law on consumer protection providing for a right to the prize supposedly won by the addressee of misleading advertising.

Operative part of the judgment

The principle of cooperation under Article 10 EC does not require a national court to disapply its internal rules of procedure in order to review and set aside a final judicial decision if that decision should be contrary to Community law.

([1]) OJ C 251 of 09.10.2004.

Judgment of the Court (Second Chamber) of 23 March 2006 (reference for a preliminary ruling from the Tribunale civile e penale di Cagliari) — Enirisorse SpA v Sotacarbo SpA

(Case C-237/04) ([1])

(State aid — Articles 87 EC and 88 EC — Definition of aid — Shareholding of a public undertaking in the capital of a private undertaking — Right of withdrawal subject to a prior relinquishment of all claims over a company's assets)

(2006/C 131/26)

Language of the case: Italian

Referring court

Tribunale civile e penale di Cagliari

Parties to the main proceedings

Applicant: Enirisorse SpA

Defendant: Sotacarbo SpA

Re:

Reference for a preliminary ruling — Tribunale di Cagliari — Interpretation of Articles 87 and 88(3) EC — Meaning of State aid — Public undertaking holding shares in the capital of a private undertaking — Compatibility of national rules authorising such a shareholding with Articles 43 and 49 EC

Operative part of the judgment

National provisions such as those at issue in the main proceedings, whereby members of a company controlled by the State may, in derogation from the general law, withdraw from that company on condition that they relinquish all claims over that company's assets, are not liable to be considered to be State aid for the purposes of Article 87 EC.

([1]) OJ C 201, 07.08.2004.

Judgment of the Court (Second Chamber) of 9 March 2006 (reference for a preliminary ruling from the Gerechtshof te Amsterdam) — Beemsterboer Coldstore Services BV v Inspecteur der Belastingdienst — Douanedistrict Arnhem

(Case C-293/04) ([1])

(Post-clearance recovery of import or export duties — Article 220(2)(b) of Regulation (EEC) No 2913/92 — Application ratione temporis — System of administrative cooperation involving the authorities of a non-member country — Meaning of 'incorrect certificate' — Burden of proof)

(2006/C 131/27)

Language of the case: Dutch

Referring court

Gerechtshof te Amsterdam (Netherlands)

Parties to the main proceedings

Applicant: Beemsterboer Coldstore Services BV

Defendant: Inspecteur der Belastingdienst — Douanedistrict Arnhem

Re:

Reference for a preliminary ruling — Gerechtshof te Amsterdam — Interpretation of Article 220(2)(b) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1) as amended by Regulation (EC) No 2700/2000 of the European Parliament and of the Council of 16 November 2000 (OJ 2000 L 311, p. 17) — Post-clearance recovery of duty resulting from a customs debt which arose before the entry into force of Regulation (EC) No 2700/2000 against an importer who submitted EUR. 1 certificates of origin indicating an origin of the goods which could not be established upon a subsequent verification

Operative part of the judgment

1. *Article 220(2)(b) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Regulation (EC) No 2700/2000 of the European Parliament and of the Council of 16 November 2000, applies to a customs debt which was incurred and the post-clearance recovery of which was commenced before that regulation entered into force.*

2. *Inasmuch as the origin of the goods referred to in a movement certificate EUR.1 can no longer be confirmed following subsequent verification, that certificate must be considered to be an 'incorrect certificate' within the meaning of Article 220(2)(b) of Regulation No 2913/92, as amended by Regulation No 2700/2000.*

3. *The person who relies on the third subparagraph of Article 220(2)(b) of Regulation No 2913/92, as amended by Regulation No 2700/2000, must adduce the evidence necessary for his claim to succeed. It is therefore in principle for the customs authorities which wish to rely on the beginning of the third subparagraph of that Article 220(2)(b) in order to carry out post-clearance recovery to adduce evidence that the incorrect certificates were issued because of the inaccurate account of the facts provided by the exporter. Where, however, as a result of negligence wholly attributable to the exporter, it is impossible for the customs authorities to adduce the necessary evidence that the movement certificate EUR.1 was based on the accurate or inaccurate account of the facts provided by the exporter, the burden of proving that that certificate issued by the authorities of the non-member country was based on an accurate account of the facts lies with the person liable for the duty.*

([1]) OJ C 228, 11.09.2004.

Judgment of the Court (Second Chamber) of 16 February 2006 (reference for a preliminary ruling from the Juzgado de lo Social de Madrid) — Carmen Sarkatzis Herrero v Instituto Madrileño de la Salud (Imsalud)

(Case C-294/04) ([1])

(Directive 76/207/EEC — Equal treatment for men and women — Maternity leave — Access to the career of official — Temporary servant on maternity leave who gains a permanent post after taking part in a competition — Calculation of seniority)

(2006/C 131/28)

Language of the case: Spanish

Referring court

Juzgado de lo Social de Madrid (Spain)

Parties to the main proceedings

Applicant: Carmen Sarkatzis Herrero

Defendant: Instituto Madrileño de la Salud (Imsalud)

Re:

Reference for a preliminary ruling — Juzgado de lo Social de Madrid — Community rules on maternity leave and equal treatment for men and women as regards access to employment — Rights of women during maternity leave — Acquisition of the position of official and of the rights corresponding to that position — Temporary employee on maternity leave when she obtained her permanent post

Operative part of the judgment

Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, precludes a national law which does not afford a woman who is on maternity leave the same rights as other successful applicants from the same recruitment competition as regards conditions for access to the career of an official by deferring the start of her career to the end of that leave, without taking account of the duration of the leave, for the purpose of calculating her seniority of service.

([1]) OJ C 106, 30.04.2004.

Judgment of the Court (Third Chamber) of 16 March 2006 — Commission of the European Communities v Kingdom of Spain

(Case C-332/04) ([1])

(Failure of a Member State to fulfil its obligations — Directive 85/337/EEC as amended by Directive 97/11/EC — Assessment of the effects of projects on the environment — Inter-action between factors likely to be directly and indirectly affected — Obligation to publish the impact statement — Assessment limited to urban development projects outside urban areas — Construction project for a leisure complex at Paterna)

(2006/C 131/29)

Language of the case: Spanish

Parties

Applicant: Commission of the European Communities (represented by: G. Valero Jordana and F. Simonetti, acting as Agents)

Defendant: Kingdom of Spain (represented by: M. Muñoz Perez, acting as Agent)

Re:

Failure of a Member State to fulfil its obligations — Incomplete/incorrect transposition of Arts. 3, 9(1) and Paragraph 10(b) of Annex II to 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 of 3 March 1997 (OJ 1997 L 73, p. 5) — Failure to apply the transitional scheme established by Article 3 of Directive 97/11/EC — Failure to have submitted a construction project for a leisure complex at Paterna (Valencia) for an assessment

Operative part of the judgment

The Court:

1. *Declares that, by failing to fully transpose Article 3 of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11, by failing to transpose Article 9(1) of Directive 85/337, as amended by Directive 97/11, by failing to comply with the transitional scheme provided for by Article 3 of Directive 97/11, by failing to correctly transpose the combined provisions of Paragraph 10(b) of Annex II and Articles 2(1) and 4(2) of Directive 85/337, as amended by Directive 97/11, and by failing to submit the construction project for a leisure complex at Paterna to the procedure for the assessment of the effects on the environment and, consequently, by failing to apply the provisions of Articles 2(1), 3, 4(2), 8 and 9 of Directive 85/337, as amended by Directive 97/11, the Kingdom of Spain has failed to fulfil its obligations under that directive;*

2. *The Kingdom of Spain is ordered to pay the costs.*

([1]) OJ C 262 of 23.10.2004.

Judgment of the Court (First Chamber) of 9 March 2006 (reference for a preliminary ruling from the Audiencia Provincial de Barcelona) — Matratzen Concord AG v Hukla Germany SA

(Case C-421/04) ([1])

(Reference for a preliminary ruling — Article 3(1)(b) and (c) of Directive 89/104/EEC — Grounds for refusal to register — Articles 28 EC and 30 EC — Free movement of goods — Measure having equivalent effect to a quantitative restriction — Justification — Protection of industrial and commercial property — National word mark registered in a Member State — Trade mark consisting of a term borrowed from the language of another Member State in which it is devoid of distinctive character and/or descriptive of the goods in respect of which the trade mark was registered)

(2006/C 131/30)

Language of the case: Spanish

Referring court

Audiencia Provincial de Barcelona

Parties to the main proceedings

Applicant: Matratzen Concord AG

Defendant: Hukla Germany SA

Re:

Reference for a preliminary ruling — Audiencia Provincial de Barcelona — Interpretation of Article 30 EC — Protection of industrial and commercial property — Disguised restriction in trade between Member States resulting from a national word mark composed of a word which, in the language of another Member State, is descriptive of the products concerned ('matratzen')

Operative part of the judgment

Article 3(1)(b) and (c) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks does not preclude the registration in a Member State, as a national trade mark, of a term borrowed from the language of another Member State in which it is devoid of distinctive character or descriptive of the goods or services in respect of which registration is sought, unless the relevant parties in the Member State in which registration is sought are capable of identifying the meaning of the term.

([1]) OJ C 300, 04.12.2004.

Judgment of the Court (Second Chamber) of 9 March 2006 (reference for a preliminary ruling from the Hof van Cassatie van België) — Criminal proceedings against Léopold Henri van Esbroeck

(Case C-436/04) ([1])

(Convention implementing the Schengen Agreement — Articles 54 and 71 — Ne bis in idem principle — Application ratione temporis — Concept of 'the same acts' — Import and export of narcotic drugs subject to legal proceedings in different Contracting States)

(2006/C 131/31)

Language of the case: Dutch

Referring court

Hof van Cassatie van België

Party in the main proceedings

Léopold Henri van Esbroeck

Re:

Reference for a preliminary ruling — Hof van Cassatie van België — Interpretation of Arts. 54 and 71 of the Convention implementing the Schengen Agreement — *Ne bis in idem* principle — Person prosecuted in a Member State for illegally exporting drugs after having been prosecuted and convicted in Norway for illegal importing drugs before the Schengen Agreement was applicable to that State

Operative part of the judgment

1. *The ne bis in idem principle, enshrined in Article 54 of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, signed on 19 June 1990 in Schengen, must be applied to criminal proceedings brought in a Contracting State for acts for which a person has already been convicted in another Contracting State even though the Convention was not yet in force in the latter State at the time at which that person was convicted, in so far as the Convention was in force in the Contracting States in question at the time of the assessment, by the court before which the second proceedings were brought, of the conditions of applicability of the ne bis in idem principle.*

2. *Article 54 of the Convention must be interpreted as meaning that:*

   — *the relevant criterion for the purposes of the application of that article is identity of the material acts, understood as the existence of a set of facts which are inextricably linked together, irrespective of the legal classification given to them or the legal interest protected;*

   — *punishable acts consisting of exporting and importing the same narcotic drugs and which are prosecuted in different Contracting States to the Convention are, in principle, to be regarded as 'the same acts' for the purposes of Article 54, the definitive assessment in that respect being the task of the competent national courts.*

([1]) OJ C 300 of 4.12.2004.

Judgment of the Court (Third Chamber) of 23 February 2006 (reference for a preliminary ruling from the Landesgericht Klagenfurt) — A-Punkt Schmuckhandels GmbH v Claudia Schmidt

(Case C-441/04) ([1])

(Free movement of goods — Articles 28 EC and 30 EC — Measures having equivalent effect — Doorstep selling — Sale of silver jewellery — Prohibition)

(2006/C 131/32)

Language of the case: German

Referring court

Landesgericht Klagenfurt (Austria)

Parties to the main proceedings

Applicant: A-Punkt Schmuckhandels GmbH

Defendant: Claudia Schmidt

Re:

Reference for a preliminary ruling — Landesgericht Klagenfurt — Interpretation of Articles 28 EC and 30 EC — National legislation prohibiting the door-to-door sale of gold, silver and platinum jewellery

Operative part of the judgment

Article 28 EC does not preclude a national provision by which a Member State prohibits in its territory the selling of, and collecting of orders for, silver jewellery in a doorstep-selling situation where such a provision applies to all relevant traders in so far as it affects in the same manner, in law and in fact, the marketing of domestic products and that of products from other Member States. It is for the national court to ascertain whether, having regard to the circumstances in the main proceedings, the application of the national provision is liable to prevent the access to the market of products from other Member States or to impede that access more than it impedes the access to the market of domestic products and, if that is the case, to determine whether the measure concerned is justified by an objective in the general interest within the meaning given to that concept in the Court's case-law or by one of the objectives listed in Article 30 EC, and whether that measure is proportionate to that objective.

([1]) OJ C 314, 18.12.2004.

Judgment of the Court (Sixth Chamber) of 23 February 2006 — Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland

(Case C-455/04) ([1])

(Failure of a Member State to fulfil obligations — Directive 2001/55/EC — Asylum policy — Mass influx of displaced persons — Temporary protection — Minimum standards — Failure to transpose the directive within the prescribed period)

(2006/C 131/33)

Language of the case: English

Parties

Applicant: Commission of the European Communities (represented by: C. O'Reilly, Agent)

Defendant: United Kingdom of Great Britain and Northern Ireland (represented by: C. White)

Re:

Failure of a Member State to fulfil its obligations — Failure to transpose within the period prescribed Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (OJ 2001 L 212, p. 12)

Operative part of the judgment

1. *Declares that, by failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary to transpose into domestic law Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under that directive;*

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

([1]) OJ C 6, 08.01.2005.

Judgment of the Court (First Chamber) of 23 March 2006 (reference for a preliminary ruling from the Corte suprema di cassazione) — Honyvem Informazioni Commerciali Srl v Mariella De Zotti

(Case C-465/04) ([1])

(Independent commercial agents — Directive 86/653/EEC — Entitlement of a commercial agent to an indemnity after termination of the contract)

(2006/C 131/34)

Language of the case: Italian

Referring court

Corte suprema di cassazione

Parties to the main proceedings

Applicant: Honyvem Informazioni Commerciali Srl

Defendant: Mariella De Zotti

Re:

Reference for a preliminary ruling — Corte Suprema di Cassazione — Interpretation of Articles 17 and 19 of Council Directive 86/653/EEC of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents (OJ 1986 L 382, p. 17) — Right of a commercial agent to an indemnity or damages on termination of contract

Operative part of the judgment

1. *Article 19 of Council Directive 86/653/EEC of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents must be interpreted as meaning that the indemnity for termination of contract which results from the application of Article 17(2) of the directive cannot be replaced, pursuant to a collective agreement, by an indemnity determined in accordance with criteria other than those prescribed by Article 17, unless it is established that the application of such an agreement guarantees the commercial agent, in every case, an indemnity equal to or greater than that which results from the application of Article 17.*

2. *Within the framework prescribed by Article 17(2) of Directive 86/653, the Member States enjoy a margin of discretion which they may exercise, in particular, in relation to the criterion of equity.*

([1]) OJ C 31 of 05.02.2005.

