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(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS AND BODIES

COURT OF JUSTICE

(2007/C 56/01)

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

OJ C 42, 24.2.2007

Past publications

OJ C 20, 27.1.2007

OJ C 331, 30.12.2006

OJ C 326, 30.12.2006

OJ C 310, 16.12.2006

OJ C 294, 2.12.2006

OJ C 281, 18.11.2006

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

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Third Chamber) of 25 January 2007 (reference for a preliminary ruling from the High Court of Justice of England and Wales, Chancery Division, United Kingdom) — Dyson Ltd v Registrar of Trade Marks

(Case C-321/03) ([1])

(Trade marks — Approximation of laws — Directive 89/104/EEC — Article 2 — Concept of a sign of which a trade mark may consist — Transparent bin or collection chamber forming part of the external surface of a vacuum cleaner)

(2007/C 56/02)

Language of the case: English

Referring court

High Court of Justice of England and Wales, Chancery Division

Parties to the main proceedings

Applicant: Dyson Ltd

Defendant: Registrar of Trade Marks

Re:

Reference for a preliminary ruling — High Court of Justice of England and Wales, Chancery Division — Interpretation of Article 3(3) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989 L 40, p. 1) — Mark consisting of a functional characteristic (transparent plastic container) forming part of the external surface of a vacuum cleaner

Operative part of the judgment

Article 2 of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks is to be interpreted as meaning that the subject-matter of an application for trade mark registration, such as that lodged in the main proceedings, which relates to all the conceivable shapes of a transparent bin or collection chamber forming part of the external surface of a vacuum cleaner, is not a 'sign' within the meaning of that provision and therefore is not capable of constituting a trade mark within the meaning thereof.

([1]) OJ C 239, 4.10.2003.

Judgment of the Court (First Chamber) of 25 January 2007 — Sumitomo Metal Industries Ltd and Nippon Steel Corp. v Commission of the European Communities

(Joined Cases C-403/04 P and C-405/04 P) ([1])

(Appeals — Competition — Agreements, decisions and concerted practices — Market in seamless steel tubes — Protection of domestic markets — Burden of proof and production of evidence — Duration of the proceedings before the Court of First Instance)

(2007/C 56/03)

Language of the case: English

Parties

Appellants: Sumitomo Metal Industries Ltd (represented by: C. Vajda QC and G. Sproul and S. Szlezinger, Solicitors) and Nippon Steel Corp (represented by: J.-F. Bellis and K. Van Hove, avocats)

Other parties to the proceedings: JFE Engineering Corp, formerly NKK Corp., JFE Steel Corp., formerly Kawasaki Steel Corp., Commission of the European Communities (represented by: N. Khan and A. Whelan, Agents), EFTA Surveillance Authority

Re:

Appeals against the judgment of the Court of First Instance (Second Chamber) of 8 July 2004 in Joined Cases T-67/00, T-68/00, T-71/00 and T-78/00 *JFE Engineering Corp. and Others* v *Commission* partially annulling Commission Decision 2003/382/EC of 8 December 1999 relating to a proceeding under Article 81 of the EC Treaty (Case IV/E-1/35.860-B seamless steel tubes) (notified under document number C(1999) 4154) and reducing the amount of the fine imposed on the applicants.

Operative part of the judgment

The Court:

1. *Dismisses the appeals;*

2. *Orders Sumitomo Metal Industries Ltd to pay the costs in Case C-403/04 P and Nippon Steel Corp. to pay the costs in Case C-405/04 P.*

([1]) OJ C 284, 20.11.2004.

Judgment of the Court (First Chamber) of 25 January 2007 — Dalmine SpA v Commission of the European Communities

(Case C-407/04 P) ([1])

(Appeals — Competition — Agreements, decisions and concerted practices — Seamless steel tubes market — Protection of domestic markets — Supply contract — Rights of the defence — Self-incrimination — Anonymous evidence — Fine — Statement of reasons — Equal treatment — Guidelines on the method of setting fines — Size of the relevant market and of the undertaking concerned — Attenuating circumstances)

(2007/C 56/04)

Language of the case: Italian

Parties

Appellant: Dalmine SpA (represented by: A. Sinagra, M. Siragusa, F. Moretti and A. L. Valvo, lawyers)

Other party to the proceedings: Commission of the European Communities (represented by: A. Whelan and F. Amato, Agents)

Re:

Appeal against the judgment of the Court of First Instance (Second Chamber) of 8 July 2004 in Case T-50/00 *Dalmine* v *Commission*, partially annulling Commission Decision 2003/382/EC of 8 December 1999 relating to a proceeding under Article 81 of the EC Treaty (Case IV/E-1/35.860-B seamless steel tubes) (notified under document number C (1999) 4154), and setting the amount of the fine imposed on the applicants

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Dalmine SpA to pay the costs.*

([1]) OJ C 300, 4.12.2004.

Judgment of the Court (First Chamber) of 25 January 2007 — Salzgitter Mannesmann GmbH, formerly Mannesmannröhren-Werke GmbH v Commission of the European Communities

(Case C-411/04 P) ([1])

(Appeals — Competition — Agreements, decisions and concerted practices — Market in seamless steel tubes — Fair legal process — Anonymous evidence — Fine — Cooperation — Equal treatment)

(2007/C 56/05)

Language of the case: German

Parties

Appellant: Salzgitter Mannesmann GmbH, formerly Mannesmannröhren-Werke GmbH (represented by: M. Klusmann and F. Wiemer, Rechtsanwälte)

Other party to the proceedings: Commission of the European Communities (represented by: A. Whelan and H.Gading, Agents, H-J. Freund, Rechtsanwalt)

Re:

Appeal against the judgment of the Court of First Instance (Second Chamber) of 8 July 2004 in Case T-44/00 Mannesmannröhren-Werke AG v Commission, inasmuch as it dismissed an action for annulment of Commission Decision 2003/382/EC of 8 December1999 relating to a proceeding under Article 81 EC (Case IV-1/35.860.B. — Seamless steel tubes) (OJ 1999 L 140, p. 11) — Right to a fair hearing — Misapplication of Article 81 EC — Principle of equal treatment

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Salzgitter Mannesmann GmbH to pay the costs*

([1]) OJ C 273, 6.11.2004.

Judgment of the Court (First Chamber) of 25 January 2007 (reference for a preliminary ruling from the Landgericht Nürnberg-Fürth) — Adam Opel AG v Autec AG

(Case C-48/05) ([1])

(Reference for a preliminary ruling — Trade Marks — Article 5(1)(a) and (2), and Article 6(1)(b) of the First Directive 89/104/EEC — Right of a trade mark proprietor to prevent use by a third party of a sign identical or similar to the trade mark — Trade mark registered for motor vehicles and for toys — Reproduction of the trade mark by a third party on scale models of that make of vehicle)

(2007/C 56/06)

Language of the case: German

Referring court

Landgericht Nürnberg-Fürth, Germany

Parties to the main proceedings

Applicant: Adam Opel AG

Defendant: Autec AG

Re:

Reference for a preliminary ruling — Landgericht Nürnberg-Fürth (Germany) — Interpretation of Article 5(1)(a) and Article 6(1)(b) of Directive No 89/104/EEC: First Directive of the Council to approximate the laws of the Member States relating to trade marks (OJ L 40, p. 1) — Right of the proprietor of a trademark to oppose its use by a third person — Reproduction of the logo of a motor vehicle manufacturer on toy cars

Operative part of the judgment

1) *Where a trade mark is registered both for motor vehicles — in respect of which it is well known — and for toys, the affixing by a third party, without authorisation from the trade mark proprietor, of a sign identical to that trade mark on scale models of vehicles bearing that trade mark, in order faithfully to reproduce those vehicles, and the marketing of those scale models:*

   — *constitute, for the purposes of Article 5(1)(a) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks, a use which the proprietor of the trade mark is entitled to prevent if that use affects or is liable to affect the functions of the trade mark as a trade mark registered for toys;*

   — constitute, within the meaning of Article 5(2) of that directive, a use which the proprietor of the trade mark is entitled to prevent — where the protection defined in that provision has been introduced into national law — if, without due cause, use of that sign takes unfair advantage of, or is detrimental to, the distinctive character or the repute of the trade mark as a trade mark registered for motor vehicles.

2) *Where a trade mark is registered, inter alia, in respect of motor vehicles, the affixing by a third party, without the authorisation of the proprietor of the trade mark, of a sign identical to that mark to scale models of that make of vehicle, in order faithfully to reproduce those vehicles, and the marketing of those scale models, do not constitute use of an indication concerning a characteristic of those scale models, within the meaning of Article 6(1)(b) of Directive 89/104.*

([1]) OJ C 82, 2.4.2005.

Judgment of the Court (First Chamber) of 18 January 2007 (reference for a preliminary ruling from the Tribunal administratif de Lyon, France) — Jean Auroux, Marie-Hélène Riamon, Christian Avocat, Laure Deroche, Pascal Mirabel, Vladimir Serdeczny, Paul Perard, Dolorès Ponramon, Elisabeth Roche v Commune de Roanne

(Case C-220/05) ([1])

(Public procurement — Directive 93/37/EEC — Award without call for tenders — Contract for the implementation of a development project concluded between two contracting authorities — Definition of 'public works contract' and 'work' — Method of calculation of the value of the contract)

(2007/C 56/07)

Language of the case: French

Referring court

Tribunal administratif de Lyon, France

Parties to the main proceedings

Applicants: Jean Auroux, Marie-Hélène Riamon, Christian Avocat, Laure Deroche, Pascal Mirabel, Vladimir Serdeczny, Paul Perard, Dolorès Ponramon, Elisabeth Roche

Defendant: Commune de Roanne

intervening party: Société d'équipement du département de la Loire (SEDL)

Re:

Reference for a preliminary ruling — Tribunal Administratif de Lyon — Interpretation of Articles 1 and 6 of Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts (OJ 1993 L 199, p. 54) — Public development agreement concluded in the public interest between two contracting authorities for the realisation of a development procedure under which the latter contracting authority carries out works designed to meet the requirements of the former, with the former authority acquiring ownership in all of the works that have not been assigned to third parties on the expiry of the procedure — Methods for assessing the value of the market in order to set a threshold for the application of the award procedures — Construction of a leisure complex and a car park

Operative part of the judgment

1) *An agreement by which a first contracting authority entrusts a second contracting authority with the execution of a work constitutes a public works contract within the meaning of Article 1(a) of Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts, as amended by European Parliament and Council Directive 97/52/EC of 13 October 1997, regardless of whether or not it is anticipated that the first contracting authority is or will become the owner of all or part of that work.*

2) *In order to determine the value of a contract for the purpose of Article 6 of Directive 93/37, as amended by Directive 97/52, account must be taken of the total value of the works contract from the point of view of a potential tenderer, including not only the total amounts to be paid by the contracting authority but also all the revenue received from third parties.*

3) *A contracting authority is not exempt from using the procedures for the award of public works contracts laid down in Directive 93/37, as amended by Directive 97/52, on the ground that, in accordance with national law, the agreement may be concluded only with certain legal persons, which themselves have the capacity of contracting authority and which will be obliged, in turn, to apply those procedures to the award of any subsequent contracts.*

([1]) OJ C 193, 6.8.2005.