Judgment of the Court (First Chamber) of 23 February 2006 (reference for a preliminary ruling from the Bundesfinanzhof) — Finanzamt Offenbach am Main-Land v Keller Holding GmbH

(Case C-471/04) ([1])

(Freedom of establishment — Corporation tax — Right of a parent company to deduct costs relating to its shareholdings — Non-deductible financing costs having an economic link with dividends exempt from tax — Dividends distributed by an indirect subsidiary established in a Member State other than that in which the parent company has its seat)

(2006/C 131/35)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Finanzamt Offenbach am Main-Land

Defendant: Keller Holding GmbH

Re:

Preliminary ruling — Bundesfinanzhof — Interpretation of Article 52 of the EC Treaty (now, after amendment, Article 43 EC), Article 58 and Article 73b of the EC Treaty (now Article 48EC and 56 EC) — Corporation tax — Non-deductibility of expenditure having a direct economic link to tax-free profits — Expenditure incurred by a parent company established in a Member State linked to its shareholding in a subsidiary established in the same Member State, in connection with dividends distributed by a second-tier subsidiary which are exempted from tax by virtue of the fact that this latter company is established in another Member State

Operative part of the judgment

Article 52 of the EC Treaty (now, after amendment, Article 43 EC) and Article 31 of the Agreement on the European Economic Area of 2 May 1992 must be interpreted as precluding legislation of a Member State which excludes the possibility of deducting for tax purposes financing costs incurred by a parent company subject to unlimited tax liability in that State in order to acquire holdings in a subsidiary where those costs relate to dividends which are exempt from tax because they are derived from an indirect subsidiary established in another Member State or in a State which is party to the Agreement, whereas such costs may be deducted where they relate to dividends paid by an indirect subsidiary established in the same Member State as that of the place of the registered office of the parent company and which, in reality, also benefit from a tax exemption.

([1]) OJ C 19, 22.01.2005.

Judgment of the Court (Second Chamber) of 23 February 2006 (reference for a preliminary ruling from the VAT and Duties Tribunal, Manchester) — Dolland & Aitchison Ltd v Commissioners of Customs & Excise

(Case C-491/04) ([1])

(Community Customs Code — Customs value — Customs import duties — Delivery of goods by a company established in Jersey and supplies of services effected in the United Kingdom)

(2006/C 131/36)

Language of the case: English

Referring court

VAT and Duties Tribunal, Manchester

Parties to the main proceedings

Applicant: Dolland & Aitchison Ltd

Defendant: Commissioners of Customs & Excise

Re:

Reference for a preliminary ruling — VAT and Duties Tribunal, Manchester — Interpretation of Articles 29 and 30 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1) — Customs value of imported goods — Contact lenses delivered by post by a company established in a third territory (the Island of Jersey) belonging to a company established in a Member State supplying examination, consultation and after-care services for contact lenses

Operative part of the judgment

1. *Article 29 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code must be interpreted as meaning that, in circumstances such as those of the main proceedings, payment for the supply of specified services, such as examination, consultation or aftercare required in connection with contact lenses, and for specified goods, consisting of those lenses, the cleaning solutions and the soaking cases, constitutes as a whole the 'transaction value' within the meaning of Article 29 of the Customs Code and is, therefore, dutiable.*

2. *The principles laid down in the CCP judgment (Case C-349/96) of 25 February 1999 cannot be used directly to determine the elements of the transaction to be taken into account for the purposes of applying Article 29 of the Customs Code.*

([1]) OJ C 45, 19.02.2005.

Judgment of the Court (Third Chamber) of 9 March 2006 (reference for a preliminary ruling from the Landesarbeitsgericht Düsseldorf) — Hans Werhof v Freeway Traffic Systems GmbH & Co. KG

(Case C-499/04) ([1])

(Transfer of undertakings — Directive 77/187/EEC — Safeguarding of employees' rights — Collective agreement applicable to the transferor and the employee at the time of the transfer)

(2006/C 131/37)

Language of the case: German

Referring court

Landesarbeitsgericht Düsseldorf

Parties to the main proceedings

Applicant: Hans Werhof

Defendant: Freeway Traffic Systems GmbH & Co. KG

Re:

Reference for a preliminary ruling — Landesarbeitsgericht Düsseldorf — Interpretation of Article 3(1) of Council Directive 98/50/EC of 29 June 1998 amending Directive 77/187/EEC on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses (OJ 1998 L 201, p. 88) — Obligations of the transferee with regard to retention of more favourable pay conditions resulting from a collective agreement applicable to the transferor and the employee at the time of the transfer

Operative part of the judgment

Article 3(1) of Council Directive 77/187/EEC of 14 February 1977 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses must be interpreted as not precluding, in a situation where the contract of employment refers to a collective agreement binding the transferor, that the transferee, who is not party to such an agreement, is not bound by collective agreements subsequent to the one which was in force at the time of the transfer of the business.

([1]) OJ C 31 of 05.02.2005.

Judgment of the Court (Sixth Chamber) of 16 February 2006 (reference for a preliminary ruling from the Finanzgericht Düsseldorf) — Proxxon GmbH v Oberfinanzdirektion Köln

(Case C-500/04) ([1])

(Tariff classification — Hand-operated spanners and wrenches and interchangeable spanner sockets)

(2006/C 131/38)

Language of the case: German

Referring court

Finanzgericht Düsseldorf (Germany)

Parties to the main proceedings

Applicant: Proxxon GmbH

Defendant: Oberfinanzdirektion Köln

Re:

Reference for a preliminary ruling — Finanzgericht Düsseldorf — Interpretation of the Combined Nomenclature as amended by Commission Regulation (EC) No 1789/2003 of 11 September 2003 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 2003 L 281) — 'Hand-operated spanners and wrenches (including torque meter wrenches but not including tap wrenches); interchangeable spanner sockets, with or without handles' within the meaning of Heading 8204 — Screwdriver bits with square drive for slotted-head, cross-head, TX and hexagon socket head screws and square-system torque meter wrenches

Operative part of the judgment

1. *Heading 8204 of the Combined Nomenclature in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended by Commission Regulation (EC) No 2388/2000 of 13 October 2000, is to be interpreted as not covering separately imported screwdriver bits with square drive for slotted-head, cross-head, TX (internal Torx) and hexagon socket head screws, as described in the order for reference.*

2. *Heading 8204 of the Combined Nomenclature is to be interpreted as covering separately imported parts of the square system, as described in the order for reference, which are not in direct contact with the fastener during use.*

3. *Heading 8204 of the Combined Nomenclature is to be interpreted as covering separately imported square-system torque meter wrenches of the type described in the order for reference.*

([1]) OJ C 57, 05.03.2005

Judgment of the Court (Fifth Chamber) of 16 March 2006 — Commission of the European Communities v Hellenic Republic

(Case C-518/04) ([1])

(Failure of a Member State to fulfil its obligations — Directive 92/43/EEC — Conservation of natural habitats and of wild fauna and flora — Protection of Species)

(2006/C 131/39)

Language of the case: Greek

Parties

Applicant: Commission of the European Communities (represented by: M. Konstantinidis and M. van Beek, acting as Agents)

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

Re:

Failure of a Member State to fulfil its obligations — Infringement of Article 12(1)(b) 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) — Protection of vipers *Vipera Schweizeri* on the island of Milos — Failure to adopt the measures necessary to prohibit disturbance of that species during the period of breeding and the deterioration or destruction of breeding sites

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt, within the prescribed period, the measures necessary to establish and implement an effective system of strict protection for the viper Vipera schweizeri on the island of Milos prohibiting deliberate disturbance of that species, particularly during the period of breeding, rearing and hibernation and deterioration or destruction of breeding sites or resting places of that species, the Hellenic Republic has failed to fulfil its obligations under Article 12(1)(b) and (d) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora;*

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

([1]) OJ C 57 of 05.03.2005.

Judgment of the Court (Second Chamber) of 16 February 2006 (reference for a preliminary ruling from the Corte d'appello di Cagliari) — Gaetano Verdoliva v J.M. Van der Hoeven BV, Banco di Sardegna, San Paolo IMI SpA

(Case C-3/05) ([1])

(Brussels Convention — Judgment authorising the enforcement of a judgment given in another Contracting State — Failure of, or defective, service — Notice — Time for appealing)

(2006/C 131/40)

Language of the case: Italian

Referring court

Corte d'appello di Cagliari

Parties to the main proceedings

Applicant: Gaetano Verdoliva

Defendants: J.M. Van der Hoeven BV, Banco di Sardegna, San Paolo IMI SpA

Intervener: Pubblico Ministero

Re:

Reference for a preliminary ruling — Corte d'appello di Cagliari — Interpretation of Article 36 of the Brussels Convention — Enforcement of judgments — Defective service of a decision authorising enforcement — Meaning of 'notice of procedural documents'

Operative part of the judgment

Article 36 of the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters, as amended by the Convention of 9 October 1978 on the accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, the Convention of 25 October 1982 on the accession of the Republic of Greece and the Convention of 26 May 1989 on the accession of the Kingdom of Spain and the Portuguese Republic, is to be interpreted as requiring due service of the decision authorising enforcement in accordance with the procedural rules of the Contracting State in which enforcement is sought, and therefore, in cases of failure of, or defective, service of the decision authorising enforcement, the mere fact that the party against whom enforcement is sought has notice of that decision is not sufficient to cause time to run for the purposes of the time-limit fixed in that article.

([1]) OJ C 69, 19.03.2005.

Judgment of the Court (Fourth Chamber) of 23 February 2006 — Commission of the European Communities v Federal Republic of Germany

(Case C-43/05) ([1])

(Failure of a Member State to fulfil its obligations — Directive 2000/78/EC — Equal treatment in employment and occupation — Failure to transpose within the prescribed period)

(2006/C 131/41)

Language of the case: German

Parties

Applicant: Commission of the European Communities (represented by: V. Kreuschitz, D. Martin and H. Kreppel, Agents, acting as Agents)

Defendant: Federal Republic of Germany (represented by: U. Forsthoff, acting as Agent)

Re:

Failure of a Member State to fulfil its obligations — Failure to transpose, within the prescribed period, Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16)

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, as far as concerns discrimination based on religion or belief, disability and sexual orientation, the Federal Republic of Germany has failed to fulfil its obligations under that directive;*

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

([1]) OJ C 82 of 02.04.2005.

Judgment of the Court (Sixth Chamber) of 23 February 2006 — Commission of the European Communities v Ireland

(Case C-46/05) ([1])

(Failure of a Member State to fulfil obligations — Directive 2000/79/EC — Working conditions — Organisation of working time — Mobile workers in civil aviation — Failure to transpose within the prescribed period)

(2006/C 131/42)

Language of the case: English

Parties

Applicant: Commission of the European Communities (represented by: N. Yerrell, Agent)

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

Re:

Failure of a Member State to fulfil obligations — Failure to transpose, within the prescribed period, Council Directive 2000/79/EC of 27 November 2000 concerning the European Agreement on the Organisation of Working Time of Mobile Workers in Civil Aviation concluded by the Association of European Airlines (AEA), the European Transport Workers' Federation (ETF), the European Cockpit Association (ECA), the European Regions Airline Association (ERA) and the International Air Carrier Association (IACA) (OJ 2000 L 302, p. 57)

Operative part of the judgment

1. *By failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 2000/79/EC of 27 November 2000 concerning the European Agreement on the Organisation of Working Time of Mobile Workers in Civil Aviation concluded by the Association of European Airlines (AEA), the European Transport Workers' Federation (ETF), the European Cockpit Association (ECA), the European Regions Airline Association (ERA) and the International Air Carrier Association (IACA), Ireland has failed to fulfil its obligations under that directive;*

2. *Ireland is ordered to pay the costs.*

([1]) OJ C 93, 16.04.2005.

Judgment of the Court (First Chamber) of 23 February 2006 (reference for a preliminary ruling from the Bundesgerichtshof) — Siemens AG v Gesellschaft für Visualisierung und Prozeßautomatisierung mbH (VIPA)

(Case C-59/05) ([1])

(Approximation of laws — Directives 84/450/EEC and 97/55/EC — Comparative advertising — Taking unfair advantage of the reputation of a distinguishing mark of a competitor)

(2006/C 131/43)

Language of the case: German

Referring court

Bundesgerichtshof (Germany)

Parties to the main proceedings

Applicant: Siemens AG

Defendant: VIPA Gesellschaft für Visualisierung und Prozeßautomatisierung mbH

Re:

Reference for a preliminary ruling — Bundesgerichtshof — Interpretation of Article 3a(1)(g) of Council Directive 84/450/EEC of 10 September 1984 relating to the approximation of the laws, regulations and administrative provisions of the Member States concerning misleading advertising (OJ 1984 L 250, p. 17), as inserted by Directive 97/55/EC of the European Parliament and of the Council of 6 October 1997 (OJ 1997 L 290, p. 18) — Comparative advertising — Products sold under reference to what are essentially the product order numbers of a competitor

Operative part of the judgment

Article 3a(1)(g) of Council Directive 84/450/EEC of 10 September 1984 concerning misleading and comparative advertising, as amended by Directive 97/55/EC of the European Parliament and of the Council of 6 October 1997, must be interpreted as meaning that, in circumstances such as those in the main proceedings, by using in its catalogues the core element of a manufacturer's distinguishing mark which is known in specialist circles, a competing supplier does not take unfair advantage of the reputation of that distinguishing mark.

([1]) OJ C 82, 2.4.2005.