Judgment of the Court (First Chamber) of 18 January 2007 — Osman Ocalan, on behalf of the Kurdistan Workers' Party (PKK), Serif Vanly, on behalf of the Kurdistan National Congress (KNK) v Council of the European Union, United Kingdom of Great Britain and Northern Ireland, Commission of the European Communities

(Case C-229/05 P) ([1])

(Appeal — Specific restrictive measures directed against certain persons and entities with a view to combating terrorism — Action for annulment — Admissibility)

(2007/C 56/08)

Language of the case: English

Parties

Appellants: Osman Ocalan, on behalf of the Kurdistan Workers' Party (PKK), Serif Vanly, on behalf of the Kurdistan National Congress (KNK) (represented by: M. Muller QC, E. Grieves and P. Moser, Barristers, J.G. Peirce, Solicitor)

Other parties to the proceedings: Council of the European Union (represented by: E. Finnegan and M. Bishop, acting as Agents), United Kingdom of Great Britain and Northern Ireland (represented by: R. Caudwell, acting as Agent), Commission of the European Communities

Re:

Appeal against the order of the Court of First Instance (Second Chamber) of 15 February 2005 in Case T-229/02 *PKK and KNK v Council*, by which the Court of First Instance dismissed as inadmissible the action seeking annulment of Council Decision 2002/334/EC of 2 May 2002 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (OJ 2002 L 116, p. 33) — Capacity and standing to bring proceedings

Operative part of the judgment

The Court:

1. *Sets aside the order of the Court of First Instance of the European Communities of 15 February 2005 in Case T-229/02 PKK and KNK v Council in so far as it dismisses the application of Osman Ocalan on behalf of the Kurdistan Workers' Party (PKK);*

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

3. *Orders Serif Vanly on behalf of the Kurdistan National Congress (KNK) to pay the costs of the appeal brought by him;*

4. *Dismisses the application of Osman Ocalan on behalf of the PKK as inadmissible in so far as it challenges Council Decision 2002/334/EC of 2 May 2002 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Decision 2001/927/EC;*

5. *Declares that the application of Osman Ocalan on behalf of the PKK is admissible in so far as it challenges Council Decision 2002/460/EC of 17 June 2002 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Decision 2002/334/EC, and refers the case back to the Court of First Instance of the European Communities for judgment on the substance;*

6. *Reserves the costs of Osman Ocalan on behalf of the PKK.*

([1]) OJ C 86, 8.4.2006.

Judgment of the Court (Second Chamber) of 25 January 2007 (reference for a preliminary ruling from the High Court of Justice of England and Wales, Chancery Division, United Kingdom) — Carol Marilyn Robins and Others v Secretary of State for Work and Pensions

(Case C-278/05) ([1])

(Protection of employees in the event of the employer's insolvency — Directive 80/987/EEC — Transposition — Article 8 — Supplementary company or inter-company pension schemes — Old-age benefits — Protection of rights conferring immediate entitlement — Extent of protection — Liability of a Member State by reason of the incorrect transposition of a directive — Conditions)

(2007/C 56/09)

Language of the case: English

Referring court

High Court of Justice of England and Wales, Chancery Division

Parties in the main proceedings

Applicants: Carol Marilyn Robins and Others

Defendant: Secretary of State for Work and Pensions

Re:

Interpretation of Article 8 of Council Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer (OJ 1980 L 283, p. 23) — Extent of the obligation to protect rights conferring on employees immediate or prospective entitlement to old-age benefits

Operative part of the judgment

1) *On a proper construction of Article 8 of Council Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer, where the employer is insolvent and the assets of the supplementary company or inter-company pension schemes are insufficient, accrued pension rights need not necessarily be funded by the Member States themselves or be funded in full.*

2) *A system of protection such as that at issue in the main proceedings is incompatible with Article 8 of Directive 80/987.*

3) *If Article 8 of Directive 80/987 has not been properly transposed into domestic law, the liability of the Member State concerned is contingent on a finding of manifest and grave disregard by that State for the limits set on its discretion.*

([1]) OJ C 243, 1.10.2005.

Judgment of the Court (First Chamber) of 18 January 2007 (reference for a preliminary ruling from the Wojewódzki Sąd Administracyjny w Warszawie, Poland) — Maciej Brzeziński v Dyrektor Izby Celnej w Warszawie

(Case C-313/05) ([1])

(Internal taxation — Taxes on motor vehicles — Excise duties — Second-hand vehicles — Import)

(2007/C 56/10)

Language of the case: Polish

Referring court

Wojewódzki Sąd Administracyjny w Warszawie

Parties to the main proceedings

Applicant: Maciej Brzeziński

Defendant: Dyrektor Izby Celnej w Warszawie

Re:

Preliminary ruling — Wojewódzki Sąd Administracyjny w Warszawie (Poland) — Interpretation of Articles 25 EC, 28 EC and 90 EC, and of Article 3(3) of Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products (OJ 1992 L 76, p. 1) — National tax (excise duty) imposed on vehicles when first registered within the national territory, the rate being calculated on the basis of the age of the vehicle — Intra-Community acquisition of a second-hand vehicle — Obligation to submit a declaration within five days of such acquisition

Operative part of the judgment

1) *An excise duty such as that introduced in Poland by the 2004 Law, which does not affect passenger vehicles by reason of the fact that they cross the frontier, is not a customs duty on import or a charge having equivalent effect within the meaning of Article 25 EC.*

2) *The first paragraph of Article 90 EC is to be interpreted as meaning that it precludes an excise duty, in so far as the amount of the duty imposed on second-hand vehicles over two years old acquired in a Member State other than that which introduced such a duty exceeds the residual amount of the same duty incorporated into the purchase price of similar vehicles which had been previously registered in the Member State which introduced that duty. It is for the national court to examine whether the legislation at issue in the main proceedings, in particular the application of Article 7 of the Order of the Minister for Finance of 22 April 2004 on the lowering of the rates of excise duty, has such an effect.*

3) *Article 28 EC does not apply to a simplified declaration such as that provided for in Article 81(1)(1) of the Polish Law of 23 January 2004 on Excise Duty and Article 3(3) of Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products does not preclude such a declaration when the legislation in question may be interpreted as meaning that that declaration must be made as from the time of the acquisition of the right to use the passenger vehicle as owner and, at the latest, as from the time of its registration in Poland under road traffic provisions.*

([1]) OJ C 281, 12.11.2005.

Judgment of the Court (First Chamber) of 25 January 2007 (reference for a preliminary ruling from the Bundesfinanzhof (Germany)) — Finanzamt Dinslaken v Gerold Meindl

(Case C-329/05) ([1])

(Freedom of establishment — Article 52 of the EC Treaty (now, after amendment, Article 43 EC) — Self-employed person — Income tax — Spouses who live apart on a non-permanent basis — Refusal of joint assessment — Spouses residing separately — Wage compensation benefits for the non-resident spouse — Income not subject to tax in the spouse's Member State of residence)

(2007/C 56/11)

Language of the case: German

Referring court

Bundesfinanzhof (Germany)

Parties to the main proceedings

Applicant: Finanzamt Dinslaken

Defendant: Gerold Meindl

Third party: Christine Meindl-Berger

Re:

Reference for a preliminary ruling — Bundesfinanzhof (Germany) — Interpretation of Article 43 of the EC Treaty — National provisions on income tax — Refusal to assess to tax jointly spouses on the ground that the income received by the wife in the Member State of her residence exceeds certain thresholds, where in that Member State that income is not subject to tax.

Operative part of the judgment

Article 52 of the EC Treaty (now, after amendment, Article 43 EC) precludes a resident taxpayer from being refused, by the Member State of his residence, joint assessment to income tax with his spouse from whom he is not separated and who lives in another Member State, on the ground that that spouse received in that Member State both more than 10 % of the household's income and more than DEM 24 000, where the income received by that spouse in the second Member State is not there subject to income tax.

([1]) OJ C 271, 29.10.2005.

Judgment of the Court (Second Chamber) of 18 January 2007 (reference for a preliminary ruling from the Bundessozialgericht (Germany)) — Aldo Celozzi v Innungskrankenkasse Baden-Württemberg

(Case C-332/05) ([1])

(Freedom of movement for workers — Calculation of daily sick pay based on net income, itself determined by tax class — Automatic placing of a migrant worker whose spouse is resident in another Member State in an unfavourable tax class — Amendment of the tax class only on application by the migrant worker — Failure to take into account a subsequent amendment of the tax class on the basis of the marital status of that worker — Principle of equal treatment — Infringement)

(2007/C 56/12)

Language of the case: German

Referring court

Bundessozialgericht (Germany)

Parties to the main proceedings

Applicant: Aldo Celozzi

Defendant: Innungskrankenkasse Baden-Württemberg

Re:

Reference for a preliminary ruling — Bundessozialgericht — Interpretation of Article 39 EC, Articles 3(1) and 23(3) of Regulation (EC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (OJ, English special edition 1971 (II), p. 416) and Article 7(2) of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ, English special edition 1968 (II), p. 475) — National social security legislation — Indirect discrimination — Calculation of the daily rate of sick pay based on net income, itself determined by tax class — Refusal to take into account retroactively an amendment of the tax class after account was taken of the marital status of a migrant worker whose spouse is resident in another Member State

Operative part of the judgment

Article 3(1) of Regulation (EEC) No 1408/71 of the Council 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, precludes the application of a daily sick pay scheme implemented by a Member State, such as that at issue in the main proceedings:

— *under which a migrant worker, whose spouse resides in another Member State, is automatically placed in a tax class which is less favourable than that of a married national worker whose spouse resides in the Member State concerned and is not in paid employment, and*

— *which does not allow account to be taken retroactively, as regards the amount of that sick pay, which is calculated according to net income, itself determined by tax class, of a subsequent correction of that class following an express application by the migrant worker based on his actual marital status.*

([1]) OJ C 281, 12.11.2005.

Judgment of the Court (Second Chamber) of 18 January 2007 (reference for a preliminary ruling from the Tribunal de grande instance de Brive-la-Gaillarde (France)) — Estager SA v Receveur principal de la recette des douanes de Brive

(Case C-359/05) ([1])

(Economic and monetary policy — Regulations (EC) No 1103/97 and No 974/98 — Introduction of the euro — Conversion between the euro and national currency units — Legislation of a Member State adjusting the value in euros of certain sums expressed in national currency in the legislative texts of that State)

(2007/C 56/13)

Language of the case: French

Referring court

Tribunal de grande instance de Brive-la-Gaillarde (France)

Parties to the main proceedings

Applicant: Estager SA

Defendant: Receveur principal de la Recette des Douanes de Brive

Re:

Reference for a preliminary ruling — Tribunal de grande instance de Brive-La-Gaillarde — Interpretation of Articles 3 and 5 of Council Regulation (EC) No 1103/97 of 17 June 1997 on certain provisions relating to the introduction of the euro (OJ 1997 L 162, p. 1) and of Article 14 of Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro (OJ 1998 L 139, p. 1) — National legislation rounding off the amount of tax on the supplementary budget for agricultural social benefits (BAPSA) following its conversion into euros

Operative part of the judgment

Council Regulation (EC) No 1103/97 of 17 June 1997 on certain provisions relating to the introduction of the euro and Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro must be interpreted as precluding national legislation which, on effecting the conversion into euros of an amount of a tax on flour, meal and groats of common wheat supplied or used for human consumption, such as that at issue in the main proceedings, raised it to an amount higher than that which would have resulted from application of the rules of conversion provided for in those regulations, unless such an increase meets the requirements of legal certainty and transparency guaranteed by those regulations, which presupposes that the legislative texts at issue make it possible to distinguish clearly the decision of the authorities of a Member State to increase that amount from the operation of conversion of that amount into euros. It is for the referring court to determine whether that is so in the proceedings before it.

([1]) OJ C 315, 10.12.2005.

Judgment of the Court (Third Chamber) of 25 January 2007 (reference for a preliminary ruling from the Vestre Landsret — Denmark) — Criminal proceedings against Uwe Kay Festersen

(Case C-370/05) ([1])

(Freedom of establishment — Free movement of capital — Articles 43 EC and 56 EC — Restrictions on the acquisition of agricultural property — Requirement that the acquirer take up fixed residence on the agricultural property)

(2007/C 56/14)

Language of the case: Danish

Referring court

Vestre Landsret

Party to the main criminal proceedings

Uwe Kay Festersen

Re:

Reference for a preliminary ruling — Vestre Landsret — Interpretation of Articles 43 EC and 56 EC — National legislation under which the acquisition of an agricultural holding is conditional on taking up residence there

Operative part of the judgment

1) *Article 56 EC precludes national legislation such as that at issue in the main proceedings from laying down as a condition for acquiring an agricultural property the requirement that the acquirer take up fixed residence on that property.*

2) *That interpretation of Article 56 EC would not be different where the agricultural property acquired did not constitute a viable farm and the residential building was situated in an urban zone.*

([1]) OJ C 315, 10.12.2005.

Judgment of the Court (Second Chamber) of 18 January 2007 (reference for a preliminary ruling from the Conseil d'Etat (France)) — Confédération générale du travail, CFDT — Confédération française démocratique du travail, Confédération française de l'encadrement (CGC), Confédération française des travailleurs chrétiens (CFTC), Confédération générale du travail — Force ouvrière v Premier ministre, Ministre de l'Emploi, de la Cohésion sociale et du Logement

(Case C-385/05) ([1])

(Social policy — Directives 98/59/EC and 2002/14/EC — Collective redundancies — Information and consultation of employees — Method for calculating the thresholds of workers employed — Member States' powers — Exclusion of employees belonging to a certain age group)

(2007/C 56/15)

Language of the case: French

Referring court

Conseil d'Etat

Parties to the main proceedings

Applicants: Confédération générale du travail, CFDT — Confédération française démocratique du travail, Confédération française de l'encadrement (CGC), Confédération française des travailleurs chrétiens (CFTC), Confédération générale du travail — Force ouvrière

Defendants: Premier ministre, Ministre de l'Emploi, de la Cohésion sociale et du Logement

Re:

Reference for a preliminary ruling — Conseil d'Etat (France) — Interpretation of Article 3(1) of Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community (OJ 2002 L 80, p. 29), and of Article 1 of Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies (OJ 1998 L 225, p. 16) — Obligation on undertakings to inform and consult employees where the number of their employees exceeds a certain threshold — National legislation excluding from the calculation of staff numbers employees aged under 26

Operative part of the judgment

1. *Article 3(1) of Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community must be interpreted as precluding national legislation which excludes, even temporarily, a specific category of workers from the calculation of staff numbers within the meaning of that provision.*

2. *Article 1(1)(a) of Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies must be interpreted as precluding national legislation which excludes, even temporarily, a specific category of workers from the calculation of staff numbers set out in that provision.*

([1]) OJ C 330, 24.12.2005.

Judgment of the Court (Fifth Chamber) of 25 January 2007 — Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland

(Case C-405/05) ([1])

(Failure of a Member State to fulfil obligations — Directive 91/271/EEC — Pollution and nuisance — Treatment of urban waste water — Lack of measures to ensure the adequate treatment of urban waste water from a number of agglomerations)

(2007/C 56/16)

Language of the case: English

Parties

Applicant: Commission of the European Communities (represented by: S. Pardo Quintillán, X. Lewis and H. van Vliet, acting as Agents)

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

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 4(1) and (3) of Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment (OJ 1991 L 135, p. 40) — Failure to ensure adequate treatment of urban waste water from a number of agglomerations

Operative part of the judgment

The Court:

1. *Declares that, by failing to take the measures necessary to ensure that adequate treatment was provided for urban waste waters from the agglomerations of Bangor, Brighton, Broadstairs, Carrickfergus, Coleraine, Donaghadee, Larne, Lerwick, Londonderry, Margate, Newtownabbey, Omagh and Portrush by 31 December 2000 at the latest, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under Article 4(1) and (3) of Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment;*

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

([1]) OJ C 48, 25.2.2006.

Judgment of the Court (Third Chamber) of 18 January 2007 (reference for a preliminary ruling from the Rechtbank van Koophandel te Brussel, Belgium) — City Motors Groep NV v Citroën Belux NV

(Case C-421/05) ([1])

(Competition — Distribution agreement relating to motor vehicles — Block exemption — Regulation (EC) No 1400/2002 — Article 3(4) and (6) — Termination by the supplier — Right to refer the dispute to an expert or arbitrator or to apply to a national court — Express termination clause — Compatibility with the block exemption — Validity of the grounds for the termination — Effective review)

(2007/C 56/17)

Language of the case: Dutch

Referring court

Rechtbank van Koophandel te Brussel

Parties to the main proceedings

Applicant: City Motors Groep NV

Defendant: Citroën Belux NV

Re:

Reference for a preliminary ruling — Rechtbank van koophandel te Brussel — Interpretation of Article 3(6) of Commission Regulation (EC) No 1400/2002 of 31 July 2002 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices in the motor vehicle sector (OJ 2002 L 203, p. 30) — Prohibition on inserting an express termination clause in a motor vehicle concession agreement intended to benefit from the exemption

Operative part of the judgment

Article 3(6) of Commission Regulation (EC) No 1400/2002 of 31 July 2002 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices in the motor vehicle sector is to be interpreted as meaning that the mere fact that an agreement falling within the scope of that regulation contains an express termination clause, such as that at issue in the main proceedings, under which such an agreement can be terminated by the supplier as of right and without notice in the event of a breach by the distributor of one of the contractual obligations referred to in that clause, does not have the effect of rendering the block exemption provided for in Article 2(1) of that regulation inapplicable to that agreement.

([1]) OJ C 36, 11.2.2006.

Judgment of the Court (Eighth Chamber) of 18 January 2007 — Commission of the European Communities v Kingdom of Sweden

(Case C-104/06) ([1])

(Failure of a Member State to fulfil obligations — Tax legislation — Deferral of taxation on capital gains arising on sale of residential property — Articles 18 EC, 39 EC and 43 EC — Articles 28 and 31 of the Agreement on the European Economic Area)

(2007/C 56/18)

Language of the case: Swedish

Parties

Applicant: Commission of the European Communities (represented by: L. Ström van Lier and R. Lyal, acting as Agents)

Defendant: Kingdom of Sweden (represented by: A. Kruse, acting as Agent)

Re:

Failure of Member State to fulfil obligations — Infringement of Articles 18 EC, 39 EC, 43 EC and 56(1) EC and of Articles 28, 31 and 40 of the EEA Agreement — National legislation making deferral of taxation on capital gains arising on the sale of owner-occupied property when the taxable person acquires a replacement property conditional on both properties being on national territory

Operative part of the judgment

The Court:

1. *Declares that, by adopting and maintaining in force tax provisions, such as those in Chapter 47 of the law on income tax (1999:1229) (inkomstskattelagen (1999:1229)), which make entitlement to deferral of taxation on capital gains arising from the sale of a private residential property or of a right to reside in a private cooperative property conditional on the newly-acquired residence also being on Swedish territory, the Kingdom of Sweden has failed to fulfil its obligations under Articles 18 EC, 39 EC and 43 EC and under Articles 28 and 31 of the EEA Agreement;*

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

([1]) OJ C 96, 22.4.2006.

Judgment of the Court (Sixth Chamber) of 18 January 2007 — Commission of the European Communities v Czech Republic

(Case C-204/06) ([1])

(Failure of a Member State to fulfil obligations — Directive 78/686/EEC — Mutual recognition of diplomas, certificates and other evidence of formal qualifications — Practitioners of dentistry — Measures to facilitate the effective exercise of the right of establishment and freedom to provide services — Failure to transpose within the prescribed period)

(2007/C 56/19)

Language of the case: Czech

Parties

Applicant: Commission of the European Communities (represented by: K. Walkerová and H. Støvlbæk, Agents)

Defendant: Czech Republic (represented by: T. Boček, Agent)

Re:

Failure of a Member State to fulfil obligations — Failure to have transposed, within the prescribed period, Council Directive 78/686/EEC of 25 July 1978 concerning the mutual recognition of diplomas, certificates and other evidence of the formal qualifications of practitioners of dentistry, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services (OJ 1978 L 233, p. 1)

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 78/686/EEC of 25 July 1978 concerning the mutual recognition of diplomas, certificates and other evidence of the formal qualifications of practitioners of dentistry, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services, the Czech Republic has failed to fulfil its obligations under Article 24 of that directive.*

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

(1) OJ C 143, 17.6.2006.

Order of the Court (Fifth Chamber) of 11 January 2007 (reference for a preliminary ruling of The Okresní soud v Českém Krumlově, Czech Republic) — Jan Vorel v Nemocnice Český Krumlov

(Case C-437/05) (1)

(First subparagraph of Article 104(3) of the Rules of Procedure — Social Policy — Protection of the health and safety of workers — Directives 93/104/EC and 2003/88/EC — Concept of 'working time' — Periods of inactivity during on-call duty provided by a doctor at his place of work — Classification — Effect on the remuneration of the person concerned)

(2007/C 56/20)

Language of the case: Czech

Referring court

Okresní soud v Českém Krumlově (Český Krumlov District Court)

Parties

Applicant: Jan Vorel

Defendant: Nemocnice Český Krumlov (Český Krumlov Hospital)

Re:

Reference for a preliminary ruling — Okresní Soud v Českém Krumlově — Interpretation of Articles 2(1) and 18 of Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time (OJ 1993 L 307, p. 18) — Meaning of working time — National legislation regarding periods of inactivity during the on-call period of a doctor at his place of work as not constituting working time

Operative part of the order

1. *Directive 93/104/EC of the Council of 23 November 1993 concerning certain aspects of the organisation of working time, as amended by Directive 2000/34/EC of the European Parliament and of the Council of 22 June 2000, and Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003, concerning certain aspects of the organisation of working time should be interpreted as:*

   — *precluding national legislation under which on-call duty performed by a doctor under a system where he is expected to be physically present at the place of work, but in the course of which he does no actual work, is not treated as wholly constituting 'working time' within the meaning of the said directives;*

   — *not preventing a Member State from applying legislation on the remuneration of workers and concerning on-call duties performed by them at the workplace which makes a distinction between the treatment of periods in the course of which work is actually done and those during which no actual work is done, provided that such a system wholly guarantees the practical effect of the rights conferred on workers by the said directives in order to ensure the effective protection of their health and safety.*

(1) OJ C 36, 11.2.2006.

Order of the Court of 9 January 2007 (reference for a preliminary ruling from the Finanzgericht München, Germany) — Juers Pharma Import-Export GmbH v Oberfinanzdirektion Nürnberg

(Case C-40/06) (1)

(First subparagraph of Article 104(3) of the Rules of Procedure — Common Customs Tariff — Combined Nomenclature — Tariff classification — Capsules containing primarily melatonin — Medicaments)

(2007/C 56/21)

Language of the case: German

Referring court

Finanzgericht München

Parties in the main proceedings

Applicant: Juers Pharma Import-Export GmbH

Defendant: Oberfinanzdirektion Nürnberg

Re:

Reference for a preliminary ruling — Finanzgericht München — Interpretation of Commission Regulation (EC) No 1789/2003 of 11 September 2003 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 2003 L 281, p. 1) — Heading 3004 (medicaments) and heading 2106 (food preparations) of the Combined Nomenclature — Classification of melatonin capsules put up as dietary supplements but which may be supplied only by pharmacies and on prescription — Twinlab Melatonin Caps

Operative part of the order

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 1789/2003 of 11 September 2003, must be interpreted as meaning that capsules containing primarily melatonin such as those in issue in the main proceedings fall under tariff heading 3004.

(1) OJ C 86, 8.4.2006.

Appeal brought on 30 November 2006 by Tesco Stores Ltd against the judgment of the Court of First Instance (Third Chamber) delivered on 13 September 2006 in Case T-191/04: MIP Group Intellectual Property GmbH & Co. KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case C-493/06 P)

(2007/C 56/22)

Language of the case: English

Parties

Appellant: Tesco Stores Ltd (represented by: E. Kelly, Solicitor, S. Malynicz, Barrister)

Other parties to the proceedings: Office for Harmonisation in the Internal Market, MIP Metro Group Intellectual Property GmbH & Co. KG

Form of order sought

The applicant claims that the Court should:

— set aside the judgment of the Court of First Instance of 13 September 2006 in Case T-191/04.