Judgment of the Court (Second Chamber) of 16 March 2006 (reference for a preliminary ruling from the Bundesverwaltungsgericht) — Emsland-Stärke GmbH v Landwirtschaftskammer Hannover

(Case C-94/05) ([1])

(Common agricultural policy — Regulation (EC) No 97/95 — Premiums paid to starch-producing undertakings — Conditions for granting premiums — Penalties — Proportionality — Regulation (EC, Euratom) No 2988/95 — Protection of the European Communities' financial interests)

(2006/C 131/44)

Language of the case: German

Referring court

Bundesverwaltungsgericht (Germany)

Parties to the main proceedings

Applicant: Emsland-Stärke GmbH

Defendant: Landwirtschaftskammer Hannover

Re:

Reference for a preliminary ruling — Bundesverwaltungsgericht — Interpretation of Article 13(4) of Commission Regulation (EC) No 97/95 of 17 January 1995 laying down detailed rules for the application of Council Regulation (EEC) No 1766/92 as regards the minimum price and compensatory payment to be paid to potato producers and of Council Regulation (EC) No 1868/94 establishing a quota system in relation to the production of potato starch (OJ 1995 L 16, p. 3), as amended by Commission Regulation (EC) No 1125/96 of 24 June 1996 (OJ 1996 L 150, p. 1) — Conditions governing grant of the premium — Cultivation contract between the potato starch manufacturer on the one hand and, on the other, not the producer but a dealer who obtains the potatoes directly or indirectly from producers — Penalties

Operative part of the judgment

1. *The penalty provided for in Article 13(4) of Commission Regulation (EC) No 97/95 of 17 January 1995 laying down detailed rules for the application of Council Regulation (EEC) No 1766/92 as regards the minimum price and compensatory payment to be paid to potato producers and of Council Regulation (EC) No 1868/94 establishing a quota system in relation to the production of potato starch, as amended by Commission Regulation (EC) No 1125/96 of 24 June 1996, applies to a starch-producing undertaking which, although it has not necessarily exceeded the sub-quota allocated to it, obtains potatoes from a trader obtaining them directly or indirectly from potato producers, even where the purchase and delivery contract between that undertaking and the trader in question is described as a 'cultivation contract' by the parties to the contract and has been accepted as such by a competent national authority under Article 4(2) of that regulation, but cannot be classified as a 'cultivation contract' for the purposes of Article 1(d) and (e) of that regulation.*

2. *Consideration of the first part of the second question has disclosed no factor capable of affecting the validity of Article 13(4) of Regulation No 97/95, as amended by Regulation No 1125/96, from the point of view of the principle of legal certainty.*

3. *Consideration of the second part of the second question has disclosed no factor capable of affecting the validity of Article 13(4) of Regulation No 97/95, as amended by Regulation No 1125/96, from the point of view of the principle of proportionality referred to in Article 2(1) and (3) of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests.*

4. *The fact that the competent national authority was informed that the starch-producing undertaking had obtained potatoes from a trader obtaining them directly or indirectly from producers cannot affect the classification of an irregularity regarded as having been 'caused by negligence' within the meaning of Article 5(1) of Regulation No 2988/95, nor, therefore, affect the imposition on that undertaking of the penalty provided for in Article 13(4) of Regulation No 97/95, as amended by Regulation No 1125/96.*

([1]) OJ C 93, 16.04.2005.

Judgment of the Court (Sixth Chamber) of 9 March 2006 (reference for a preliminary ruling from the Conseil d'État (France)) — Ministre de l'Économie, des Finances et de l'Industrie v Gillan Beach Ltd

(Case C-114/05) ([1])

(VAT — Place of taxable transactions — Fiscal connection — Services provided in connection with boat shows)

(2006/C 131/45)

Language of the case: French

Referring court

Conseil d'État (France)

Parties to the main proceedings

Applicant: Ministre de l'Économie, des Finances et de l'Industrie

Defendant: Gillan Beach Ltd

Re:

Reference for a preliminary ruling — Counseil d'Etat (France) — Interpretation of Article 9(2) of the Sixth Council Directive 77/388 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) — Determination of relevant place for tax purposes — Supply of services carried out in relation to boat shows.

Operative part of the judgment

The first indent of Article 9(2)(c) 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 must be interpreted as meaning that an inclusive service provided by an organiser to exhibitors at a fair or in an exhibition hall falls within the category of services referred to in that provision.

([1]) OJ C 115,14.05.2005.

Judgment of the Court (Fourth Chamber) of 23 February 2006 — Commission of the European Communities v Republic of Austria

(Case C-133/05) ([1])

(Failure of a Member State to fulfil its obligations — Directive 2000/78/EC — Equal treatment in employment and occupation — Failure to transpose within the prescribed period)

(2006/C 131/46)

Language of the case: German

Parties

Applicant: Commission of the European Communities (represented by: D. Martin, acting as Agent)

Defendant: Republic of Austria (represented by: C. Pesendorfer, acting as Agent)

Re:

Failure by a Member State to fulfil its obligations — Failure to have transposed, within the prescribed period, Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16)

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply, at federal level, with the provisions on discrimination based on disability, in Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation and, at Länder level, with the exception of the Länder of Vienna and Lower-Austria, to all the provision of that directive, the Republic of Austria has failed to fulfil its obligations under that directive;*

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

([1]) OJ C 143 of 11.06.2005.

Judgment of the Court (Second Chamber) of 9 March 2006 (reference for a preliminary ruling from the College van Beroep voor het bedrijfsleven) — Stichting Zuid-Hollandse Milieufederatie, Stichting Natuur en Milieu v College voor de toelating van bestrijdingsmiddelen

(Case C-174/05) ([1])

(Authorisation to place plant protection products on the market — Directive 91/414/EEC — Article 8 — Active substance named 'aldicarb' — Validity of Article 2(3) of Decision 2003/199/EC)

(2006/C 131/47)

Language of the case: Dutch

Referring court

College van Beroep voor het bedrijfsleven

Parties to the main proceedings

Applicants: Stichting Zuid-Hollandse Milieufederatie, Stichting Natuur en Milieu

Defendant: College voor de toelating van bestrijdingsmiddelen

Joined party: Bayer CropScience BV

Re:

Preliminary ruling — College van Beroep voor het bedrijfsleven — Validity of Article 2(3) of Council Decision 2003/199/EC of 18 March 2003 concerning the non-inclusion of aldicarb in Annex I to Council Directive 91/414/EEC and the withdrawal of authorisations for plant protection products containing this active substance (OJ 2003 L 76, p. 21)

Operative part of the judgment

Examination of the question referred has not disclosed any factor of such a kind as to affect the validity of Article 2(3) of Council Decision 2003/199/EC of 18 March 2003 concerning the non-inclusion of aldicarb in Annex I to Council Directive 91/414/EEC and the withdrawal of authorisations for plant protection products containing this active substance.

([1]) OJ C 155 of 25.6.2005.

Judgment of the Court (Fourth Chamber) of 9 March 2006 — Commission of the European Communities v Grand-Duchy of Luxembourg

(Case C-310/05) ([1])

(Failure of a Member State to fulfil its obligations — Directive 2001/95/EC — General product safety — Failure to transpose within the prescribed period)

(2006/C 131/48)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: M.-J. Jonczy and A. Aresu, acting as Agents)

Defendant: Grand-Duchy of Luxembourg (represented by: S. Schreiner, acting as Agent)

Re:

Failure by a Member State to fulfil its obligations — Failure to adopt, within the prescribed period, the measures necessary to comply with Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety (OJ L 11, p. 4)

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety, the Grand-Duchy of Luxembourg has failed to fulfil its obligations under Article 21(1) of that directive;*

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

([1]) OJ C 243 of 01.10.2005.

Reference for a preliminary ruling from the Bayerisches Landessozialgericht lodged on 3 February 2006 — Grete Schlepps v Deutsche Rentenversicherung Oberbayern

(Case C-60/06)

(2006/C 131/49)

Language of the case: German

Referring court

Bayerisches Landessozialgericht (Bavarian Higher Social Court) (Germany)

Parties to the main proceedings

Applicant: Grete Schlepps

Defendant: Deutsche Rentenversicherung Oberbayern (German Pension Insurance Scheme, Upper Bavaria)

Questions referred

1. Must point 35 Germany-Austria (e)(i) of Parts A and B of Annex III to Regulation (EEC) No 1408/71 ([1]) be interpreted as requiring — in addition to entitlement to the benefit on 1 January 1994 — also the taking up of residence in Austria?

2. If so, are that provision and point C Germany (1) of Annex VI to Regulation (EEC) No 1408/71 compatible with higher-ranking European law, in particular the requirement of freedom of movement under Article 39 EC in conjunction with Article 42 EC?

(1) OJ English Special Edition 1971(II), p. 416.

Reference for a preliminary ruling from the Tribunale Ordinario di Novara lodged on 5 January 2006 — CARP SNC, Di Moleri Luigi and Corsi Valter v ECORAD SRL.

(Case C-80/06)

(2006/C 131/50)

Language of the case: Italian

Referring court

Tribunale Ordinario di Novara

Parties to the main proceedings

Applicant: Carp Snc di L. Moleri e V. Corsi, Associazione Nazionale Artigiani Legno e Arredamenti.

Defendant(s): Ecorad Srl

Question(s) referred

1. Are Articles 2 and 3 and Annexes II and III of Decision 1999/93/EC (1) to be interpreted as meaning that it is not possible for doors intended to be fitted with panic bars to be manufactured by operators (door fitters) who do not comply with the requirements of the system of attestation of conformity No 1?

2. If the answer to Question 1 is yes: regardless of whether technical standards have been adopted by the European Committee for Standardisation (CEN), are the requirements under Articles 2 and 3 and Annexes II and III of Decision 1999/93/EC legally binding from the date when that decision entered into force in so far as regards the type of attestation of conformity procedure to be complied with by manufacturers (door fitters) of doors intended to be fitted with panic bars?

3. Are Articles 2 and 3 and Annexes II and III of Decision 1999/93/EC to be regarded as being invalid on the basis that they are contrary to the principle of proportionality in so far as they require all producers to comply with the attestation of conformity procedure No 1 in order to be able to mark doors fitted with panic bars they have themselves manufactured with the EC conformity mark (the mandate to adopt the relevant technical standards being given to the CEN)?

(1) Commission Decision 1999/93/EC of 25 January 1999 on the procedure for attesting the conformity of construction products pursuant to Article 20(2) of Council Directive 89/106/EEC as regards doors, windows, shutters, blinds, gates and related building hardware (OJ 1999 L 29, p. 51).

Reference for a preliminary ruling from the Tribunal Superior de Justicia de Madrid lodged on 20 February 2006 — Navicon SA v Administración del Estado

(Case C-97/06)

(2006/C 131/51)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de Madrid

Parties to the main proceedings

Applicant: Navicon SA

Defendant: Administración del Estado

Questions referred

1. Is the term 'chartering' in the exemption provided for in Article 15(5) of the Sixth Directive (1) to be interpreted as including only chartering of the entire capacity of the vessel (full chartering) or as including chartering relating to a part or percentage of the vessel's capacity (partial chartering)?

2. Does the Sixth Directive preclude a national law which allows exemption only for full chartering?

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

Reference for a preliminary ruling from the Arbeitsgericht Berlin, lodged on 28 February 2006 — Annette Radke v Achterberg Service GmbH & Co. KG

(Case C-115/06)

(2006/C 131/52)

Language of the case: German

Referring court

Arbeitsgericht Berlin

Parties to the main proceedings

Claimant: Annette Radke

Defendant: Achterberg Service GmbH & Co. KG

Questions referred

1. (a) Is Council Directive 98/59/EC (1) of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies to be interpreted to the effect that the consultation procedure under Article 2 of the Directive is concluded as soon as direct negotiations between the employer and the workers' representatives have failed or, where the employer and/or workers' representatives refer the matter to an establishment-level arbitration committee provided for by national law, do the negotiations before that committee also have to have been concluded?

   (b) If the second alternative part of the question should be answered in the affirmative does the Directive require, before the notices of dismissal are announced, the conclusion of both the negotiations before the arbitration committee as to ways and means of avoiding collective redundancies or reducing the number of workers affected and the negotiations on ways and means of mitigating the consequences by recourse to accompanying social measures?

2. (a) Is the Directive to be interpreted to the effect that notification may not be issued to the employment authority under Article 3 of the Directive until after the consultation procedure has been concluded?

   (b) If Question 2(a) should be answered in the affirmative must both the negotiations on the avoidance of collective redundancies or the reduction of the number of workers affected and the negotiations on the mitigation of the consequences have been concluded before notification is issued?

(1) OJ 1998 L 225, p. 16.

Action brought on 28 February 2006 — Commission of the European Communities v Italian Republic

(Case C-119/06)

(2006/C 131/53)

Language of the case: Italian

Parties

Applicant: Commission of the European Communities (represented by: X. Lewis, acting as Agent, and M. Mollica, Avvocato)

Defendant: Italian Republic

Form of order sought

— A Declaration that, as the region of Tuscany and the Tuscan Aziende Sanitarie (public health authorities) concluded the regional framework agreement for the supply of healthcare transport services on 11 October 1999 with the Confederazione delle Misericordie d'Italia, ANPAS — the Tuscan regional committee and the Croce Rossa Italiana — Tuscan division, and subsequently extended that framework agreement by means of a memorandum of understanding on 28 March 2003 and, finally, in April 2004, on the basis of Regional Decision No 379 of 19 April 2004, concluded a new regional framework agreement maintaining the relationship with the above-mentioned organisations and entrusting the administration of the services in question to them for the period from January 2004 to December 2008, the Italian Republic has failed to fulfil its obligations under Council Directive 92/50/EEC (1) of 18 June 1992 relating to the coordination of procedures for the award of public service contracts and, in particular, Articles 11, 15 and 17 thereof.

— An order that the Italian Republic should pay the costs.

Pleas in law and main arguments

The Commission maintains that the above-mentioned agreements delegating the supply of services in question constitute public service contracts which were awarded directly, without recourse to any form of tendering procedure, and thus in breach of Community law on public contracts.

([1]) OJ L 209 of 24/07/1992, p. 1.

Action brought on 10 March 2006 — Commission of the European Communities v Republic of Malta

(Case C-136/06)

(2006/C 131/54)

Language of the case: English

Parties

Applicant: Commission of the European Communities (represented by: M. Konstantinidis and D. Lawunmi, Agents)

Defendant: Republic of Malta

The applicant claims that the Court should:

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with the following Directives of the European Parliament and of the Council, namely, 2002/96/EC on Waste Electrical and Electronic Equipment ([1]) and 2003/108/EC of 8 December 2003 amending Directive 2002/96/EC on waste electrical and electronic equipment ([2]), or in any event by failing to communicate them to the Commission, Malta has failed to fulfil its obligations under the Directive;

— order the Republic of Malta to pay the costs.

Pleas in law and main arguments

The period within which the directives had to be transposed expired on 13 August 2004.

([1]) OJ L 37, 13.02.2003, p. 24
([2]) OJ L 345, 31.12.2003, p. 106

Action brought on 10 March 2006 — Commission of the European Communities v Ireland

(Case C-137/06)

(2006/C 131/55)

Language of the case: English

Parties

Applicant: Commission of the European Communities (represented by: A. Alcover San Pedro and D. Lawunmi, Agents)

Defendant: Ireland

The applicant claims that the Court should:

— declare that by failing to adopt the laws, regulations or administrative provisions necessary to comply with Directive 2002/49/EC of the European Parliament and of the Council of 25 June 2002 relating to the assessment and management of environmental noise ([1]) or, in any event, by failing to notify such provisions to the Commission, Ireland has failed to fulfil its obligations under Article 14 of that Directive.

— order Ireland to pay the costs.

Pleas in law and main arguments

The period within which the directive had to be transposed expired on 18 July 2004.

([1]) OJ L 189, p. 12

Action brought on 10 March 2006 — Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland

(Case C-138/06)

(2006/C 131/56)

Language of the case: English

Parties

Applicant: Commission of the European Communities (represented by: A. Alcover San Pedro and D. Lawunmi, Agents)

Defendant: United Kingdom of Great Britain and Northern Ireland

The applicant claims that the Court should:

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2002/49/EC of the European Parliament and of the Council, relating to the assessment and management of noise ([1]), or in any event by failing to communicate them to the Commission, the United Kingdom has failed to fulfil its obligations under the Directive:

— order United Kingdom of Great Britain and Northern Ireland to pay the costs.

Pleas in law and main arguments

The period within which the directive had to be transposed expired on 18 July 2004.

([1]) OJ L 189, p. 12

Action brought on 21 March 2006 — Commission of the European Communities v Republic of Finland

(Case C-152/06)

(2006/C 131/57)

Language of the case: Swedish

Parties

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

Defendant: Republic of Finland

Form of order sought

— Declare that, with regard to the province of Åland, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2002/95/EC of the European Parliament and of the Council of 27 January 2003 on the restriction of the use of certain hazardous substances in electrical and electronic equipment ([1]) or in any case by failing to inform the Commission thereof, the Republic of Finland has failed to fulfil its obligations under that directive;

— order the Republic of Finland to pay the costs.

Pleas in law and main arguments

The period prescribed for implementation of the directive expired on 13 August 2004.

([1]) OJ L 37, 13.02.2003, p. 19.

Action brought on 21 March 2006 — Commission of the European Communities v Republic of Finland

(Case C-153/06)

(2006/C 131/58)

Language of the case: Swedish

Parties

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

Defendant: Republic of Finland

Form of order sought

— Declare that, with regard to the province of Åland, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2002/96/EC of the European Parliament and of the Council of 27 January 2003 on waste electrical and electronic equipment (WEEE) ([1]) or in any case by failing to inform the Commission thereof, the Republic of Finland has failed to fulfil its obligations under that directive;

— order the Republic of Finland to pay the costs.

Pleas in law and main arguments

The period prescribed for implementation of the directive expired on 13 August 2004.

([1]) OJ L 37, 13.02.2003, p. 24.

Action brought on 21 March 2006 — Commission of the European Communities v Republic of Finland

(Case C-154/06)

(2006/C 131/59)

Language of the case: Swedish

Parties

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

Defendant: Republic of Finland

Form of order sought

— Declare that, with regard to the province of Åland, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2003/108/EC of the European Parliament and of the Council of 8 December 2003 ([1]) amending Directive 2002/96/EC on waste electrical and electronic equipment (WEEE) or in any case by failing to inform the Commission thereof, the Republic of Finland has failed to fulfil its obligations under that directive;

— order the Republic of Finland to pay the costs.

Pleas in law and main arguments

The period prescribed for implementation of the directive expired on 13 August 2004.

([1]) OJ L 345, 31.12.2003, p. 106.

Action brought on 23 March 2006 — Commission of the European Communities v Kingdom of Sweden

(Case C-156/06)

(2006/C 131/60)

Language of the case: Swedish

Parties

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

Defendant: Kingdom of Sweden

Form of order sought

— Declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate ([1]) and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council the directive or in any case by failing to inform the Commission thereof, the Kingdom of Sweden has failed to fulfil its obligations under that directive;

— order the Kingdom of Sweden to pay the costs.

Pleas in law and main arguments

The period prescribed for implementation of the directive expired on 11 August 2004.

([1]) OJ 2003 L 35, p. 1.

Action brought on 23 March 2006 — Commission of the European Communities v Italian Republic

(Case C-157/06)

(2006/C 131/61)

Language of the case: Italian

Parties

Applicant: Commission of the European Communities (represented by: X. Lewis and D. Recchia, Agents)

Defendant: Italian Republic

Form of order sought

— Declaration that, by adopting Decree No 558/A/04/03/RR of the Minister for the Interior of 11 July 2003, authorising the derogation from Community rules on public supply contracts in respect of the procurement of light helicopters for the use of police forces and the national fire service, without any of the conditions capable of justifying that derogation having been satisfied, the Italian Republic has failed to fulfil its obligations under the combined provisions of Articles 2(1)(b), 6 and 9 of Directive 93/36/EEC ([1]);

— Order requiring the Italian Republic to pay the costs of the proceedings.

Pleas in law and main arguments

The Commission of the European Communities brought an action on 23 March 2006 in which it seeks a declaration that, by adopting the Decree of the Minister for the Interior of 11 July 2003 authorising the derogation from Community rules on public supply contracts in respect of the procurement of light helicopters for the use of police forces and the national fire service, without any of the conditions capable of justifying such a derogation having been satisfied, the Italian Republic has failed in its obligations under Council Directive 93/36/EEC of 14 June 1993 coordinating procedures for the award of public supply contracts, and in particular under Article 2(1)(b), in conjunction with Articles 6 and 9, thereof.

The Commission became aware of the existence of the aforementioned decree of the Minister for the Interior while preparing other infringement proceedings. The Commission submits that this decree is at variance with the above directive on public supply contracts in so far as none of the conditions set out in Article 2(1)(b) of Directive 93/36/EEC which, if met, may allow that directive not to be applied — that is to say, in the case of contracts which are declared secret or the execution of which must be accompanied by special security measures, or where the protection of the basic interests of the State's security so requires — has been satisfied.

([1]) OJ L 199 of 09.08.1993, p. 1.

Action brought on 21 March 2006 — Commission of the European Communities v Republic of Finland

(Case C-159/06)

(2006/C 131/62)

Language of the case: Swedish

Parties

Applicant: Commission of the European Communities (represented by: U. Wölker, F. Simonetti and K. Nyberg, acting as Agents)

Defendant: Republic of Finland

Form of order sought

— Declare that, with regard to the province of Åland, by failing to adopt the laws, regulations and administrative provisions necessary to comply with 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]) or in any case by failing to inform the Commission thereof, the Republic of Finland has failed to fulfil its obligations under that directive;

— order the Republic of Finland to pay the costs.

Pleas in law and main arguments

The period prescribed for implementation of the directive expired on 21 July 2004.

([1]) OJ L 197, 21.7.2001, p. 30.

Action brought on 24 March 2006 — Commission of the European Communities v Italian Republic

(Case C-160/06)

(2006/C 131/63)

Language of the case: Italian

Parties

Applicant: Commission of the European Communities (represented by: E. Montaguti, G. Zavvos, Agents)

Defendant: Italian Republic

Form of order sought

— Declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2003/51/EC ([1]) of the European Parliament and of the Council of 18 June 2003 on the annual and consolidated accounts of certain types of companies, banks and other financial institutions and insurance undertakings, or, in any case, by failing to communicate such measures to the Commission, the Italian Republic has failed to fulfil its obligations under that directive;

— Order the Italian Republic to pay the costs.

Pleas in law and main arguments

The period prescribed for transposing that directive into national law expired on 1 January 2005.

([1]) OJ L 178, 17.7.2003, p. 16

Appeal brought on 29 March 2006 by Ermioni Komninou, Grigorios Dokos, Donatos Pappas, Vasilios Pappas, Aristidis Pappas, Eleftheria Pappa, Lamprini Pappa, Irini Pappa, Alexandra Dokou, Fotios Dimitriou, Zoi Dimitriou, Petros Bolosis, Despina Bolosi, Konstantinos Bolosis and Thomas Bolosis against the order made by the Court of First Instance (Fifth Chamber) on 13 January 2006 in Case T-42/04 Komninou and Others v Commission

(Case C-167/06 P)

(2006/C 131/64)

Language of the case: Greek

Parties

Appellants: Ermioni Komninou, Grigorios Dokos, Donatos Pappas, Vasilios Pappas, Aristidis Pappas, Eleftheria Pappa, Lamprini Pappa, Irini Pappa, Alexandra Dokou, Fotios Dimitriou, Zoi Dimitriou, Petros Bolosis, Despina Bolosi, Konstantinos Bolosis and Thomas Bolosis (represented by: G. Dellis, dikigoros)

Other party to the proceedings: Commission of the European Communities

Form of order sought

— Allow the present application;

— set aside the order appealed against, made by the Court of First Instance on 13 January 2006 in Case T-42/04;

— rule on the appellants' application of 10 February 2004, allow the application and order the European Commission to pay to each of the appellants the sum of EUR 200 000 together with statutory interest at the rate of 8 % from delivery of the Court's judgment until payment;

— order the defendant to pay all the costs of the appellants at first instance and on appeal and, in the alternative, should the present appeal be dismissed, order the defendant to pay the costs or, at any rate, each party to bear his own costs.

Grounds of appeal and main arguments

The appeal in Case C-167/06 has been brought by 15 appellants, who reside in Parga (Prefecture of Preveza, Greece), against the order of the Court of First Instance of the European Communities of 13 January 2006 in Case T-42/04. That order dismissed as clearly unfounded their action for compensation of 10 February 2004 brought against the Commission of the European Communities.

By their application of 10 February 2004 to the Court of First Instance of the European Communities, the appellants brought proceedings against the Commission for compensation in respect of the non-material damage suffered by them by reason of the Commission's conduct following their complaint of 7 July 2005 alleging that the Greek authorities had infringed Community environmental law, in particular Articles 3 and 5 of Directive 85/337, in relation to the design and construction of a biological sewage treatment plant at a place known as Varka.

They have submitted that the Commission's **overall** and **continuous** conduct in their regard amounts to a clear case of maladministration. In particular:

1. At an initial stage, the Commission (i) did not inform them in good time of progress with regard to the complaint, concealed information and misled them as to the progress of their case, (ii) rejected their complaint with a statement of reasons clearly contrary to Community environmental law and the Court's case-law and (iii) did not observe basic rules of impartiality in relation to the handling of the case by its officials.

2. Subsequently, after the aforementioned matters had been confirmed by decision of the Ombudsman, the Commission failed to take basic measures to make good the foregoing forms of maladministration. What is more, it has persisted in treating the appellants in a manner that is dilatory and lacks transparency: first, it has refused to admit the errors made by it to the appellants' detriment and, second, it has refused (both at the time when the action for compensation was brought and now) to examine the substance of their complaint and to ensure that Community law is interpreted uniformly and correctly.

The appellants have submitted in particular that, irrespective of whether or not the Commission's position on the application of Directive 85/337 is correct, the Commission has, by its conduct, flagrantly infringed its fundamental obligations to the appellants as European citizens and as persons subject to administrative authorities: it has infringed, in particular, the principles of good administration, impartiality, legal certainty and the protection of legitimate expectations, while it has also in fact infringed the right of complaint laid down for European citizens.

By the order under appeal, the Court of First Instance, without examining the admissibility of the action for compensation, applied Article 111 of its Rules of Procedure and held (i) that the action manifestly lacked any foundation in law and (ii) that it was not necessary for the proceedings before it to continue, in particular by means of the exchange of further pleadings and an oral procedure. It therefore dismissed the action in its entirety and ordered the appellants to bear not only their own costs but also the Commission's. Notice of the order was given to the lawyer acting for the appellants in the present case by registered letter of 25 January 2006.

The appellants consider the order to be wrong in law for the purposes of the second subparagraph of Article 225(1) of the EC Treaty and Article 58 of the Statute of the Court of Justice; the appeal against it, provided for in those articles and in Article 56 of the Statute, is admissible and has been brought within the time-limit and on the basis of a clear legal interest. In their appeal, the appellants seek to show the errors of law in the order.

Those errors concern:

(i) the fact that the Court of First Instance failed completely to examine the appellants' pleas and arguments relating to infringement of the right of complaint, as enshrined as an aspect of European citizenship;

(ii) the fact that the Court of First Instance in any event distorted the sense of the Ombudsman's decision of 18 July 2002, which constituted the most relevant item of evidence relied upon by the appellants in their action, or at any rate erred in the legal characterisation of that item of evidence;

(iii) the fact that the Court of First Instance interpreted and applied incorrectly the principles of good administration, impartiality and the protection of legitimate expectations, in certain instances distorted the sense of the evidence and in any event erred in the legal characterisation of the facts of the action which relate to the infringement of those principles;

(iv) the fact that the Court of First Instance failed to examine the action for compensation or, in any event, examined it in a deficient manner, inasmuch as it treated the Commission's conduct in question as a collection of isolated events separate from one another and not in an overall manner, despite the fact that the infringement of Community rules relied upon by the appellants and the damage suffered by them result principally from the overall stance of the Commission over a period of eight years.

More generally, the appellants consider that the Court of First Instance failed to draw the correct conclusions from the fundamental rule that the Commission is responsible for ensuring that procedures progress in a correct and lawful manner and in the event of error must bear the financial burden of maladministration. Furthermore, failure to observe the fundamental rules governing authorities' conduct can give rise to non-material harm in respect of which citizens may seek reparation and damages.

Action brought on 31 March 2006 — Commission of the European Communities v Kingdom of Spain

(Case C-172/06)

(2006/C 131/65)

Language of the case: Spanish

Parties

Applicant: Commission of the European Communities (represented by: S. Pardo Quintillán, acting as Agent)

Defendant: Kingdom of Spain

Form of order sought

— Declare that, by making the grant of public aid to economic operators who wish to market in Spain solar captors manufactured and lawfully marketed in another Member State or manufactured in a country which is a signatory to the Agreement on the European Economic Area subject to the condition that those captors must have a certificate of conformity which satisfies the requirements laid down in the national rules and, for that purpose, to undergo in a specially designated national laboratory for tests already carried out in that State, the Kingdom of Spain has failed to fulfil its obligations under Articles 28 and 30 of the EC Treaty and Articles 11 and 13 of the Agreement on the European Economic Area;

— order Kingdom of Spain to pay the costs.

Pleas in law and main arguments

The Spanish provisions on the conditions of access to public aid for solar captors from another Member State or a country which is a signatory to the Agreement on the European Economic Area are contrary to the fundamental principle of free movement of goods and cannot be justified for any of the reasons of general interest laid down in Article 30 of the EC Treaty or by any of the overriding requirements recognised by the case-law of the Court of Justice.