— order the Respondent to pay Tesco's costs of this appeal and of the appeal before the Court of First Instance.

Pleas in law and main arguments

The appellant maintains that the contested judgment should be set aside on the grounds that the Court of First Instance has committed a breach of procedure which adversely affects the appellant and has infringed Community law. In particular, the applicant submits that:

1. Article 8 and 42 of the Community Trade Mark Regulation (1) do not require an opponent to prove any of the conditions of an opposition beyond the opposition period. A correct and legally certain interpretation of the provisions requires an opponent to demonstrate conditions such as proprietorship and subsistence of the earlier right once and once only, that is to say, at the time of the opposition;

2. Rules 15, 16 and 20 of Commission Regulation (EC) No. 2868/95 of 13 December 1995 implementing Regulation No. 40/94 on the Community Trade Mark (2) did not require the opponent to substantiate the earlier mark in any way beyond that already provided and, in particular, did not impose any obligation upon it to demonstrate renewal of the earlier mark beyond the opposition period;

3. There was a legitimate expectation on the part of Tesco that it was not required to provide further substantiation of its earlier right beyond that already provided;

4. To impose upon Tesco the obligation to demonstrate renewal, as of 28 January 2000, 24 February 2000, 13 June 2000 or even 23 October 2000 would be to require Tesco retrospectively to prove something that, as of those dates, it was either not able and/or not required to do at the time under national law;

5. There were breaches of procedure before the Court of First Instance adversely affecting Tesco in that: (a) OHIM sought to rely on a version of its Opposition Guidelines that was not in use at the material time; and (b) OHIM advanced arguments that went beyond the terms of the dispute as delimited by the parties.

(1) OJ L 11, p. 1.
(2) OJ L 303, p. 1.

Reference for a preliminary ruling from the Juzgado de lo Social Único de Algeciras (Spain) lodged on 7 December 2006 — Maira María Robledillo Núñez v Fondo de Garantía Salarial ('FOGASA')

(Case C-498/06)

(2007/C 56/23)

Language of the case: Spanish

Referring court

Juzgado de lo Social Único de Algeciras

Parties to the main proceedings

Applicant: Maira María Robledillo Núñez

Defendant: Fondo de Garantía Salarial ('FOGASA')

Question referred

Having regard to the general principle of equality and non-discrimination, is there no objective justification for the difference in treatment created by Article 33.2 of the Workers' Statute and, consequently, must compensation for dismissal payable to an employee pursuant to extra-judicial conciliation be included in the ambit of Council Directive 80/987/EEC [1] on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer, in the version amended by Directive 2002/74/EC [2] of the European Parliament and of the Council of 23 September 2002, given that Article 33.1 of the Workers' Statute recognises this type of conciliation in relation to the payment by the guarantee institution of the 'salarios de tramitación' which also arise from the dismissal?

[1] OJ L 283, 1980, p. 23; EE 05/02, p. 219.
[2] OJ L 270, 2002, p. 10.

Reference for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 14 December 2006 — Sabine Mayr v Bäckerei und Konditorei Gerhard Flöckner OHG

(Case C-506/06)

(2007/C 56/24)

Language of the case: German

Referring court

Oberster Gerichtshof (Austria)

Parties to the main proceedings

Appellant: Sabine Mayr

Respondent: Bäckerei und Konditorei Gerhard Flöckner OHG

Question referred

Is a worker, who undergoes *in vitro* fertilisation, a 'pregnant worker' within the meaning of the first part of Article 2(a) of Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding [1] (tenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) if, at the time at which she was given notice of termination of employment, the woman's ova had already been fertilised with the sperm cells of her partner and *'in vitro'* embryos thus existed, but they had not yet been implanted within her?

[1] OJ L 348, 1992, p. 1.

Reference for a preliminary ruling from the Oberlandesgericht Innsbruck lodged on 13 December 2006 — Malina Klöppel v Tiroler Gebietskrankenkasse

(Case C-507/06)

(2007/C 56/25)

Language of the case: German

Referring court

Oberlandesgericht Innsbruck

Parties to the main proceedings

Applicant: Malina Klöppel

Defendant: Tiroler Gebietskrankenkasse

Question(s) referred

Must Article 72 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 [1] (OJ, English special edition: Series I Chapter 1971(II) p. 416) in the version amended and brought up to date by Regulation (EC) No 1386/2001 of the European Parliament and of the Council of 5 June 2001 [2] (OJ 2001 L 187, p. 1) in conjunction with Article 3 of that regulation and Article 10a of Regulation (EEC) No 574/72 of the Council of 21 March 1972 fixing the procedure for implementing Regulation (EEC) No 1408/71 [3] (OJ, English special edition: Series I Chapter 1972(I) p. 0159) in the version amended and brought up to date by Commission Regulation (EC) No 410/2002 of 27 February 2002 [4] (OJ 2002 L 62, p. 17) be interpreted to the effect that periods of drawing family benefits in one Member State (in this case the national child-raising allowance in the Federal Republic of Germany) must be treated equally in relation to the entitlement to draw a comparable benefit in another Member State (in this case child-care allowance in Austria) and accordingly must be characterised as domestic periods of drawing for the purposes of entitlement in a second Member State if during those periods of drawing both parents should be regarded as employed persons under Article 1(a)(i) of Regulation No 1408/71?

[1] ABl. L 149, S. 2.
[2] ABl. L 187, S. 11.
[3] ABl. L 74, S. 1.
[4] ABl. L 62, S. 17.

Action brought on 14 December 2006 — Commission of the European Communities v Republic of Malta

(Case C-508/06)

(2007/C 56/26)

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 claim that the Court should:

— declare that the Maltese authorities have failed to fulfil their obligations under Article 11 of Council Directive 96/59/EC ([1]) as read in conjunction with Article 54 of the 2003 Act of Accession.

— order Republic of Malta to pay the costs.

Pleas in law and main arguments

The time limit within which the Republic of Malta was required to have communicated the plans and outlines under article 11 of the directive expired on 1 May 2004.

([1]) OJ L 243, p. 31.

Appeal brought on 15 December 2006 by Akzo Nobel NV against the judgment of the Court of First Instance (Third Chamber) of 27 September 2006 in Case T-330/01 *Akzo Nobel NV* v *Commission*

(Case C-509/06 P)

(2007/C 56/27)

Language of the case: Dutch

Parties

Appellant: Akzo Nobel NV (represented by: C. Swaak, advocaat)

Other party to the proceedings: Commission of the European Communities

Form of order sought

— Set aside the judgment delivered by the Court of First Instance (CFI) on 27 September 2006 in Case T-330/01;

— Annul Articles 3 and 4 of Commission Decision C(2001) 2931 final of 2 October 2001;

— Order the Commission to pay the costs of the present appeal.

Pleas in law and main arguments

(1) The CFI appears to have erred in law in finding that liability for an infringement committed by a Community undertaking can be attributed not only to its parent companies but also — and primarily — to the head holding company which indirectly holds the shares in one of the two parent companies.

(2) The CFI appears to have erred in law in forming the view that arguments which were not raised in the course of the administrative procedure before the Commission may not be invoked for the first time before the CFI.

Appeal brought on 15 December 2006 by Archer Daniels Midland Co. against the judgment of the Court of First Instance (Third Chamber) delivered on 27 September 2006 in Case T-329/01: Archer Daniels Midland Company v Commission of the European Communities

(Case C-510/06 P)

(2007/C 56/28)

Language of the case: English

Parties

Appellant: Archer Daniels Midland Co. (represented by: C. Lenz, Prof. Dr., L. Alegi, E. Batchelor and M. Garcia, Solicitors)

Other party to the proceedings: Commission of the European Communities

Form of order sought

The applicant claims that the Court should:

— i) set aside the Judgment in so far as it dismisses the application brought by ADM in respect of the Decision;

— ii) annul Article 3 of the Decision insofar as it pertains to ADM;

— iii) in the alternative to (ii), modify Article 3 of the Decision to reduce further or cancel the fine imposed on ADM;

— iv) in the alternative to (ii) and (iii), refer the case back to the CFI for judgment of the ECJ as to the law;

— v) in any event, order that the Commission bear its own costs and pay ADM's costs relating to the proceedings before the CFI and the ECJ.

Pleas in law and main arguments

The grounds relied upon Archer Daniels Midland Company (hereinafter 'ADM') in this appeal are:

(1) the Court of First Instance (hereinafter 'CFI') infringes the duty to give reasons:

(a) in rejecting ADM's plea that the increase in fines resulting from the Fines Guidelines was not necessary to ensure the implementation of EC competition policy.

(b) by failing to respond to ADM's pleas that the evidence would show lack of impact if the market was wider.

(2) the CFI errs in finding that the Commission satisfied the *Pioneer* ([1]) test and justified the discretion to increase fines generally and in this case;

(3) the CFI infringes the legal principles applicable to the calculation of fines by permitting the Commission to disregard relevant EEA product turnover as an appropriate starting point;

(4) the CFI infringes the principle that the Commission must follow self-imposed rules:

(a) by holding that the Commission can prove impact on a market without needing to respond to ADM's pleas that no relevant economic market was proven;

(b) by permitting the Commission to disregard termination of the infringement as a relevant attenuating circumstances;

(5) the CFI infringes the principle of equal treatment by finding that there were relevant factors distinguishing the far smaller fines imposed in *Zinc Phosphates* ([2]), a directly comparable case;

(6) the CFI reverses the burden of proof by requiring ADM to show that prices 'but for' the cartel would have been the same;

(7) the CFI infringes Article 81 EC treaty:

(a) by misapplying the law of cartels;

(b) by concluding that the conduct at the June 1995 meeting in Anaheim was anticompetitive;

(8) the CFI distorts the evidence:

(a) in concluding that ADM's withdrawal is not supported by the evidence of other participants;

(b) by finding that evidence of the June 1995 meeting was contemporaneous note written by Roquette at the meeting.

([1]) Joined cases 100-103/80 SA Musique Diffusion Française and others V Commission [1983] ECR 1825.
([2]) OJ L 153, P.1.

Appeal brought on 15 December 2006 by Archer Daniels Midland Co. against the judgment of the Court of First Instance (Third Chamber) delivered on 27 September 2006 in Case T-59/02: Archer Daniels Midland Company v Commission of the European Communities

(Case C-511/06 P)

(2007/C 56/29)

Language of the case: English

Parties

Appellant: Archer Daniels Midland Co. (represented by: C. Lenz, Prof. Dr., L. Martin Alegi, E. Batchelor and M. Garcia, Solicitors)

Other party to the proceedings: Commission of the European Communities

Form of order sought

The applicant claims that the Court should:

— (i) set aside the Judgment in so far as it dismisses the application brought by ADM in respect of the Decision;

— (ii) annul Article 3 of the Decision insofar as it pertains to ADM,

— (iii) in the alternative to the point (ii), modify Article 3 of the Decision reduce further or cancel the fine imposed on ADM,

— (iv) in the alternative to (ii) and (iii), refer the case back to the CFI for judgment in accordance with the judgment of the ECJ as to the law;

— (v) in any event, order that he Commission bear its own costs and pay ADM's costs relating to the proceedings before the CFI and the ECJ.