Appeal brought on 5 April 2006 by Stadtwerke Schwäbisch Hall GmbH, Stadtwerke Tübingen GmbH and Stadtwerke Uelzen GmbH against the judgment of the Court of First Instance (Fourth Chamber) delivered on 26 January 2006 in Case T-92/02 Stadtwerke Schwäbisch Hall GmbH, Stadtwerke Tübingen GmbH and Stadtwerke Uelzen GmbH v Commission of the European Communities supported by E.ON Kernkraft GmbH, RWE Power AG, EnBW Energie Baden-Württemberg AG and Hamburgische Electricitäts-Werke AG

(Case C-176/06 P)

(2006/C 131/66)

Language of the case: German

Parties

Appellants: Stadtwerke Schwäbisch Hall GmbH, Stadtwerke Tübingen GmbH and Stadtwerke Uelzen GmbH (represented by: D. Fouquet and P. Becker, Rechtsanwälte)

Other parties to the proceedings: Commission of the European Communities, E.ON Kernkraft GmbH, RWE Power AG, EnBW Energie Baden-Württemberg AG, Hamburgische Electricitäts-Werke AG

Form of order sought

— Set aside the judgment of the Court of First Instance of 26 January 2006 in Case T-92/02 *Stadtwerke Schwäbisch Hall GmbH and Others* v *Commission of the European Communities* ([1]);

— Insofar as the state of the proceedings permits the Court to give final judgment, annul Commission Decision C (2001) 3967 final of 11 December 2001 to the extent that the Commission determines therein that reserves for disposal purposes and for the permanent closure of nuclear power stations in the Federal Republic of Germany do not constitute State aid for the purposes of Article 87(1) EC;

— Insofar as the state of the proceedings does not permit the Court to give final judgment, refer the case back to the First Chamber, Extended Composition, of the Court of First Instance for rehearing, thus retaining the judicial body which was competent to hear the applicants' initial proceedings;

— Order the Commission to pay the costs of the initial proceedings;

— Order the respondent to pay the costs of the appeal proceedings.

In the alternative:

— Dismiss the interveners' application that the appellants pay their costs in the proceedings before the Court of First Instance.

Pleas in law and main arguments

In these appeal proceedings the appellants challenge the judgment of the Court of First Instance by means of which it declared lawful the Commission's determination that the tax deferral applied to reserves for disposal purposes and for the permanent closure of nuclear power stations in the Federal Republic of Germany cannot be regarded as constituting State aid for the purposes of Article 87(1) EC. As grounds for their appeal the appellants submit infringement of procedural law and substantive Community law.

The Court of First Instance transferred the case, despite its obvious legal complexities and significance and although there were no special circumstances for so doing, from the First Chamber, Extended Composition, to the Fourth Chamber with a bench of three judges. That groundless and unjustified transfer of the case to a smaller chamber after it had been pending for a number of years infringed the appellants' right to a hearing before the judicial body laid down by law.

The Court of First Instance did not distinguish between the requirements relating to the existence of State aid and the requirements relating to the initiation of a full formal assessment. As in the present case there are, in reviewing whether the planned aid is compatible with the common market, serious difficulties of a factual and legal nature concerning the existence of a State guarantee and whether the obligations regarding permanent closure and disposal are sufficiently specified and also concerning the actual amounts of the reserves, the tax advantages and the total cost of permanent closure, the Commission was not entitled to restrict itself only to the preliminary stage. On the contrary, in this case it was under an obligation to open the formal stage of the investigation procedure.

Furthermore, the Court of First Instance did not properly assess the issue of the selectivity of the German reserve scheme per se. It failed to realise that the tax exemption for reserves in the nuclear industry is an exception to the general tax scheme. That exception is however only permitted if the future obligations have been determined in a sufficiently concrete manner. That is not however the case here: the criteria relating to the time of permanent closure, to the obligations associated with permanent closure and to the legal consequences of failure to comply with the provisions were not determined sufficiently at all. However, even if no selectivity as regards the aid is ascertainable *de jure*, a measure can contravene the law relating to State aid if it is liable to favour certain undertakings. The directive liberalising the internal market in electricity requires that Member States actively reduce discrimination and distortion of competition. The Court of First Instance did not however find that the Federal Government was under an obligation to alter the German practice as regards reserves which, by selectively supporting individual economic sectors, constitutes a direct infringement of the directive and the principle of effectiveness.

Lastly, the appellants contend that the contested judgment wrongly orders them to pay the interveners' costs. As the interveners only joined the proceedings at a very late stage, at which all the main pleadings had already been submitted, their contribution in support of the defendant could only have been marginal. That situation does not justify liability for all the costs on the part of the applicants.

([1]) OJ 2006 C 74, p. 15.

COURT OF FIRST INSTANCE

Assignment of Judges to Chambers

(2006/C 131/67)

At its plenary meeting on 8 May 2006, the Court of First Instance decided, following the taking up of his duties by Mr Moavero Milanesi, to amend as follows the decision of the plenary meeting of 7 July 2005 on the assignment of Judges to chambers:

For the period from 8 May 2006 to 30 September 2006, the following are assigned:

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

H. Legal, President of the Chamber, P. Lindh, I. Wiszniewska-Bialecka, V. Vadapalas and M. Milanesi, Judges;

to the Fourth Chamber, sitting with three Judges:

H. Legal, President of the Chamber

(a) P. Lindh and V. Vadapalas, Judges

(b) I. Wiszniewska-Bialecka and M. Milanesi, Judges

Judgment of the Court of First Instance of 5 April 2006 — Degussa v Commission

(Case T-279/02) [1]

(Competition — Article 81 EC — Cartels — Methionine market — Unique and continuous nature of the infringement — Fine — Guidelines for calculating the amount of fines — Gravity and duration of the infringement — Cooperation during the administrative procedure — Article 15(2) of Regulation No 17/62 — Presumption of innocence)

(2006/C 131/68)

Language of the case: German

Parties

Applicant: Degussa AG (Düsseldorf, Germany) (represented by: R. Bechtold, M. Karl and C. Steinle, lawyers)

Defendant: Commission of the European Communities (represented by: A. Bouquet and W. Mölls, agents, assisted by H.-J. Freund, lawyer)

Intervener in support of the defendant: Council of the European Union (represented by: E. Karlsson and S. Marquardt, agents)

Re:

Primarily, an application for annulment of Commission Decision 2003/674/EC of 2 July 2002 relating to a proceeding pursuant to Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case C.37.519 — Methionine) (OJ 2003 L 255, p.1) and, in the alternative, an application for reduction of the fine imposed on the applicant by this decision.

Operative part of the judgment

The Court:

1. *Reduces to EUR 91 125 000 the fine imposed on the applicant by Article 3 of Commission Decision 2003/674/EC of 2 July 2002 relating to a proceeding pursuant to Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case C.37.519 — Methionine);*

2. *Dismisses the remainder of the application;*

3. *Orders the applicant to pay its own costs and 75 % of the costs incurred by the Commission;*

4. *Orders the Commission to pay 25 % of its own costs;*

5. *Orders the Council to pay its own costs.*

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[1] OJ C 274 of 9.11.2002

Judgment of the Court of First Instance of 5 April 2006 — Deutsche Bahn v Commission

(Case T-351/02) [1]

(State aid — Competitor's complaint — Directive 92/81/EEC — Excise duties on mineral oils — Mineral oils used as fuel for the purpose of air navigation — Exemption from duty — Letter from the Commission to a complainant — Action for annulment — Admissibility — Challengeable act — Regulation (EC) No 659/1999 — Concept of aid — Imputability to the State — Equal treatment)

(2006/C 131/69)

Language of the case: German

Parties

Applicant: Deutsche Bahn (Berlin, Germany) (represented by: M. Schütte, M. Reysen and W. Kirchhoff, then M. Schütte and M. Reysen, lawyers)

Defendant: Commission of the European Communities (represented by: V. Kreutschitz and J. Flett, agents)

Intervener in support of the defendant: Council of the European Union (represented by: A.-M. Colaert, F. Florindo Gijón and C. Saile, agents)

Re:

Application for annulment of the Commission's decision of 12 September 2002 rejecting a complaint lodged by the applicant on 5 July 2002.

Operative part of the judgment

The Court:

1. *Rejects the action;*

2. *Orders the applicant to pay the costs;*

3. *Orders the Council to bear its own costs.*

([1]) OJ 2003 C 31, p. 19.

Judgment of the Court of First Instance of 6 April 2006 — Schmitz-Gotha Fahrzeugwerke v Commission

(Case T-17/03) ([1])

(State aid — Guidelines on State aid for rescuing and restructuring firms in difficulty — Necessity of the aid)

(2006/C 131/70)

Language of the case: German

Parties

Applicant: Schmitz-Gotha Fahrzeugwerke GmbH (Gotha, Germany) (represented by: M. Matzat, lawyer)

Defendant: Commission of the European Communities (represented by: V. Kreuschitz and V. di Bucci, Agents)

Re:

Application for annulment of Commission Decision 2003/194/EC of 30 October 2002 on the State aid implemented by Germany for Schmitz-Gotha Fahrzeugwerke GmbH (OJ 2003 L 77, p. 41)

Operative part of the judgment

The Court:

1. *Dismisses the application;*

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

([1]) OJ C 124 of 24.5.2003

Judgment of the Court of First Instance of 6 April 2006 — Camós Grau v Commission

(Case T-309/03) ([1])

(Investigation by the European Anti-Fraud Office (OLAF) concerning the management and funding of the Institute for Europeon and Latin American Relations (IRELA) — Potential conflict of interest on the part of an investigator — Removal from the investigating body — Impact on the conduct of the investigation and the content of the report of the investigation — Report terminating the investigation — Action for annulment — Admissibility — Action for damages — Admissibility)

(2006/C 131/71)

Language of the case: French

Parties

Applicant: Manel Camós Grau (Brussels, Belgium) (represented by: M.-A. Lucas, lawyer)

Defendant: Commission of the European Communities (represented by: J.-F. Pasquier and C. Ladenburger, Agents)

Re:

Application, first, for the annulment of the report of the European Anti-Fraud Office (OLAF) of 17 October 2002 terminating the investigation concerning the Institute for Europeon and Latin American Relations (IRELA) and, secondly, for compensation for non-material damage and damage to the applicant's employment prospects claimed to have arisen by virtue of that report

Operative part of the judgment

The Court:

1. *Orders the Commission to pay Mr Camós Grau the sum of EUR 10 000.*

2. *Dismisses the remainder of the claims.*

3. *Orders the Commission to bear the costs.*

([1]) OJ C 275, 15.11.2003.

Judgment of the Court of First Instance of 5 April 2006 — Saiwa v OHMI

(Case T-344/03) ([1])

(Community trade mark — Application for a figurative mark including the word element 'SELEZIONE ORO Barilla' — Opposition — Earlier word marks ORO and ORO SAIWA — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94 — Opposition rejected)

(2006/C 131/72)

Language of the case: Italian

Parties

Applicant: Saiwa SpA (Genoa Italy) (represented by: G. Sena, P. Tarchini, J.-P. Karsenty and M. Karsenty-Ricard, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (represented by: M. Capostagno and O. Montalto, acting as Agents)

Other party to the proceedings before the Board of Appeal of OHIM, intervening before the Court of First Instance: Barilla Alimentare SpA (Parma, Italy) (represented by: A. Vanzetti and S. Bergia, lawyers)

Re:

Action against the decision of the Fourth Board of Appeal of OHIM of 18 July 2003 (R 480/2002-4) concerning opposition proceedings between Saiwa SpA and Barilla Alimentare SpA

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

([1]) OJ C 304, 13.12.2003.

Judgment of the Court of First Instance of 5 April 2006 — Madaus v OHIM

(Case T-202/04) ([1])

(Community trade mark — Opposition proceedings — Previous international word mark ECHINACIN — Application for Community word mark ECHINAID — Relative grounds for refusal — Article 8(1)(b) of Regulation (EC) No 40/94)

(2006/C 131/73)

Language of the case: English

Parties

Applicant: Madaus AG (Cologne, Germany) (represented by: I. Valdelomar Serrano, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Optima Healthcare Ltd (Cardiff, United Kingdom)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 30 March 2004 (Case R 714/2002-2) concerning the opposition proceedings between Madaus AG and Optima Healthcare Ltd

Operative part of the judgment

The Court:

1. *Dismisses the application;*

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

([1]) OJ C 201 of 7.8.2004

Judgment of the Court of First Instance of 5 April 2006 — Kachakil Amar v OHIM

(Case T-388/04) ([1])

(Community trade mark — Figurative mark in the form of a longitudinal line ending with a triangle — Refusal to register — Lack of distinctive character — Acquisition of a distinctive character through use)

(2006/C 131/74)

Language of the case: Spanish

Parties

Applicant: Habib Kachakil Amar (Valencia, Spain) (represented by: J. C. Heder, lawyer)

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

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 20 July 2004 (R 175/2004-1) which refused to register the figurative mark 'Longitudinal line ending with a triangle' as a Community trade mark

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

([1]) OJ C 284 of 20.11.2004.

Order of the Court of First Instance of 30 March 2006 — Korkmas and others v Commission

(Case T-2/04) ([1])

(Admissibility — Application for annulment — Act against which proceedings can be brought — Implied Commission decision refusing to make a proposal to the Council — Action for failure to act — Omission against which proceedings can be brought — Failure to address a proposal to the Council — Discretion — Injunction)

(2006/C 131/75)

Language of the case: English

Parties

Applicants: Cemender Korkmas (Flers, France), Corner House Research (Sturminster Newton, Dorset, United Kingdom) and The Kurdish Human Rights Project (London, United Kingdom) (represented initially by P. Moser, barrister, and A. Stock, lawyer, then by Mr Moser and H. Miller, solicitor)

Defendant: Commission of the European Communities (represented by: G. Boudot and M. Wilderspin, agents)

Re:

Application for the annulment of the Commission's Regular Report of 5 November 2003 concerning Turkey's progress towards accession, in so far as it contains a Commission decision refusing to make a recommendation to the Council concerning pre-accession aid granted to Turkey and, in the alternative, for a finding of failure to act in that connection and, in any event, for an injunction in that regard

Operative part of the order

1. *The action is dismissed as inadmissible;*

2. *Cemender Korkmaz, Corner House Research and the Kurdish Human Rights Project are ordered to pay the costs.*

([1]) OJ C 71, 20.3.2004

Order of the President of the Court of First Instance of 4 April 2006 — Tesoka v EUROFOUND

(Case T-398/05 R)

(Proceedings for interim relief — No need to adjudicate)

(2006/C 131/76)

Language of the case: French

Parties

Applicant: Sabrina Tesoka (Overijse, Belgium) (represented by: J.-L. Fagnart, lawyer)

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

Re:

Application for interim measures, essentially seeking that EUROFOUND be ordered, first, to make an interim payment to the applicant and, second, to return to the applicant the documents necessary to enable her to obtain unemployment benefits in her country of residence.

Operative part of the order

1. *There is no need to adjudicate on the application for interim measures.*

2. *In the interlocutory proceedings, the defendant shall bear her own costs and pay half the costs incurred by the applicant.*

Action brought on 11 January 2006 — Dimitrios Grammatikopoulos v OHIM

(Case T-20/06)

(2006/C 131/77)

Language in which the application was lodged: Greek

Parties

Applicant: Dimitrios Grammatikopoulos (represented by: Konstantinos Taoulas, 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: National Academy of Recording Arts and Sciences (Santa Monica, USA)

Form of order sought

— Annul and set aside the decision of 18 August 2005 of the Fourth Board of Appeal of OHIM in Case R 1062/2000-4 and grant the applicant's application for registration of the word mark GRAMMY as a Community mark outright, as filed, or — in the alternative — in amended form as suggested in the present application to the Court.

Pleas in law and main arguments

Applicant for a Community trade mark: Dimitrios Grammatikopoulos.

Community trade mark concerned: Word mark GRAMMY for goods in Classes 25 and 28 — Application No 19315.

Proprietor of the mark or sign cited in the opposition proceedings: National Academy of Recording Arts and Sciences.

Mark or sign cited in opposition: National mark GRAMMY for goods in Classes 9, 35, 41 and 42.

Decision of the Opposition Division: Opposition rejected.

Decision of the Board of Appeal: Appeal upheld. Application for registration rejected.

Pleas in law: Infringement of Articles 8(5) and 43(3) of Council Regulation No 40/94. The applicant pleads that genuine commercial use of the mark cited in opposition was not proved, while he also contests the Board of Appeal's assessment that the mark cited in opposition has a reputation.

Action brought on 8 March 2006 — General Química and Others v Commission of the European Communities

(Case T-85/06)

(2006/C 131/78)

Language of the case: Spanish

Parties

Applicants: General Química S.A. (Lantarón, Álava, Spain), Repsol Química S.A. and Repsol YPF S.A. (Madrid) (represented by: J.M. Jiménez Laiglesia and J. Jiménez Laiglesia, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Annul Articles 1(g), 1(h) and 2(d) of the decision in so far as it declares Repson Química and Repsol YPF to be jointly and severally liable for an infringement of Article 81(1) EC;

alternatively, annul the declaration of joint and several liability in respect of Repsol YPF;

— annul Article 2(d) of the decision in so far as it fixes the amount of the fine at EUR 3.38 million;

alternatively, reduce the amount of the fine in an appropriate manner;

— order the European Commission to pay the costs.

Pleas in law and main arguments

The action is brought against Commission Decision C(2005) 5592 final of 21 December 2005 in Case COMP/F/38.443 — Chemicals for the rubber industry. In the contested decision the Commission declared that the applicant, among other undertakings, had infringed Article 81(1) EC and Article 53 of the EEA Agreement by participating, between 1999-2000, in a cartel and concerted practices consisting in price-fixing and the exchange of confidential information in the rubber chemicals sector in the EEA. In respect of those infringements the Commission imposed a fine jointly and severally on the applicants.

In support of their claims the applicants rely on the following grounds:

— incorrect assessment by the Commission, in declaring Repsol YPF and Repsol Química jointly liable with General Química and, alternatively, incorrect assessment and failure to state reasons for the declaration of joint and several liability in respect of Repsol YPF;

— incorrect assessment, failure to state reasons and infringement of the principles of proportionality and equal treatment in the calculation of the fine;

— incorrect assessment and defective reasoning in the application of the Commission notice on immunity from fines and reduction of fines in cartel cases ([1]).

([1]) OJ 2002 C 45, p. 3.

Action brought on 15 March 2006 — Lebard v Commission

(Case T-89/06)

(2006/C 131/79)

Language of the case: French

Parties

Applicant: Daniel Lebard (Brussels, Belgium) (represented by: de Guillenschmidt, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— annul the decision set out in the letter of 16 January 2006 addressed to Mr Lebard, dismissing the application for withdrawal of Decision IV/M.1517 in the name of the Commission;

— annul, as a consequence, the Commission's decision to close the file on the concentrations between Rhodia and Albright & Wilson and de Hoechst and Rhône-Poulenc to the extent that these transactions are interlinked;

— as a result, declare that Decision IV/M.1378 of 2004 is also void;

— order the Commission to pay Mr Lebard the sum of one euro for the harm caused to him, to have the judgment of the Court of First Instance containing the order published at its own cost in newspapers chosen by the applicant and to pay all the costs.

Pleas in law and main arguments

By decision No IV/M.1517 of July 1999, the Commission authorised a concentration under which Rhodia SA was to take full control of the company Albright & Wilson, of which the applicant was chairman between 28 July 1999 and 14 October 1999. By Decision No IV/M.1378 of 9 August 1999, the Commission also authorised the concentration between the undertakings Hoechst and Rhône-Poulenc, the latter having a controlling interest in Rhodia of 67.35 %. Certain commitments relating to Rhodia (sale of Rhône-Poulenc's interest in Rhodia, maintenance of independent management of the two undertakings) were entered into by Rhône-Poulenc and attached to Decision No IV/M.1378 to ensure that the transactions would not have an adverse effect on competition. The applicant sent the Commission several letters informing it that the commitments entered into in respect of Case IV/M.1378 had allegedly not been complied with and requesting that Decision No IV/M.1517 be withdrawn. In its reply of 7 October 2005, the Commission stated that it did not envisage bringing any action on the basis of the facts brought to its knowledge by the applicant and that it had decided to close the file. In response to the applicant's letter, the Cabinet of the President of the Commission sent the applicant a letter dated 16 January 2006 confirming its earlier position as that set out in the letter of 7 October 2005, namely the rejection of the application to withdraw the Commission's decision in Case IV/M.1517. The present action for annulment is directed against the alleged decision contained in the Commission's letter of 16 January 2006.

In support of its action, the applicant puts forward several pleas.

First, for the purposes of admissibility of his action, the applicant purports to have a direct interest in bringing proceedings as recipient of the contested letter causing him direct and individual harm. He further contends that the letter of 16 January 2006, which is the subject of the present action, cannot be considered to be an act that simply confirms the letter of 7 October 2005 on the ground that a new element has since arisen which is likely to bring about a substantial change in the circumstances and conditions governing the adoption of the former measure for the purposes of Community case-law. The applicant thereby refers to a letter from Mrs Kroes of 12 January 2006 addressed to the Members of the European Parliament concerning the concentrations in question.

Second, the applicant puts forward pleas in support of the forms of order sought on the merits. In the first, alleging a breach of the substantive and procedural rules in the field of competition, he criticises the Commission for not re-examining the file and not using its power to withdraw its earlier decision. In the second, he alleges that the Commission has misused its powers by failing to maintain tight control over the concentrations, authorised in advance, in the course of their implementation.

Finally, the applicant puts forward a plea based on judicial protection which, he contends, is owed to the parties to a concentration and in particular to the directors of an undertaking involved in a concentration.

Action brought on 23 March 2006 — Mülhens v OHIM

(Case T-93/06)

(2006/C 131/80)

Language in which the application was lodged: English

Parties

Applicant: Mülhens GmbH & Co. KG (Cologne, Germany) (represented by: T. Schulte-Beckhausen, lawyer)

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

Other party to the proceedings before the Board of Appeal: S.A. Spa Monopole, Compagnie fermière de Spa (Spa, Belgium)

Form of order sought

— Annul the decision of the second Board of Appeal of the defendant of 11 January 2006 (Case No 2746/2004);

— order the defendant to bear the costs.

Pleas in law and main arguments

Applicant for the Community trade mark: Mülhens GmbH & Co. KG

Community trade mark concerned: the word mark 'MINERAL SPA' for goods in class 3 (soaps, perfumeries, essential oils, preparations for body and beauty care, preparations for the hair, dentifrices)

Proprietor of the mark or sign cited in the opposition proceedings: S.A. Spa Monopole, Compagnie fermière de SPA

Mark or sign cited: several trade marks containing the word 'SPA' and, in particular, the Benelux word trade mark 'SPA' for goods in class 32

Decision of the Opposition Division: rejection of the application for registration of the mark

Decision of the Board of Appeal: dismissal of the appeal

Pleas in law: Misapplication of Article 8(5) of Regulation 40/94.

Action brought on 21 March 2006 — Federaction de Cooperativas Agrarias de la Comunidad Valenciana v Community Plant Variety Office (CPVO)

(Case T-95/06)

(2006/C 131/81)

Language of the case: Spanish

Parties

Applicant: Federación de Cooperativas Agrarias de la Comunidad Valenciana (Valencia, Spain) (represented by S. Roig Girbes, R. Ortega Bueno and M. Delgado Echevarría, lawyers)

Defendant: Community Plant Variety Office (CPVO)

Form of order sought

— Annul the Decision of the Board of Appeal of the Community Plant Variety Office of 8 November 2005;

— order the Community Plant Variety Office to pay the costs.

Pleas in law and main arguments

Applicant for Community plant variety rights: Jean de Maistre, following the transfer of the variety at issue, SARL Nador Cott Protection (Application No 1995/0726).

Community plant variety right sought by: Nadorcott

Decision of the CPVO: Community plant variety right granted (Decision No 14111).

Appeal before the Board of Appeal lodged by: the applicant.

Decision of the Board of Appeal: Application inadmissible (Case A 001/2005).

Pleas in law: Infringement of Regulation (EC) No 1239/95 [1] and of the principle of sound administration consisting in failure to apply Article 49 of that regulation; error consisting in the dismissal of the appeal without justification.

[1] Commission Regulation (EC) No 1239/95 of 31 May 1995 establishing implementing rules for the application of Council Regulation (EC) No 2100/94 as regards proceedings before the Community Plant Variety Office (OJ 1995 L 121, p. 37).

Action brought on 29 March 2006 — Neoperl v OHIM

(Case T-97/06)

(2006/C 131/82)

Language of the case: German

Parties

Applicant: Neoperl GmbH (Müllheim, Germany) (represented by H. Börjes-Pestalozza, lawyer)

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

Form of order sought

— annul contested Decision R 0612/2005-4 and order the Office for Harmonisation in the Internal Market to publish application No 3 636 206 for the purposes of its registration as a Community trade mark.

Pleas in law and main arguments

Community trade mark concerned: Three dimensional mark 'Sanitärschlauch' — shape of a tube — for goods in Classes 11 and 17 — Application No 3 636 206.

Decision of the Examiner: Rejection of the application

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: The mark applied for has the necessary distinctive character for the purposes of Article 7(1)(b) of Regulation (EC) No 40/94 [1].

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

Action brought on 28 March 2006 — Fédération nationale du Crédit agricole v Commission

(Case T-98/06)

(2006/C 131/83)

Language of the case: French

Parties

Applicant: Fédération nationale du Crédit agricole (Paris, France) (represented by: N. Lenoir and P.-A. Jeanneney, lawyers)

Defendant: Commission of the European Communities

Form of order sought

The applicant claims that the Court should:

— annul the decision given by the Commission on 21 December 2005 in Case N 531/2005 France — Measures relating to the creation and operation of Banque Postale;

— order the Commission to pay the entire costs of the proceeding.

Pleas in law and main arguments

On 25 January 2005 the French authorities informed the Commission of their decision to transfer the banking and insurance activities of La Poste to a subsidiary (Banque Postale), initially wholly owned by La Poste. On 21 July 2001, the applicant in the present action submitted a formal complaint to the Commission under Article 20(2) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 (now Article 88) of the EC Treaty [1], alleging that the State aid granted to Banque Postale was incompatible with the common market and requesting that the Commission initiate formal investigation proceedings.

In a decision of 21 December 2005, the Commission stated that the transferring of financial activities to a subsidiary does not confer an economic advantage on Banque Postale and that the measures relating to the creation and operation of this subsidiary do not constitute State aid within the meaning of Article 87(1) EC. That is the decision against which the present action is brought.

In support of its action, the applicant relies on four pleas in law, the first alleging a breach of formal legality, i.e. breach of Regulation No 659/1999 by the Commission in taking a decision to refer certain measures back for further consideration and breach by the Commission of Article 88(2) EC in refusing to initiate the formal investigation procedure.

In its second plea the applicant asserts that by holding that the measures relating to the creation and operation of Banque Postale did not constitute State aid, the Commission made several errors of assessment regarding, inter alia, the economic advantages alleged in the complaint and that therefore it had misinterpreted Articles 87 and 88 EC.

In its third plea the applicant alleges that the Commission's decision is vitiated by formal defects owing to the Commission's failure to give reasons for its refusal to deal with the fundamental objections raised by the applicant in its complaint and also contradictory reasoning and lack of reasoning regarding certain specific points dealt with in the decision.

In its fourth plea the applicant alleges that the Commission breached Articles 43, 82 and 86 EC by failing to take account in its decision of the interference with freedom of establishment and free competition posed by the measures relating to the purpose of the State aid as inferred from Livret A.

([1]) OJ 1999 L 83, p. 1

Action brought on 3 April 2006 — Société des plantations de Mbanga (S.P.M.) v Commission of the European Communities

(Case T-104/06)

(2006/C 131/84)

Language of the case: French

Parties

Applicant: Société des plantations de Mbanga (S.P.M.) (Douala, Cameroon) (represented by: B.-L. Doré, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— Grant all of its claims;

— annul Commission Regulation (EC) No 219/2006 of 8 February 2006 opening and providing for the administration of the tariff quota for bananas falling under CN code 0803 00 19 originating in ACP countries for the period 1 March to 31 December 2006;

— order the Commission to pay all the costs and expenses.

Pleas in law and main arguments

In the context of the amendments to the specific regime for trade quotas with non-Member States forming part of the measures of market organisation in the banana sector, Council Regulation No 1964/2005 of 29 November 2005 ([1]), among other things, conferred on the Commission the power to enact the measures necessary to implement that regulation, as well as transitional measures relating to the management of the tariff quota for bananas originating in ACP countries. In that context, the Commission maintained in its Regulation No 2015/2005 of 9 December 2005 ([2]), for the months of January and February 2006, the system of granting import licences on the basis of historic references ([3]). As that regulation was, by definition, transitional, on 8 February 2006 the Commission adopted Regulation No 219/2006 opening and providing for the administration of the tariff quota for bananas falling under CN code 0803 00 19 originating in ACP countries for the period 1 March to 31 December 2006 ([4]). In that regulation, the Commission adopted a method of administering the tariff quota which provides that the quota is to be used by chronological order of acceptance of the declarations for release for free circulation (the 'first come, first served' method) and reserves, as a transitional measure, part of the tariff quota for operators who supplied the Community with ACP bananas under the import arrangements previously in force. The annulment of that regulation is sought in this action.