Pleas in law and main arguments

The applicant submits that:

1. The Court of First Instance (CFI) misapplied the law on the rights of defence in determining Archer Daniels Midland Company (ADM) was given fair warning of the facts on which the Commission found it to be a leader;

2. The CFI infringed essential procedural safeguards by permitting the Commission to rely on the FBI's summary of an interview with an ADM employee as evidence of leadership;

3. The CFI distorted the evidence by stating that Cerestar's statement as to ADM's leadership is corroborated;

4. The CFI failed to give reasons for dismissing ADM's plea that Cerestar's failure tp identify positively or provide details of Sherpa meetings is fatal to Cerestar's statement that ADM led those meetings;

5. the CFI erroneously concluded that ADM is estopped from disputing the accuracy of Cerestar's statement because it did not do so during the administrative procedure;

6. The CFI infringed the principle that the Commission must follow self-imposed rules by:

   (a) permitting the Commission to disregard termination of the infringement as a relevant attenuating circumstance;

   (b) holding it that the Commission had proven impact on a market without defining the relevant market;

7. the CFI infringed the principle of legitimate expectations in applying the Leniency Notice by concluding that ADM was a leader and could not qualify for Section B leniency;

8. the CFI misapplied the law on legitimate expectations in finding that the Commission's representations during the administrative procedure did not give rise to a justified expectation that ADM would receive a reduction in penalty under Section B of the Leniency Notice.

Appeal brought on 18 December 2006 by Armacell Enterprise GmbH against the judgment of the Court of First Instance (Fifth Chamber) delivered on 10 October 2006 in Case T-172/05: Armacell Enterprise GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-514/06 P)

(2007/C 56/30)

Language of the case: English

Parties

Appellant: Armacell Enterprise GmbH (represented by: O. Spuhler, Rechtsanwalt)

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

Form of order sought

The applicant claims that the Court should:

— set aside the decision of the Court of First Instance dated 10 October 2006 in case T-172/05;

— order the Office for Harmonisation in the Internal Market to pay the costs of the proceedings before the Court of Justice;

— annul the decision of the First Board of Appeal of the Office of the Harmonization in the Internal Market dated 23 February 2005 in case R 552/2004-1;

— order the Office of Harmonization in the Internal Market to pay the costs of the proceedings before the Court of First Instance as well as the costs of the proceedings before the Office for Harmonization in the Internal Market.

Pleas in law and main arguments

The applicant submits that the contested decision of the Court of First Instance is based on a misinterpretation of the statutory requirement of trade mark similarity according to article 8(1)(b) of Council regulation (EC) nº 40/94 [1] of 20 December 1993 on the Community trade mark (hereinafter 'CMTR'). The applicant also submits that the failure of the Court of First Instance to consider the question of trade mark similarity from the point of view of the English-speaking public constitutes a violation of an essential procedural requirement within the meaning of article 63(2) CTMR.

[1] OJ L 11, p. 1.

Appeal brought on 19 December 2006 by European Association of Euro Pharmaceutical Companies (EAEPC) against the judgment of the Court of First Instance (Fourth Chamber, Extended Composition) delivered on 27 September 2006 in Case T-168/01: GlaxoSmithKline Services Unlimited v Commission of the European Communities

(Case C-515/06 P)

(2007/C 56/31)

Language of the case: English

Parties

Appellant: European Association of Euro Pharmaceutical Companies (EAEPC) (represented by: M. Hartmann-Rüppel and W. Rehmann, Rechtsanwälte)

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

Form of order sought

The applicant claims that the Court should:

— set aside the judgment of the Court of First Instance of 27 September 2006, case no. T-168/01, to the extent the Court of First Instance annulled the Commission decision 2001/70/E ([1]) of 8 May 2001.

— to award the costs of the proceedings before the Court of Justice and the Court of First Instance.

Pleas in law and main arguments

The Appellant claims the following infringements of Community law by the appealed judgment:

(a) Misapplication of Art. 81(3) EC-the Court of First Instance disregarded the role and function of Art. 81(3) when alleging the assessment undertaken by the Commission was insufficient.

(b) Misapplication of Article 81(3) EC by misjudging the burden of rendering evidence and proof

(c) Misapplication of Article 81(3) EC in consequence of misinterpretation or non-consideration of evidence on file, which proves that the applicant (GSK) did not plead on the requirements of Article 81(3) EC sufficiently and by offering sustainable evidence.

([1]) OJ L 302, p. 1.

Appeal brought on 20 December 2006 by Asociación de exportadores españoles de productos farmacéuticos (Aseprofar) against the judgment of the Court of First Instance (Fourth Chamber, Extended Composition) delivered on 27 September 2006 in Case T-168/01: GlaxoSmithKline Services Unlimited, formerly Glaxo Wellcome plc v Commission of the Eurooean communities

(Case C-519/06 P)

(2007/C 56/32)

Language of the case: English

Parties

Appellant: Asociación de exportadores españoles de productos farmacéuticos (Aseprofar) (represented by: M. Araujo Boyd, abogado, J. L. Buendía Sierra, membre du service juridique)

Other parties to the proceedings: Commission of the European Communities, European Association of Euro Pharmaceutical Companies (EAEPC), Bundesverband der Arzneimittel-Importeure eV, Spain Pharma, SA, GlaxoSmithKline Services Unlimited, anciennement Glaxo Wellcome plc

Form of order sought

The applicant claims that the Court should:

— set aside point 1 of the judgment of the Court of First Instance of 27 September 2006 in case T-168/01;

— give final judgment in case T-168/01 by entirely rejecting GLAXO's claim and confirming Commission Decision 2001/791/EC; and

— set aside points 3, 4, and 5 of the said judgment relating to costs, and to order GLAXO to bear entirely the costs of case T-168/01 and of the present appeal.

Pleas in law and main arguments

The applicant submits that the contested judgment should be annulled on the following grounds:

Erroneous application of Article 81(1) EC

The applicant maintains that the Court of First Instance (hereinafter 'CFI') wrongly rejected the Commission's finding that GLAXO'S dual pricing had as its object the prevention, restriction or distortion of competition and argues that dual pricing and export bans are anticompetitive by their very nature. The applicant also submits that the CFI has wrongly applied article 81(1) EC in the context of a regulated sector, that the contested judgment incorrectly analyses the legal and economic context of the case and that the CFI is manifestly wrong in law in its assessment of the goal of the competition rules contained in the EC Treaty and in its analysis of consumer welfare arising from parallel trade.

Erroneous application of Article 81(3) EC

According to the contested judgment the Commission failed in its assessment of the causal link between parallel trade and innovation and between article 4 of the General Sales Conditions and innovation. The CFI also held that the Commission's conclusions regarding the effect of the currency fluctuations on the parallel trade between Spain and the UK were erroneous. The applicant submits that the Commission's appraisal regarding these points was entirely correct and that there was no manifest error of assessment and that the CFI therefore wrongly interpreted article 81(3) EC.

Finally the applicant submits that the CFI reversed the burden of proof regarding article 81(3) EC and did not correctly analyse the Commission's evaluation of the second, third and fourth conditions of that article. The applicant maintains that the four conditions for granting an exemption under article 81(3) are cumulative and therefore the non-fulfilment of only one of these conditions is sufficient grounds for the Commission to reject the application for exemption. As a consequence the CFI cannot annul a negative decision if it has not previously completely assessed the Commission's analysis of the four conditions contained in article 81(3) and concluded that the Commission committed manifest errors of assessment as regards those conditions.

Reference for a preliminary ruling from House of Lords (United Kingdom) made on 20 December 2006 — Stringer and others v Her Majesty's Revenue and Customs

(Case C-520/06)

(2007/C 56/33)

Language of the case: English

Referring court

House of Lords

Parties to the main proceedings

Applicant: Stringer and others

Defendant: Her Majesty's Revenue and Customs

Questions referred

1. Does Article 7(1) of Directive 2003/88/EC ([1]) mean that a worker on indefinite sick leave is entitled (i) to designate a future period as paid annual leave and (ii) to take paid annual leave, in either case during a period that would otherwise be sick leave?

2. If a Member State exercises its discretion to replace the minimum period of paid annual leave with an allowance in lieu on termination of employment under Article 7(2) of Directive 2003/88/EEC, in circumstances in which a worker has been absent on sick leave for all or part of the leave year in which the employment relationship is terminated, does Article 7(2) impose any requirements or lay down any criteria as to whether the allowance is to be paid or how it is to be calculated?

([1]) OJ L 299, p. 9.

Reference for a preliminary ruling from the Oberverwaltungsgericht für das Land Nordrhein-Westfalen (Germany) lodged on 28 December 2006 — Heinz Huber v Federal Republic of Germany

(Case C-524/06)

(2007/C 56/34)

Language of the case: German

Referring court

Oberverwaltungsgericht für das Land Nordrhein-Westfalen

Parties to the main proceedings

Applicant: Heinz Huber

Defendant: Federal Republic of Germany

Questions referred

Is the general processing of personal data of foreign citizens of the Union in a central register of foreign nationals compatible with

(a) the prohibition of discrimination on grounds of nationality against citizens of the Union who exercise their right to move and reside freely within the territory of the Member States (first paragraph of Article 12 EC in conjunction with Articles 17 EC and 18(1) EC),

(b) the prohibition of restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State (first paragraph of Article 43 EC),

(c) the requirement of necessity under Article 7(e) of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ([1])?

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

Reference for a preliminary ruling from the Hoge Raad der Nederlanden lodged on 27 December 2006 — R.H.H. Renneberg v Staatssecretaris van Financiën

(Case C-527/06)

(2007/C 56/35)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Appellant: R.H.H. Renneberg

Respondent: Staatssecretaris van Financiën

Question referred

Must Articles 39 EC and 56 EC be interpreted as precluding, either individually or jointly, a situation in which a taxpayer who, in his country of residence, has (on balance) negative income from a dwelling owned and occupied by him and obtains all of his positive income, specifically work-related income, in a Member State other than that in which he resides is not permitted by that other Member State (the State of employment) to deduct the negative income from his taxed work-related income, even though the State of employment does allow its own residents to make such a deduction?

Reference for a preliminary ruling from the Simvoulio tis Epikratias (Greece) lodged on 29 December 2006 — Emm. G. Lianakis AE, Sima Anonimi Techniki Etairia Meleton kai Epivlepseon and Nikolaos Vlachopoulos v Dimos Alexandroupolis, Planitiki A.E., Aikaterini Georgoula, Dim. Vasios, N. Loukatos & Sinergates Anonimi Etairia Meleton, Eratosthenis Meletitiki A.E., A. Pantazis — Pan. Kiriopoulou & Sinergates ('Filon') O.E. and Nikolaos Sideris

(Case C-532/06)

(2007/C 56/36)

Language of the case: Greek

Referring court

Simvoulio tis Epikratias (Council of State)

Parties to the main proceedings

Applicants: Emm. G. Lianakis AE, Sima Anonimi Techniki Etairia Meleton kai Epivlepseon and Nikolaos Vlachopoulos

Defendants: Dimos Alexandroupolis, Planitiki A.E., Aikaterini Georgoula, Dim. Vasios, N. Loukatos & Sinergates Anonimi Etairia Meleton, Eratosthenis Meletitiki A.E., A. Pantazis — Pan. Kiriopoulou & Sinergates ('Filon') O.E. and Nikolaos Sideris

Question referred

If the tender notice for the award of a contract for services makes provision only for the order of priority of the award criteria, without stipulating the weighting factors for each criterion, does Article 36 of Directive 92/50/EEC ([1]) relating to the coordination of the procedures for the award of public service contracts allow criteria to be weighted by the evaluation committee at a later date and, if so, under what conditions?

([1]) OJ L 209, 24.7.1992, p. 1.

Reference for a preliminary ruling from Court of Appeal (United Kingdom) made on 28 December 2006 — 02 Holdings Limited & 02 (UK) Limited v Hutchinson 3G UK Limited

(Case C-533/06)

(2007/C 56/37)

Language of the case: English

Referring court

Court of Appeal

Parties to the main proceedings

Applicants: 02 Holdings Limited & 02 (UK) Limited

Defendant: Hutchinson 3G UK Limited

Questions referred

1. Where a trader, in an advertisement for his own goods or services uses a registered trade mark owned by a competitor for the purpose of comparing the characteristics (and in particular the price) of goods or services marketed by him with the characteristics (and in particular the price) of the goods or services marketed by the competitor under that mark in such a way that it does not cause confusion or otherwise jeopardize the essential function of the trade mark as an indication of origin, does his use fall within either (a) or (b) of Art. 5 of Directive 89/104 ([1])?