In the present action, the applicant claims that the contested regulation is legally flawed in a number of respects in that the effect of its provisions is that, whilst 60 % of the tariff quota is administered according to the new method, 40 % is still administered by granting licences on the basis of historic references. In support of its claim, the applicant relies of the same pleas in law and arguments as those put forward in its claim in Case T-447/05 ([5]).

([1]) Regulation (EC) No 1964/2005 of 29 November 2005 on the tariff rate for bananas (OJ 2005 L 316, p. 1)

([2]) Commission Regulation (EC) No 2015/2005 of 9 December 2005 on imports during January and February 2006 of bananas originating in ACP countries under the tariff quota opened by Council Regulation (EC) No 1964/2005 on the tariff rates for bananas (OJ 2005 L 324, p. 5)

([3]) The applicant seeks annulment of that regulation in Case T-447/05

([4]) OJ 2006 L 38, p. 22

([5]) See notice in OJ 2006 C 74, p. 24

Action brought on 12 April 2006 — Vodafone España and Vodafone Group v Commission

(Case T-109/06)

(2006/C 131/85)

Language of the case: English

Parties

Applicants: Vodafone España, SA (Madrid, Spain) and Vodafone Group plc (Newbury, United Kingdom) (represented by: J. Flynn, QC, E. McKnight and K. Fountoukakos-Kyriakakos, Solicitors)

Defendant: Commission of the European Communities

Form of order sought

— Order the annulment of the decision of the Commission comprised in its letter dated 30 January 2006 addressed to the Spanish CMT; and

— order the Commission to pay Vodafone's costs of the present proceedings.

Pleas in law and main arguments

The applicants seek the annulment of a decision of the Commission of the European Communities contained in a letter dated 30 January 2006 to the Spanish Comisión del Mercado de las Telecomunicaciones ('CMT'), adopted pursuant to Article 7 of the Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services ([1]) ('Framework Directive').

By the contested Decision the Commission endorsed, at the end of the first phase investigation provided for in Article 7 of the Framework Directive and without opening a further two month investigation pursuant to Article 7(4) ('second phase'), a proposed measure notified to the Commission by the CMT by which the CMT had provisionally decided to:

i) find that Vodafone and two other undertakings (Telefonica and Amena) jointly enjoyed significant market power by holding a position of collective dominance on the wholesale market for access and call origination on public mobile telephone networks in Spain; and

ii) impose an obligation on the three undertakings to respond to reasonable requests for access to their networks and to offer reasonable terms for the supply of access services.

The applicants submit that the contested Decision infringes Article 7 of the Framework Directive as the Commission should have opened a second phase investigation because it

i) should have realised that the CMT could not, by reference to the evidence and reasoning contained in the proposed measure, justify a finding of joint significant market power;

ii) should have identified serious doubts as to whether the CMT had applied the concept of significant market power correctly according to the case law of the Court of Justice and the Court of First Instance; and

iii) should have identified serious doubts as to whether the CMT had collated and examined all relevant evidence.

Further, the applicants allege that the contested Decision leads to unequal treatment of undertakings in comparable situations and creates obstacles to the single market as the Decision is inconsistent with other decisions taken under Article 7 of the Framework Directive.

Finally, the applicants submit that the Commission infringed the applicants' procedural rights by not opening a second phase investigation and by depriving the applicants of the opportunity to comment, during the Commission's first phase investigation, on additional information that the Commission obtained from the CMT.

([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 2002 L 108, p. 33).

Action brought on 7 April 2006 — Inter-IKEA v OHIM

(Case T-112/06)

(2006/C 131/86)

Language in which the application was lodged: English

Parties

Applicant: Inter-IKEA Systems BV (Delft, Netherlands) (represented by: Jonas Gulliksson and Jens Olsson, lawyers)

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

Other party to the proceedings before the Board of Appeal: Walter Waibel

Form of order sought

— Annul the contested decision, and

— order OHIM to pay the costs incurred both in these proceedings and in the invalidity proceedings before OHIM.

Pleas in law and main arguments

Registered Community trade mark subject of the application for a declaration of invalidity: the figurative Trade Mark 'idea' for goods and services in classes 16, 20 and 42 (Community Trade Mark registration No 283 952)

Proprietor of the Community trade mark: Walter Waibel

Party requesting the declaration of invalidity of the Community trade mark: Inter IKEA Systems B.V.

Trade mark right of the party requesting the declaration of invalidity: several Community and national, figurative and word trade marks for goods and services in classes 16, 20 and 42

Decision of the Cancellation Division: invalidity of the trade mark 'idea'

Decision of the Board of Appeal: rejection of the request for invalidity

Pleas in law: infringement of Articles 52(1)(a) and 8(1)(b) of Council Regulation No 40/94

Action brought on 10 April 2006 — Fjord Seafood Norway and Others v Council

(Case T-113/06)

(2006/C 131/87)

Language of the case: English

Parties

Applicants: Fjord Seafood Norway AS (Oslo, Norway), Fjord Seafood Scotland Farming Ltd (Isle of Lewis, United Kingdom), Alsaker Fjordbruk AS (Onarheim, Norway) (represented by: J. Juuhl-Langseth and P. Dyrberg, lawyers)

Defendant: Council of the European Union

Form of order sought

— Annul Council Regulation 85/2006 insofar as it relates to Fjord Seafood Norway AS.

— Order the Council to bear the applicant's costs.

Pleas in law and main arguments

The applicants either export farmed salmon from Norway to the Community or produce it in the Community. The contested regulation imposes anti-dumping duties on farmed salmon originating in Norway.

In support of their application, the applicants submit in the first place that the contested regulation defines and applies the notion of Community industry wrongly. The applicants state that the contested regulation defined the Community industry suffering injury in a way that it covered less than 5 % of total Community production, in particular on the grounds that other Community producers are owned by or related to Norwegian interests. They submit that therefore the contested regulation violated the EEA Agreement, in particular the principle of freedom of establishment, free movement of capital and non-discrimination on grounds of nationality, the basic regulation ([1]), and Article 253.

The applicants furthermore contest that the contested regulation defined the Community industry as such as to cover only producers of farmed salmon. They submit that the processing industry should also have been included in the definition in as much as the salmon at issue is also processed and the duties imposed take into account processing costs.

The applicants also submit that the contested regulation wrongly assessed the dumping and injury based on data relating to the 25 Member States of the EU although for most of the time of the investigation period, the EU consisted of 15 Member States. Norwegian exporters market behaviour on the markets of the ten new Member States, who have no farmed salmon industry, prior to 1 May 2004 should not be construed as dumping causing injury to the Community industry.

The applicants furthermore submit that the samples of complainants and Norwegian exporters used are not representative, that the contested regulation failed to establish the causal link between Norwegian imports and injury and failed to consider whether injury by US and Canadian imports was not attributed to Norwegian imports. It is also submitted that the contested regulation was wrong in automatically identifying lost Community industry market share as injury, that the exchange rates used for the calculation of duties were wrong, that the basis for import prices on fillets is wrong and that the disclosure in that respect was insufficient. Finally, it is submitted that, in relation to the applicant Fjord Seafood Norway, the cost of production was wrongly established.

([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)

Action brought on 14 April 2006 — GLOBE v Commission

(Case T-114/06)

(2006/C 131/88)

Language of the case: French

Parties

Applicant: GLOBE NV (Zandhoven, Belgium) (represented by: A. Abate, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— Annul the European Commission decision contained in the letter of 2 March 2006 from the Procurement Co-ordinator, Directorate D/3 of the EuropeAid Co-operation Office, concerning the project EuropeAid/122078/C/S/Multi, entitled 'Supply of a Pipeline Network Information System to the Central Asia Gas companies (Kazakhstan, Kyrgystan, Turkmenistan, Uzbekistan)';

— Determine the Commission's non-contractual liability with regard to the adoption of the decision referred to above;

— Order the Commission to pay compensation for the loss caused to the applicant assessed at EUR 492 024,00 plus interest for late payment from the date of the judgment's publication;

— Order the Commission to pay the costs.

Pleas in law and main arguments

The applicant took part in the tendering procedure in respect of the project EuropeAid/122078/C/S/Multi, entitled 'Innovation to tender for Supply of a Pipeline Network Information System to the Central Asia Gas companies (Kazakhstan, Kyrgystan, Turkmenistan, Uzbekistan)', which is part of the TACIS Programme 2002 ([1]). By letter of 2 March 2006, the Commission notified the applicant that its tender had been unsuccessful because it was not the lowest and that the contract had been awarded to a competing undertaking. In this action, the applicant seeks annulment of the decision contained in that letter and compensation for the loss which it claims to have sustained as a result of the adoption of the contested decision.

The applicant relies on a number of pleas to dispute that decision.

First of all, it submits that in adopting the contested decision the Commission made major errors of assessment and that it contravened the Instructions to tenderers, rendering null and void the award of the contract to the successful tenderer. Under that plea, the applicant contends that the proposal accepted by the Commission does not comply with the technical specifications in the contract documents. It also criticises the Commission for extending the period for the submission of tenders and for having asked the applicant's competitor to change its tender in the light of the Corrigendum to the tender dossier, after the opening of tenders, which allowed the ultimately successful tenderer to amend its tender so as to make it the best offer. The applicant thus alleges a breach of the principle of the protection of legitimate expectations in that its proposal, the least expensive at the opening of tenders, was not ultimately successful.

Secondly, the applicant claims that by omitting to notify it, before taking the contested decision, of the grounds on which it proposed to change the order of precedence of the tenders set out at the public tender-opening session, the Commission deprived the applicant of the possibility to submit its view and, as a result, infringed its right to be heard.

The third plea put forward by the applicant relates to the Commission's alleged breach of the duty to give reasons, those provided being, according to the applicant, insufficient and contradictory.

By its fourth plea, the applicant alleges a breach of the principle of sound administration of justice in that, in its view, the Commission demonstrated negligence in its late communication of the results of the tender selection procedure and in its late replies to various letters from the applicant.

([1]) Programme founded on Council Regulation (EC, Euratom) No 99/2000 of 29 December 1999 concerning the provision of assistance to the partner States in Eastern Europe and Central Asia (OJ 2000 L 12, p. 1)

Action brought on 12 April 2006 — Zuffa v OHIM

(Case T-118/06)

(2006/C 131/89)

Language of the case: English

Parties

Applicant: Zuffa, LLC (Las Vegas, USA) (represented by: S. Malynicz, Barrister, M. Blair, Solicitor)

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

Form of order sought

— The decision of the First Board of Appeal dated 30 January 2006 in Case R 931/2005-1 dismissing the appeal under Articles 7(1)(b) and 7(1)(c) CTMR shall be annulled.

— The Office shall bear its own costs and pay those of the applicant.

Pleas in law and main arguments

Community trade mark concerned: The word mark 'ULTIMATE FIGHTING CHAMPIONSHIP' for goods and services in classes 9, 16, 25, 28 and 41 — application No 2 789 568

Decision of the examiner: Refusal of the application in respect of all the goods and services applied for

Decision of the Board of Appeal: Annulment of the examiners decision, rejection of the trade mark applied for pursuant to Article 7(1)(b) and (c) of Council Regulation No 40/94 and remission of the case to the examiner for further examination pursuant to Article 7(3) of the Regulation

Pleas in law: The Board of Appeal erred in equating the words ULTIMATE FIGHTING to the identification of the name of a particular sport and in finding that their meaning was clear and unequivocal. The Board of Appeal therefore erred in holding the trade mark applied for descriptive and non-distinctive.

Action brought on 3 May 2006 — Centro Studi A. Manieri v Council of the European Union

(Case T-125/06)

(2006/C 131/90)

Language of the case: Italian

Parties

Applicant(s): Centro Studi A. Manieri (Rome, Italy) (represented by: Carlo Forte, Mario Forte and Giannicola Forte, lawyers)

Defendant(s): Council of the European Union

Form of order sought

— Annul the decision of the General Secretariat of the Council of the European Union of 16 January 2006 to withdraw the restricted invitation to tender UCA-459/03 for full crèche management and, at the same time to accept the proposal of the Office for infrastructure and logistics (OIB) of the European Commission for the supply of the same services;

— Assess the damage suffered by the applicant on an equitable basis:

— Order the Council to pay the costs.

Pleas in law and main arguments

This action has been brought against the decision of the Secretary-General of the defendant to withdraw the invitation to tender launched in the autumn of 2003 by contract notice 2003/S 209-187862 by restricted procedure for the full management of a crèche. The reason for the decision is alleged to be the acceptance of a proposal by the Office for infrastructure and logistics (OIB) of the Commission regarding the management of the crèche in question. That proposal was judged to be much more advantageous than the applicant's tender, particularly as regards the contractual conditions offered to the staff, the economies of scale and the optimisation of the available resources.

In support of its claims the applicant relies on pleas of:

— Breach of the principles of transparency and equal treatment, in so far as the contested measure, a decision to bring the service which was the subject of the procedure under internal management, was adopted without being advertised or opened up to competition.

— Breach of Article 86(1) EC in that it is inconceivable that there should be a system which requires Member States not to maintain in force a national system which allows the award of contracts for public services without competition while the Community institutions are allowed to conduct themselves in such a manner.

— Misapplication of the provisions cited as the legal basis of the contested decision: section 4 of the specification and Article 101 of the Financial Regulation, in so far as the withdrawal of the invitation cited by the Council was not intended to recommence the procedure.

— Breach of the obligation to state reasons and error of assessment of the facts, as regards the correctness of the criteria supporting the choice of the proposal of the OIB.

— Breach of Articles 43 and 49 EC. It is argued on this point that the OIB is not a department of the Council and it does not have any control over it. It follows that it is not possible in the circumstances of this case to rely on the case-law according to which the application of the public procurement procedures is precluded if the control exercised over the concessionaire by the concession-granting public authority is similar to that which the authority exercises over its own departments and if, at the same time, that entity carries out the essential part of its activities with the controlling authority.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Action brought on 13 March 2006 — Hanot v Commission

(Case F-30/06)

(2006/C 131/91)

Language of the case: French

Parties

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

Defendant: Commission of the European Communities

Form of order sought

— Declare that Articles 5(2) and 12 of Annex XIII to the Staff Regulations are unlawful;

— Annul the decision appointing the applicant as an Assistant, in that it sets her classification at grade B*3, step 5, pursuant to Article 5(2) of Annex XIII to the Staff Regulations;

— Annul the decision to remove all the points which form the applicant's 'rucksack';

— Annul the decision to apply a multiplier for the purpose of calculating the applicant's remuneration;

— Order the Commission of the European Communities to pay the costs.

Pleas in law and main arguments

The applicant is a successful candidate in the internal competition for change of category COM/PB/04, the notice for which was published before the date when the new Staff Regulations entered into force. After that date, she was appointed by the defendant to the higher category, but her previous grade, step and multiplier were retained. However, her promotion points were re-set at zero.

In her action, the applicant submits, first, that the contested decisions infringe the legal framework formed by the notice for the competition which she passed, and Articles 5, 29 and 31 of the Staff Regulations, the principle that officials should have reasonable career prospects and the principle of proportionality.

The applicant claims, second, that those decisions also infringe the principle of equal treatment and non-discrimination. On one hand, the classification of successful candidates in the same competition or in competitions at the same level is set at different levels depending on whether recruitment occurs before or after the entry into force of the new Staff Regulations. On the other hand, officials who did not pass the competition for change of category are at an advantage, in that they retain their promotion points while the applicant's 'rucksack' was re-set at zero.

Lastly, according to the applicant, the contested decisions are contrary to the principle of the protection of legitimate expectations, in so far as she was entitled to expect to be appointed at the grade given in the competition notice.

Action brought on 13 March 2006 — Perez-Minayo Barroso and Pino v Commission

(Case F-31/06)

(2006/C 131/92)

Language of the case: French

Parties

Applicants: Isabelle Perez-Minayo Barroso (Brussels, Belgium) and Marco Pino (Brussels, Belgium) (represented by: S. Orlandi, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— Declare that Articles 5 and 12 of Annex XIII to the Staff Regulations are unlawful;

— Annul the specific decisions appointing the applicants as Administrators, in that they set their classification pursuant to Article 5(2) of Annex XIII to the Staff Regulations;

— Annul the specific decisions to remove the points accumulated by the applicants in their former category, forming their 'rucksack';

— Annul the specific decisions to apply a multiplier lower than 1 for the purposes of determining the applicant's remuneration;

— Order the Commission of the European Communities to pay the costs.

Pleas in law and main arguments

The applicants are successful candidates in the internal competition for change of category COM/PA/04, the notice for which was published before the date when the new Staff Regulations entered into force. After that date, they were appointed by the defendant to the higher category, but their previous grade, step and multiplier were retained. However, their promotion points were re-set at zero.

In their action, the applicants submit, first, that the contested decisions infringe the legal framework formed by the notice for the competition which they passed, and Articles 5, 29 and 31 of the Staff Regulations, the principle that officials should have reasonable career prospects and the principle of proportionality.

The applicants claim, second, that those decisions also infringe the principle of equal treatment and non-discrimination. On one hand, the classification of successful candidates in the same competition or in competitions at the same level is set at different levels depending on whether recruitment occurs before or after the entry into force of the new Staff Regulations. On the other hand, the applicants are at a disadvantage compared with the officials appointed as Administrators under the certification procedure, in that the latter retain their promotion points, while the applicants' 'rucksacks' were re-set at zero.

Lastly, according to the applicants, the contested decisions are contrary to the principle of the protection of legitimate expectations, in so far as they were entitled to expect to be appointed to the grades given in the competition notice.

Action brought on 17 March 2006 — De la Cruz and Others v European Agency for Safety and Health at Work

(Case F-32/06)

(2006/C 131/93)

Language of the case: English

Parties

Applicants: María del Carmen De la Cruz (Galdakao, Spain) and Others (represented by: G. Vandersanden et L. Levi, lawyers)

Defendant(s): European Agency for Safety and Health at Work

Form of order sought

The applicants claim that the Court should:

— Annul the grading given in the 28 April 2005 contract of employment which was to take effect on 1 May 2005 to classify the applicants at group II, implying the reinstatement of all the applicants' rights as deriving from a legal and regular employment, i.e. group III, as from 1 May 2005.

— Award the applicants: i) damages in form of a legal and regular pay in so included all derived financial rights (including pension). In that respect, the monthly difference of basic salary between a classification in group II and a classification in group III has been evaluated to EUR 536.89 for Mrs De la Cruz, Mrs Estrataetxe, Mrs Grados and Mr Moral and to EUR 474.57 for Mr Sánchez; ii) the interest for delay (*intérêts de retard*) on the above mentioned damages running as from 1 May 2005 until their full payment; iii) compensation for their prejudice to their career; iv) EUR 1 for each applicant to compensate their moral prejudice.

— Order the defendant to pay the costs.

Pleas in law and main arguments

The applicants were recruited as contract staff according to Article 3a of the Conditions of Employment of Other Servants of the Communities (CEOS) and classified in function group II. In their action, the applicants submit that, as they are performing some of their tasks with a clear level of liability and independency, they should have been classified in function group III.

In their first plea, the applicants invoke mainly a violation of Article 80 of the CEOS, of Article 2 of the Annex to the CEOS, of the General implementing provision on the procedure governing the engagement and the use of contract staff at the Commission, of the principle of good administration and a manifest error of appreciation.

In their second plea, they argue that their classification was not fixed with regard to their duties and responsibilities and to the situation of their colleagues working in other agencies and institutions. For that reason, they allege a violation of the principles of equal treatment and non discrimination as well as of the principle of equivalence of positions and grades.

In their third plea, the applicants argue that the Staff Committee has not been properly consulted on the draft job descriptions and the Agency's draft guidelines on the classification of contract staff.

Finally, the applicants invoke a violation of the duty to have regard for the interests of officials laid down in Article 24 of the Staff Regulations.

Action brought on 21 March 2006 — Campoli v Commission

(Case F-33/06)

(2006/C 131/94)

Language of the case: French

Parties

Applicant(s): Franco Campoli (London, United Kingdom) (represented by: S. Rodrigues and A. Jaume, avocats)

Defendant: Commission of the European Communities

Form of order sought

— Annul, first, the decision of the Appointing Authority challenged in the complaint brought by the applicant on 10 August 2005 which, from 1 May 2004, amended the correction coefficient, the household allowance and the flat-rate education allowance applicable to the applicant's pension and, second, the applicant's salary statements in so far as they apply that decision with effect from March 2005;

— Specify to the Appointing Authority the effects of the annulment of the contested decisions, and in particular the application of the correction coefficient, the household allowance and the flat-rate education allowance applicable to the applicant's pension before 1 May 2004, and with retroactive effect from 1 May 2004;

— Order the Commission of the European Communities to pay the costs.

Pleas in law and main arguments

In support of his action, the applicant advances pleas very similar to those which he had already advanced in Case T-135/05 ([1]).

([1]) OJ C 132 of 28.05.2005, p. 33.

Action brought on 5 April 2006 — Martin Magone v Commission

(Case F-36/06)

(2006/C 131/95)

Language of the case: French

Parties

Applicant(s): Alejandro Martin Magone (Brussels, Belgium) (represented by: E. Boigelot, avocat)

Defendant: Commission of the European Communities

Form of order sought

— Annul the decision of 7 June 2005 of the Director General of ECHO in his capacity as Appeal Assessor which was flawed in so far as it definitively confirms and approves the applicant's Career Development Report (CDR) for the period from 1 January 2004 to 15 September 2004;

— Annul the disputed CDR;

— Annul the decision of 22 December 2005 of the Appointing Authority, received on 5 January 2006, rejecting the complaint brought under Article 90(2) of the Staff Regulations of Officials on 6 September 2005 and seeking annulment of the contested decision;

— Declare that the applicant is the victim of harassment at work;

— Award damages for pecuniary and non-pecuniary loss, loss of career prospects, equitable damages in the sum of EUR 29 000 or in an amount to be assessed by the Court;

— Order the Commission of the European Communities to pay the costs.

Pleas in law and main arguments

In support of his action, the applicant alleges an infringement of Article 12a, the second paragraph of Article 25, Article 26 and Article 43 of the Staff Regulations and of the rules for implementing Article 43, as adopted by the Commission on 3 March 2004, an infringement of the Commission decision of 28 April 2004 guaranteeing rates of pay, of the Administrative Guide and of the Guidelines in that regard, misuse of powers and infringement of the general principles of law, including respect for the rights of the defence, the principle of sound administration and the duty to have regard to the welfare of individuals, the principle of equality and infringement of the principles which impose a duty on the Appointing Authority to adopt decisions only on the basis of legally admissible grounds, that is which are relevant and not vitiated by manifest errors of assessment of fact or law.

The applicant next submits that by failing to adopt the assessment in question for 2004 in the circumstances of the present case, the Appointing Authority clearly failed correctly to apply and interpret the provisions of the Staff Regulations and the principles referred to above. Its decision is therefore based on an inaccurate statement of reasons both in fact and law. The applicant is therefore the victim of administrative discrimination and has been placed in a situation which infringes his legitimate expectations and interests and amounts to harassment at work.

In support of the claim for damages, the applicant submits that the implied decision rejecting his request left him in a state of uncertainty and anxiety which persisted for a number of months, giving rise to consequent material and non-material loss.

Action brought on 10 April 2006 — Strack v Commission

(Case F-37/06)

(2006/C 131/96)

Language of the case: French

Parties

Applicant: Guido Strack (Cologne, Germany) (represented by: G. Bouneaou and F. Frabetti, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Annul the defendant's implied decision of 7 July 2005 rejecting the applicant's request that his illness should be acknowledged to be an occupational illness;

— Order the defendant to pay the applicant EUR 2 000 by way of damages and interest to compensate for the material loss suffered in consequence of the decision of 7 July 2005 to reject the request;

— Order the defendant to pay the applicant EUR 5 000 by way of damages and interest to compensate for the non-material loss suffered in consequence of the decision of 7 July 2005 to reject the request;

— Order the Commission of the European Communities to pay the costs.

Pleas in law and main arguments

In support of the claim for annulment, the applicant puts forward three pleas alleging, by the first plea, infringement of Article 90 of the Staff Regulations, by the second plea, infringement of the principle of the prohibition on arbitrary procedure, of the obligation to give reasons and abuse of powers and, by the third plea, infringement of the duty to have regard for the welfare of officials.

Action brought on 11 April 2006 — Chassagne v Commission

(Case F-39/06)

(2006/C 131/97)

Language of the case: French

Parties

Applicant(s): Olivier Chassagne (Brussels, Belgium) (represented by: S. Rodrigues and Y. Minatchy, avocats)

Defendant: Commission of the European Communities

Form of order sought

— Declare illegal and therefore inapplicable to the applicant Article 8 of Annex VII of the new Staff Regulations of Officials of the European Communities;

— Award the applicant damages for non-pecuniary loss in the symbolic sum of EUR 1 and for pecuniary loss in the sum of EUR 16 473.

Pleas in law and main arguments

The applicant, an Official of the Commission, is originally from Réunion, a French Overseas Department. He brought the present action following the dismissal of a complaint which he had made against his salary statement for July 2005 containing the reimbursement of his annual travel expenses.

In support of his action, the applicant alleges that Article 8 of Annex VII of the Staff Regulations, in the version in force since 1 May 2004 is illegal. He claims that that provision is contrary to Community law in that it entails differences in remuneration based on the place of origin of Officials as well as discrimination contrary to Articles 12 EC and 229 EC amongst others, and more generally on the basis of nationality, belonging to a linguistic minority, ethnic origin or race.

The applicant also claims that that provision infringes other general principles of Community law, such as the duty to state reasons and the principles of proportionality, transparency and sound administration, as well as of legitimate expectations and legal certainty.

Action brought on 12 April 2006 — Marcuccio v Commission

(Case F-41/06)

(2006/C 131/98)

Language of the case: Italian

Parties

Applicant: Luigi Marcuccio (Tricase, Italy) (represented by: L. Garofalo, professor and lawyer)

Defendant: Commission of the European Communities

Form of order sought

— Annul the decision of the Commission of 30 May 2005, by which the applicant was retired and granted an invalidity allowance established in accordance with Article 78(3) of the Staff Regulations;

— Annul the decision of the Commission of 16 December 2005, notified on 20 January 2006, which rejected the applicant's complaint against the decision of 30 May 2005;

— Annul a whole series of measures connected to the above-mentioned decision;

— Order the Commission to compensate the applicant for the material, non-material and substantial damage sustained, together with interest at the statutory rate;

— Order the defendant to pay the costs.

Pleas in law and main arguments

The applicant challenges the decision to retire him on account of permanent invalidity, and a series of measures connected to that decision.

He submits that the contested decisions are unlawful on account of:

— Total failure to state adequate grounds, inter alia by stating tautologous, inconsistent and incoherent reasons;

— Infringement of the right to a fair hearing and of Article 9 of Annex II to the Staff Regulations;

— Procedural errors, infringements of laws and infringement of substantive rules;

— Infringement of the duty to have regard to the welfare of staff and of the duty of sound administration;

— Misuse of power and of the principle of not causing harm to others.

Action brought on 13 April 2006 — Sundholm v Commission

(Case F-42/06)

(2006/C 131/99)

Language of the case: French

Parties

Applicant(s): Asa Sundholm (Brussels, Belgium) (represented by: S. Orlandi, A. Coolen, J.-N. Louis and E. Marchal, avocats)

Defendant: Commission of the European Communities

Form of order sought

— Declare illegal Article 12 of the Commission Decision of 3 March 2004 on the general provisions for implementing Article 43 of the Staff Regulations (GIP);

— Annul the decision establishing the applicant's Career Development Review (CDR) for the period 1 January 2004 to 31 December 2004;

— Order the defendant to pay, at this stage of the proceedings, EUR 1 in respect of non-pecuniary loss;

— Order the defendant to pay the costs.

Pleas in law and main arguments

In support of her action, the applicant submits first of all that the amendments of the GIP infringe the principle of legal certainty and the Official's entitlement to reasonable career prospects, in that the rules for assessing the merits changed in the course of the assessment period.

Next, the applicant alleges an infringement of the GIP and of the duty to state reasons. In particular, notwithstanding the amendment to the applicant's duties and the lack of precise and definitive objectives and assessment criteria, comments from her CDR 2003 were copied into her CDR 2004, without complying with the conditions laid down by the GIP for a carryover.

Lastly, the applicant submits that the contested decision contains a manifest error of assessment and inconsistencies between the marks awarded and the comments.

III

(Notices)

(2006/C 131/100)

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

OJ C 121, 20.5.2006

Past publications

OJ C 108, 6.5.2006

OJ C 96, 22.4.2006

OJ C 86, 8.4.2006

OJ C 74, 25.3.2006

OJ C 60, 11.3.2006

OJ C 48, 25.2.2006

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