2. Where a trader uses, in a comparative advertisement, the registered trade mark of a competitor, in order to comply with Art. 3a of Directive 84/450 ([2]) as amended must that use be 'indispensable' and if so what are the criteria by which indispensability is to be judged?

3. In particular, if there is a requirement of indispensability, does the requirement preclude any use of a sign which is not identical to the registered trade mark but is closely similar to it?

([1]) OJ L 40, p. 1.
([2]) OJ L 250, p. 17.

Action brought on 12 January 2007 — Commission of the European Communities v Kingdom of Spain

(Case C-6/07)

(2007/C 56/38)

Language of the case: Spanish

Parties

Applicant: Commission of the European Communities (represented by: J. Enegren and R. Vidal Puig, acting as Agents)

Defendant: Kingdom of Spain

Form of order sought

— Declare that by failing to adopt the laws, regulations and administrative measures necessary to comply with Directive 2002/74/EC ([1]) of the European Parliament and of the Council of 23 September 2002 amending Council Directive 80/987/EEC on the approximation of laws of the Member States relating to the protection of employees in the event of the insolvency of their employer, and in any case, by failing to communicate them to the Commission, the Kingdom of Spain has failed to fulfil its obligations under that Directive;

— Order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

The period prescribed for the transposition into national law of Directive 2002/74 expired on 8 October 2005.

([1]) OJ L 270, 2002, p. 10.

Reference for a preliminary ruling from the Hof van Beroep te Gent (Belgium) lodged on 18 January 2007 — Hans Eckelkamp and Others v Belgian State

(Case C-11/07)

(2007/C 56/39)

Language of the case: Dutch

Referring court

Hof van Beroep te Gent

Parties to the main proceedings

Appellants: Hans Eckelkamp and Others

Respondent: Belgian State

Question referred

Do Article 12 EC, in conjunction with Articles 17 EC and 18 EC, and Article 56 EC, in conjunction with Article 57 EC, preclude national rules of a Member State under which, in the context of the acquisition, through inheritance, of immovable property situate in a Member State (the State in which the property is situate), that State imposes a tax on the value of the immovable property situate in that State, in respect of which that State allows a deduction corresponding to the value of charges on that immovable property (such as debts secured by the right conferred on a creditor to take out a mortgage against that immovable property) if the testator, at the time of his demise, was resident in the State in which the property is situate, but not if the testator, at the time of his demise, was living in a different Member State (the State of residence)?

Action brought on 18 January 2007 — Commission of the European Communities v Council of the European Union

(Case C-13/07)

(2007/C 56/40)

Language of the case: English

Parties

Applicant: Commission of the European Communities (represented by: P.J. Kuijper and M. Huttunen, Agents)

Defendant: Council of the European Union

The applicant claims that the Court should:

— annul the decision of the Council and the Member States establishing the Community's and the Member States' position within the General Council of the World Trade Organization on the accession of the Socialist Republic of Viet Nam to the World Trade Organization (COM/2005/0659 final-ACC 2006/0215);

— declare that the effects of the annulled decision are definitive;

— order Council of the European Union to pay the costs.

Pleas in law and main arguments

The proposal submitted by the Commission was based on article 133, paragraphs 1 and 5 of the EC Treaty in conjunction with the second subparagraph of article 300(2) thereof. The Council added article 133(6) to the legal basis and consequently a formally separate decision of the Representatives of the Governments of Member States meeting within the Council was adopted. Thus, the Council and the Member States adopted 'jointly' the position of the Community and its Member States as foreseen by the last sentence of article 133(6), second subparagraph.

The Commission's choice of the legal basis was decided according to the parameters established by the case-law of the Court of Justice of the European Communities, which are the aim and the content of the act. In particular, it was based on the appreciation that the content of the act falls within article 133(1) and (5), which establishes an exclusive competence, and that consequently recourse to article 133(6) was not necessary. The Commission believes that the decision should be annulled as far as this aspect of its legal basis is concerned.

Reference for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 22 January 2007 — Ingenieurbüro Michael Weiss und Partner GbR v Industrie und Handelskammer Berlin, intervener: Nicholas Grimshaw & Partners Ltd

(Case C-14/07)

(2007/C 56/41)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Appellant on a point of law: Ingenieurbüro Michael Weiss und Partner GbR

Respondent to the appeal on a point of law: Industrie und Handelskammer Berlin

Intervener: Nicholas Grimshaw & Partners Ltd.

Questions referred

1. Must Article 8(1) of Council Regulation (EC) No 1348/2000 [1] of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters ('the Regulation') be interpreted as meaning that an addressee does not have the right to refuse to accept a document pursuant to Article 8(1) of the Regulation if only the annexes to a document to be served are not in the language of the Member State addressed or in a language of the Member State of transmission which the addressee understands?

2. If the answer to the first question is in the negative:

   Must Article 8(1)(b) of the Regulation be interpreted as meaning that the addressee 'understands' the language of a Member State of transmission within the meaning of that regulation because, in the exercise of his business activity, he agreed in a contract with the applicant that correspondence was to be conducted in the language of the Member State of transmission?

3. If the answer to the second question is in the negative:

   Must Article 8(1) of the Regulation be interpreted as meaning that the addressee may not in any event rely on that provision in order to refuse acceptance of such annexes to a document, which are not in the language of the Member State addressed or in a language of the Member State of transmission which the addressee understands, if the addressee concludes a contract in the exercise of his business activity in which he agrees that correspondence is to be conducted in the language of the Member State of transmission and the annexes transmitted concern that correspondence and are written in the agreed language?

[1] OJ L 160, 2000, p. 37.

Reference for a preliminary ruling from the Kammarrätten i Jönköping (Sweden) lodged on 22 January 2007 — Mattias Jalkhed v Jordbruksverket

(Case C-18/07)

(2007/C 56/42)

Language of the case: Swedish

Referring court

Kammarrätten i Jönköping

Parties to the main proceedings

Applicant: Mattias Jalkhed

Defendant: Jordbruksverket

Questions referred

1. Does a national provision prohibiting the holding of wild birds as domestic animals or in the pursuit of a hobby constitute a quantitative restriction on imports or a measure having equivalent effect within the meaning of Article 28 of the EC Treaty, if the provision in question means that it is not permitted to import such a bird into the Member State in question from another Member State?

2. If the answer to the first question is in the affirmative: Can the national provision in question be regarded, despite that, as being compatible with Community law, with reference to the fact that the reason for the provision, according to the competent national authority, is the difficulty of accommodating the wild birds' natural behaviour in captivity (that is to say, the birds' social behaviour, hunting behaviour and need for freedom of movement) and their lack of domestication, which causes fear and undesirable stress in handling?

   (a) What is the potential significance of the fact that the national provision in question has been notified to the Commission as a draft technical regulation pursuant to Directive 98/34/EC [1] (amended by Directive 98/48/EC) and has not been the subject of any objection from the Commission (on a comparison with, primarily, the second paragraph of Article 8(5) of that directive)?

   (b) What is the potential significance of the fact that there is no harmonisation at a Community level with regard to the import and holding of, inter alia, wild birds such as those in question in the case (contrary to the situation under the rules which was at issue in the judgment of the Court of Justice in Case C 162/97 Nilsson [and Others])?

[1] OJ L 204, 21.7.1998, p. 37.

Action brought on 23 January 2007 — Commission of the European Communities v Ireland

(Case C-20/07)

(2007/C 56/43)

Language of the case: English

Parties

Applicant: Commission of the European Communities (represented by: J. Hottiaux 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 2004/26/EC of the European Parliament and of the Council of 21 April 2004 amending Directive 97/68/EC on the approximation of the laws of the Member States relating to measures against the emission of gaseous and particulate pollutants from internal combustion engines to be installed in non-road mobile machinery [1] or, in any event, by failing to notify such provisions to the Commission, Ireland has failed to fulfil its obligation under Article 3 of that Directive.

— order Ireland to pay the costs of this Application.

Pleas in law and main arguments

The period within which the directive had to be transposed expired on 20 May 2005.

[1] OJ L 146, p.1.

Action brought on 23 January 2007 — Commission of the European Communities v Ireland

(Case C-21/07)

(2007/C 56/44)

Language of the case: English

Parties

Applicant: Commission of the European Communities (represented by: J. Hottiaux 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 2002/88/EC of the European Parliament and of the Council of 9 December 2002 amending Directive 97/68/EC on the approximation of the laws of the Member States relating to measures against the emission of gaseous and particulate pollutants from internal combustion engines to be installed in non-road mobile machinery ([1]) or, in any event, by failing to notify such provisions to the Commission, Ireland has failed to fulfil its obligations under Article 2 of that Directive.

— order Ireland to pay the costs of this Application.

Pleas in law and main arguments

The period within which the directive had to be transposed expired on 11 August 2004.

([1]) OJ L 35, p.28.

Action brought on 24 January 2007 — Commission of the European Communities v Kingdom of Spain

(Case C-22/07)

(2007/C 56/45)

Language of the case: Spanish

Parties

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

Defendant: Kingdom of Spain

Form of order sought

— Declare that, by failing to adopt all the laws regulations and administrative measures necessary to comply with Directive 2004/27/EC ([1]) of the European Parliament and of the Council of 31 March 2004 amending Directive 2001/83/EC on the Community code relating to medicinal products for human use, and in any case, by failing to communicate them the Commission, the Kingdom of Spain has failed to fulfil its obligations under that Directive.

— Order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

The period prescribed for the transposition into national law of Directive 2004/27/EC expired on 30 October 2005.

([1]) OJ L 136, 2004, p. 34.

Action brought on 25 January 2007 — Commission of the European Communities v Hellenic Republic

(Case C-26/07)

(2007/C 56/46)

Language of the case: Greek

Parties

Applicant: Commission of the European Communities (represented by: M. Kontou and A.-M. Rouchaud-Joët)

Defendant: Hellenic Republic

Form of order sought

— declare that, by not adopting, and in any event by not notifying to the Commission, the laws, regulations and administrative provisions necessary to comply with Council Directive 2004/80/EC ([1]) of 29 April 2004 relating to compensation to crime victims, the Hellenic Republic has failed to fulfil its obligations under that directive;

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

The time-limit for transposition of Directive 2004/80 into domestic law expired on 1 January 2006.

([1]) OJ L 261, 6.8.2004, p. 15.

Action brought on 29 January 2007 — Commission of the European Communities v Hellenic Republic

(Case C-29/07)

(2007/C 56/47)

Language of the case: Greek

Parties

Applicant: Commission of the European Communities (represented by: M. Condou-Durande)

Defendant: Hellenic Republic

Form of order sought

— declare that, by not adopting, and in any event by not notifying to the Commission, the laws, regulations and administrative provisions necessary to comply with Council Directive 2003/110/EC ([1]) of 25 November 2003 on assistance in cases of transit for the purposes of removal by air, the Hellenic Republic has failed to fulfil its obligations under that directive;

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

The time-limit for transposition of Directive 2003/110 into domestic law expired on 6 December 2005.

([1]) OJ L 321, 6.12.2003, p. 26.

Action brought on 26 January 2007 — Commission of the European Communities v Ireland

(Case C-31/07)

(2007/C 56/48)

Language of the case: English

Parties

Applicant: Commission of the European Communities (represented by: R. Vidal Puig, Agent)

Defendant: 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 2003/42/EC of the European Parliament and of the Council of 13 June 2003 on occurrence reporting in civil aviation ([1]), or in any event by failing to communicate them to the Commission, Ireland has failed to fulfil its obligations under the Directives;

— order Ireland to pay the costs.

Pleas in law and main arguments

The period within which the directive had to be transposed expired on 4 July 2005.

([1]) OJ L 167, p. 23.

Action brought on 30 January 2007 — Commission of the European Communities v Portuguese Republic

(Case C-35/07)

(2007/C 56/49)

Language of the case: Portuguese

Parties

Applicant: Commission of the European Communities (represented by: A. Caeiros and B. Stromsky, acting as Agents)

Defendant: Portuguese Republic

Form of order sought

— principally, a declaration that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Directive 2004/28/EC ([1]) of the European Parliament and of the Council of 31 March 2004 amending Directive 2001/82/EC on the Community code relating to veterinary medicinal products, the Portuguese Republic has failed to fulfil its obligations under Article 3 of that directive;

— in the alternative, a declaration that, by failing in any event to communicate such provisions to the Commission, the Portuguese Republic has failed to fulfil its obligations under that article of the directive;

— an order for the Portuguese Republic to pay the costs.

Pleas in law and main arguments

The period prescribed for transposition of the directive into domestic law expired on 30 October 2005.

([1]) OJ L 136, 2004, p. 58.

COURT OF FIRST INSTANCE

Judgment of the Court of First Instance of 17 January 2007 — Greece v Commission

(Case T-231/04) ([1])

(Action for annulment — Common diplomatic mission in Abuja (Nigeria) — Recovery of a debt by offsetting — Regulations (EC, Euratom) No 1605/2002 and No 2342/2002 — Principle of good faith in public international law)

(2007/C 56/50)

Language of the case: Greek

Parties

Applicant: Hellenic Republic (represented by: P. Mylonopoulos and V. Kyriazopoulos, Agents)

Defendant: Commission of the European Communities (represented by: D. Triantafyllou and F. Dintilhac, Agents)

Re:

Claim for annulment of the act of 10 March 2004 by which the Commission proceeded to recovery by offsetting of sums due from the Hellenic Republic following its participation in building projects for the diplomatic mission of the Commission and several Member States in Abuja (Nigeria)

Operative part of the judgment

The Court:

1. *Orders the removal of the opinion of the Council's Legal Service of 26 June 1998, submitted by the Hellenic Republic as annex 12 to its application, from the case-file;*

2. *Dismisses the action;*

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

([1]) OJ C 179, 10.7.2004 (formerly C-189/04).

Judgment of the Court of First Instance of 17 January 2007 — Georgia-Pacific v OHIM (embossed motif)

(Case T-283/04) ([1])

(Community trade mark — Three-dimensional mark — Embossed motif — Refusal of registration — Distinctiveness — Article 7(1)(b) of Regulation (EC) No 40/94)

(2007/C 56/51)

Language of the case: French

Parties

Applicant: Georgia-Pacific Sàrl (represented by: R. Delorey, lawyer)

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

Re:

Action brought against the decision of the first Board of Appeal of OHIM of 11 May 2004 (Case R 493/2003-1) regarding registration of a three-dimensional mark consisting of an embossed motif.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the applicant, Georgia-Pacific Sàrl, to pay the costs.*

([1]) OJ C 262, 23.10.2004.

Judgment of the Court of First Instance of 9 January 2007 — Van Neyghem v Committee of the Regions of the European Union

(Case T-288/04) ([1])

(Officials — Appointment — Classification in grade and step — Pay slip — Late complaint — Admissibility)

(2007/C 56/52)

Language of the case: Dutch

Parties

Applicant: Kris Van Neyghem (Tirlemont, Belgium) (represented by: D. Janssens, lawyer)

Defendant: Committee of the Regions of the European Union (represented by: P. Cervilla, Agent, assisted by B. Wägenbaur and R. Van der Hout, lawyers)

Re:

Action for annulment of Decision 87/03 of the Committee of the Regions of 26 March 2003 which definitively classified the applicant in Grade B 5, Step 4.

Operative part of the judgment

The Court:

1. *Dismisses the action as inadmissible.*

2. *Orders the Committee of the Regions of the European Union to pay all the costs.*

([1]) OJ C 251, 9.10.2004.

Judgment of the Court of First Instance of 23 January 2007 — Tsarnavas v Commission

(Case T-472/04) ([1])

(Officials — Article 45 of the Staff Regulations — Promotion — Judgment annulling the decision not to promote the applicant — Re-examination of the merits — Reasons)

(2007/C 56/53)

Language of the case: French

Parties

Applicant: Vassilios Tsarnavas (Volos, Greece) (represented by: N. Lhoëst, lawyer)

Defendant: Commission of the European Communties (represented by: G. Berardis-Kayser and D. Martin, Agents)

Re:

Application for annulment of the Commission's decision of 23 December 2003 insofar as it did not include the applicant's name on the list of officials proposed for promotion for 1999, or on the list of officials considered the most deserving of promotion to grade A4 for 1998 and 1999, or on the list of officials promoted to grade A4 in 1998 or 1999

Operative part of the judgment

The Court:

1. *Annuls the decision of the Commission of 23 December 2003 insofar as it did not include the applicant's name on the list of officials considered the most deserving of promotion to grade A4 for 1998 and 1999, on the one hand, or on the list of officials promoted to grade A4 in 1998 or 1999, on the other;*

2. *Dismisses the remainder of the action;*

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

([1]) OJ C 57, 5.3.2005.

Judgment of the Court of First Instance of 16 January 2007 — Calvo Growers v OHIM — Calvo Sanz (Calvo)

(Case T-53/05) ([1])

(Community trade mark — Opposition proceedings — Application for figurative mark CALVO — Earlier Community word mark CALAVO — Admissibility of the opposition — Grounds of the opposition lodged in a language other than the language of the proceedings — Article 74(1) of Regulation (EC) No 40/94 — Rule 20(3) of Regulation (EC) No 2868/95)

(2007/C 56/54)

Language of the case: Spanish

Parties

Applicant: Calvo Growers Inc. (Santa Ana, United States) (represented by: E. Armijo Chávarri and A. Castán Pérez-Gómez, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance: Luis Calvo Sanz SA (Carballo, Spain) (represented by J. Rivas Zurdo and E. López Leiva, lawyers)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 8 November 2004 (Case R 159/2004-1), relating to opposition proceedings between Calvo Growers Inc. and Luis Calvo Sanz SA.

Operative part of the judgment

The Court:

1. *Annuls the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 8 November 2004 (Case R 159/2004-1);*

2. *Orders OHIM to bear its own costs and to pay those incurred by the applicant;*

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

([1]) OJ C 82, 2.4.2005.

Order of the Court of First Instance of 6 December 2006 — movingpeople.net International BV v OHIM — Schäfer (movingpeople.net)

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

(Community trade mark — Community figurative trade mark movingpeople.net — Opposition of the proprietor of the national word mark MOVING PEOPLE — Partial refusal of registration — Applicant's acquisition of the earlier trade mark — No need to adjudicate)

(2007/C 56/55)

Language of the case: English

Parties

Applicant: movingpeople.net International BV (Helmond, Netherlands) (represented by: G. van Roeyen and T. Berendsen, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance: Thomas Schäfer (Groß Schlamin, Schashagen, Germany) (represented by: D. Rohmeyer, lawyer)

Re:

Action for annulment brought against the decision of the First Board of Appeal of OHIM of 20 December 2004 (Case R 410/2004-1), relating to opposition proceedings between Thomas Schäfer and movingpeople.net International BV

Operative part of the judgment

1. *There is no need to adjudicate on the action.*

2. *The applicant is ordered to bear its own costs and to pay those incurred by the defendant.*

3. *The intervener is to bear its own costs.*

([1]) OJ C 115, 14.5.2005.

Order of the Court of First Instance of 9 January 2007 — Lootus Teine Osaühing v Council

(Case T-127/05) ([1])

(Action for annulment — Regulation (EC) No 2269/2004 and Regulation (EC) No 2270/2004 — Fisheries — Fishing opportunities for deep sea species for the new Member States which acceded in 2004 — Persons directly and individually concerned — Inadmissibility)

(2007/C 56/56)

Language of the case: English

Parties

Applicant: Lootus Teine Osaühing (Lootus) (Tartu, Estonia) (represented by: T. Sild and K. Martin, Lawyers)

Defendant: Council of the European Union (represented by: A. de Gregorio Merino, F. Ruggeri Laderchi and A. Westerhof Löreffl erova, Agents)

Intervener in support of the applicant: Republic of Estonia (represented by: L. Uibo and H. Prieß, Agents)

Intervener in support of the defendant: Commission of the European Communities (represented by K. Banks, Agent)

Re:

Action for annulment in part of, first, the Annex to Council Regulation (EC) No 2269/2004 of 20 December 2004 amending Regulations (EC) Nos 2340/2002 and 2347/2002 as concerns fishing opportunities for deep sea species for the new Member States which acceded in 2004 (OJ 2004 L 396, p. 1) and, second, Part 2 of the Annex to Council Regulation (EC) No 2270/2004 of 22 December 2004 fixing for 2005 and 2006 the fishing opportunities for Community fishing vessels for certain deep-sea fish stocks (OJ 2004 L 396, p. 4), in so far as those provisions concern the fishing opportunities allocated to Estonia.

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *The applicant shall bear its own costs and pay those incurred by the Council.*

3. *The Commission shall bear its own costs.*

([1]) OJ C 115, 14.5.2005.

Order of the Court of First Instance of 12 January 2007 — SPM v Commission

(Case T-104/06) ([1])

(Common organisation of the markets — Bananas — Scheme for the import of bananas originating in ACP countries to the European Union — Regulation (EC) No 219/2006 — Action for annulment — Locus standi — Inadmissibility)

(2007/C 56/57)

Language of the case: French

Parties

Applicant: Société des plantations de Mbanga SA (Douala, Cameroon) (represented by: B. Doré, lawyer)

Defendant: Commission of the European Communities (represented by: F. Clotuche-Duvieusart and L. Visaggio, Agents)

Re:

Action for annulment of 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 (OJ 2006 L 38, p. 22)

Operative part of the order

1. *The action is dismissed as inadmissible;*

2. *The Société des plantations de Mbanga SA (SPM) shall bear its own costs and pay those of the Commission.*

([1]) OJ C 131, 3.6.2006.

Action brought on 8 December 2006 — Rath v OHIM — Sanorell Pharma (Immunocell)

(Case T-368/06)

(2007/C 56/58)

Language in which the application was lodged: German

Parties

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

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

Other party to the proceedings before the Board of Appeal of OHIM: Sanorell Pharma GmbH & Co.

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 3 October 2006;

— Order OHIM to pay the costs of the proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant.

Community trade mark concerned: The word mark 'Immunocell' for goods and services in Classes 5 , 16 and 41 (Registration No 1 065 903).

Proprietor of the mark or sign cited in the opposition proceedings: Sanorell Pharma GmbH & Co.

Mark or sign cited in opposition: The word mark 'IMMUNORELL' for goods in Class 5 (Community trade mark No 808 014), the opposition being brought only against the registration in Class 5.

Decision of the Opposition Division: Opposition granted, partial rejection of the application.

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

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

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

Action brought on 22 December 2006 — ZERO Industry v OHIM — zero International Holding (zerorh+)

(Case T-400/06)

(2007/C 56/59)

Language in which the application was lodged: English

Parties

Applicant: ZERO Industry Srl (Como, Italy) (represented by: M. Rapisardi, lawyer)

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

Other party to the proceedings before the Board of Appeal: zero International Holding GmbH & Co. KG (Bremen, Germany)

Form of order sought

— Annul decision R0958/2005-1 of the First Board of Appeal of the Office for Harmonisation in the Internal Market, of 5 October 2006, notified to the applicant on 23 October 2006;

— definitively reject the opposition brought by the defendant against the registration of Community trade mark application No 2004547, on behalf of Zero Industry Srl;

— order the Office for Harmonisation in the Internal Market to proceed with the registration of the CTM lodged by ZERO Industry Srl;

— order the Office for Harmonisation in the Internal Market or any unsuccessful party to pay, jointly or severally, to the applicant the costs, expenses and fees, incurred in both the present proceedings and the opposition and appeal proceedings before the Office for Harmonisation in the Internal Market.

Pleas in law and main arguments

Applicant for the Community trade mark: the applicant

Community trade mark concerned: the figurative mark 'zerorh+' for the goods in classes 9, 18 and 25 — application No 2004547

Proprietor of the mark or sign cited in the opposition proceedings: zero International Holding GmbH & Co. KG

Mark or sign cited: the national figurative mark 'zero' for goods in classes 18 and 25 and the national word mark 'zero' for goods in class 9

Decision of the Opposition Division: Opposition upheld

Decision of the Board of Appeal: Appeal dismissed

Pleas in law: Infringement of Article 8(1)(b) of Regulation No 40/94

The applicant claims that the Board erred in its interpretation of the above provision insofar as it didn't take into account the visual, phonetic and conceptual differences between the goods to which the conflicting trade marks relate.

Action brought on 2 January 2007 — Apache Footwear and Apache II Footwear v Council

(Case T-1/07)

(2007/C 56/60)

Language of the case: English

Parties

Applicants: Apache Footwear Ltd (Guangzhou, China) and Apache II Footwear Ltd (Qingyuan, China) (represented by: O. Prost and S. Ballschmiede, lawyers)

Defendant: Council of the European Union

Form of order sought

— Annul Article 1 of Council Regulation (EC) No 1472/2006 of 5 October 2006 ([1]), imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam as long as it imposes 16.5 % duty on imports of products manufactured by the applicant;

— ask the Council to pay the costs.

Pleas in law and main arguments

By the present application, the applicants seek partial annulment, pursuant to Article 230(4) EC, of the contested regulation to the extent that it imposes definitive anti-dumping duties on their imports into the European Union.

The applicants advance three pleas in law in support of their claims:

First, the applicants submit that the Council, when examining whether the applicants met the criteria to be granted Market Economy Treatment ('MET'), pursuant to Article 2(7)(b) and (c) of Regulation (EC) No 384/96 (hereinafter, 'the Basic Regulation'), violated the latter, as well as its obligation of motivation under Article 253 EC, insofar as it allegedly failed to examine whether the applicants were subject to significant state interference.

Second, the applicants claim that the Council, by refusing to take into account certain additional key information, violated its obligation of due diligence and proper administration, and consequently made a manifest error of appraisal.

Third, the applicants contend that the Council by refusing to exclude children's footwear from the scope of the measures at the stage of the definitive regulation, violated Article 21 of the Basic Regulation, its obligation of motivation under Article 253 EC and made a manifest error of appraisal.

(1) OJ L 275, 2006, p. 1.

Action brought on 2 February 2007 — Kingdom of Spain v Commission of the European Communities

(Case T-2/07)

(2007/C 56/61)

Language of the case: Spanish

Parties

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

Defendant: Commission of the European Communities

Form of order sought

— Annul Decision C(2006) 5102 of 20 October 2006, in that it reduces the assistance from the Cohesion Fund to the group of projects No 2001 ES 16 C PE 050 (Clearance of the hydrographical basin of the Júcar 2001-Group2)

— Order the Commission to pay the costs.

Pleas in law and main arguments

The present action is directed at Commission Decision C(2006) 5103 of 20 October 2006, which reduced the assistance from the Cohesion Fund to the group of projects No 2001 ES 16 C PE 050, performed in Spain and designated as 'Clearance of the hydrographical basin of the Júcar 2001-Group 2'.

It concerns a comprehensive group of three different projects which received assistance of EUR 11 266 701, which was reduced by virtue of the impugned decision by EUR 1 900 281.

In support of its claims, the applicant alleges incorrect and incoherent interpretation of Directive 92/17/EEC (1), in so far as it relates to the criterion of experience (Article 30(1) and (2)) and to the use of the system of average prices (Article 30(1)).

Regarding the inclusion of the 'criterion of experience' as one of the criteria for the contract award, while that criterion is not expressly provided for in the applicable rules, it is submitted that Community case-law allows for that possibility, and that the use of that criterion can in no way constitute a grave and manifest infringement of the Community rules, or, in any event, can only amount to an excusable error of law on account of lack of clarity of the applicable rule.

On the other hand, the applicant disputes that the use of the system of average prices, used during the analysis of the most economically advantageous tender in the projects awarded, infringes the principle of equal treatment, by discriminating in favour of excessively low tenders compared with other more expensive tenders.

In the alternative, the applicant also alleges breach of Article H (2) of Annex II to Regulation (EC) No 1164/94, (2) on the ground of infringement of the principles of legitimate expectations and legal certainty; and, in respect of Contract No 2000/GV/2005, breach of the principle of proportionality, as well as breach of Article 19 of the Directive No 93/37, cited above.

(1) Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts (OJ L 199, 9.8.1993, p. 54).
(2) Council Regulation (EC) No 1164/94 of 16 May 1994 establishing a Cohesion Fund (OJ L 130, 25.5.1994, p. 1).

Action brought on 2 January 2007 — Spain v Commission

(Case T-3/07)

(2007/C 56/62)

Language of the case: Spanish

Parties

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

Defendant: Commission of the European Communities

Form of order sought

— Annul Decision C(2006) 5103 in full, which seeks to apply financial corrections to five projects carried out in Andalucia:

  — when the Court considers the first of the pleas alleged, it must annul the decision in part, reducing the amount of the corrections by 1 136 320 EUR,

— when the Court considers the second of the pleas alleged, it must annul the decision in part, reducing the amount of the corrections by 267 746 EUR, or, in the alternative and because of an error of calculation, by 90 186 EUR

— when the Court considers the third of the pleas alleged, it must annul the decision in part, reducing the amount of the corrections by 76,369 EUR,

— when the Court considers the fourth of the pleas alleged, it must annul the decision in part, reducing the amount of the corrections by 3 264 849 EUR.

— Order the Commission to pay the costs.

Pleas in law and main arguments

The present action is directed at Commission Decision C(2006) 5103 of 20 October 2006, in that it reduces the assistance from the Cohesion Fund to five projects carried out in the Comunidad Autónoma de Andalucia, and namely:

— N. 2000.ES.16.C.PE.012 (Measures to be undertaken for the management of waste by the Comunidad Autónoma de Andalucia).

— N. 2000.ES.16.C.PE.066 (Clearance and treatment measures in the Guadalquivir basin).

— N. 2001.ES.16.C.PE.004 (Clerance and treatment measures in the Southern basin: Phase I).

— N. 2000.ES-16.C.PE.025 (Enlargement of municipal solid waste (MSW) treatment facilities in the Comunidad Autónoma de Andalucia).

— N. 2000.ES.16.C.PE.138 (Measures to be undertaken for the management of waste by the Comunidad Autónoma de Andalucia).

In the contested decision, whose primary purpose was to examine project 012, the Commission applies a correction of EUR 4 735 284, on the basis of considerations relating to the sufficiency of controls in respect of the eligibility of expenditure and observance of certain rules on tendering procedures (direct award of two contracts, use of experience as a criterion of the award and alleged irregularities in the publication of certain contracts).

In support of its claims, the applicant alleges:

— Infringement of the principles of legitimate expectations, legal certainty and proportionality in relation to the eligibility of certain expenditure inasmuch as the impugned measure was adopted even before expiry of the prescribed period requested in order to disqualify non-eligible expenditure and replace it with other eligible expenditure.

— Incorrect interpretation of Article 11(3)(b) and (e) of Directive 92/50/EEC [1] in relation to the alleged irregularities detected in the direct award of two service contracts. As part of that plea, in the alternative, error of calculation.

— Breach of the directives on public contracts regarding the inclusion of the 'criterion of experience' as one of the criteria for the contract award. It is submitted in this regard that, while that criterion is not expressly provided for in the applicable rules, Community case-law allows for this possibility, and the use of that criterion can in no way constitute a grave and manifest infringement of the Community rules, or, in any event, can only amount to an excusable error of law on account of lack of clarity of the applicable rule.

— Lack of grave and manifest breach, and, therefore, of a sufficiently serious breach of Community law in relation to the irregularities stemming from the failure to publish certain contracts.

[1] Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts (OJ L 209, 24.7.1992, p. 1).

Action brought on 5 January 2007 — Belgium v Commission

(Case T-5/07)

(2007/C 56/63)

Language of the case: French

Parties

Applicant: Kingdom of Belgium (represented by: L. Van den Broeck, Agent, J.-P. Buyle and C. Steyaert, avocats)

Defendant: Commission of the European Communities

Forms of order sought

The applicant claims that the Court should:

— declare that the application is admissible and well founded;

— annul the Commission's decision of 18 October 2006 in so far as that decision considers that the 'old ESF debts' — which the Kingdom of Belgium paid voluntarily, but without prejudice, on 21 December 2004 — are not subject to a limitation period;

— in consequence, rule that those debts are subject to a limitation period pursuant to Article 3(1) of Regulation No 2988/95/EC, Euratom and, in consequence, order the European Commission to repay the Kingdom of Belgium the sum of EUR 63 117 760, together with default interest applied from 21 December 2004 and calculated at the ECB base rate increased by three and a half points;

— in the alternative, annul the Commission's decision of 18 October 2006, in so far as that decision considers that non-payment of the old ESF debts at issue generates interest and, in consequence, order the European Commission to repay the applicant the interest paid by the latter on the debts at issue, that is to say, the sum of EUR 37 772 499, together with default interest applied from 21 December 2004 and calculated at the ECB base rate increased by three and a half points;

— in the further alternative, annul the Commission's decision of 18 October 2006 as regards the rate of the interest claimed and, accordingly, rule that that interest rate changes according to the rate of interest applied by the ECB to its principal refinancing operations, as published in the Official Journal and, in consequence, order the Commission to repay the applicant the excess interest paid by it on the debts at issue, together with default interest applied from 21 December 2004 and calculated at the ECB base rate increased by three and a half points;

— in any case, order the Commission to pay the costs of these proceedings.

Pleas in law and main arguments

By the present application, Belgium seeks annulment of the Commission's decision, set out in the letter of 18 October 2006, refusing to repay Belgium a sum that it had paid in settlement of old debts owed to the European Social Fund, which Belgium claims should be reimbursed on the ground that those debts are subject to a limitation period and, in the alternative, on the ground that there is no legal basis for requiring the payment of interest.

During the period from 1987 to 1992, the Commission asked Belgium, by decisions adopted on the basis of Regulation No 2950/83/EEC ([1]) and Decision 83/673/EEC ([2]), to repay sums that had been granted in the form of assistance to various Belgian bodies (promoters) and that they had not used. Belgium passed on the debit notes issued by the Commission to the promoters concerned. Although some of the promoters reimbursed the Commission directly, others entered into correspondence with the Commission concerning the lawfulness of the requests for reimbursement. At the initiative of the Commission, fresh discussions were opened in 2003. In 2004, the Commission took steps to offset the amounts owed by way of the old ESF debts at issue (debit notes issued between 15 January 1987 and 31 December 1991) — plus default interest applied from the date of issue of the debit notes — using Belgium's debts to the Commission in the framework of management of the ESF funds. Belgium contested that offsetting, as well as the interest applied by the Commission, on the grounds that the debt was subject to a limitation period, and that there was no legal basis for the application of default interest. Nevertheless, in order to stop interest from running, Belgium paid a sum representing the balance of the amounts due by way of ESF debts that had not been offset. At the same time, Belgium made it clear that it was not abandoning the arguments put forward in its correspondence and that it reserved the right to claim reimbursement of those sums in so far as its arguments were well founded. The Commission replied by letter of 19 January 2005 in which it stated its views on Belgium's contentions. That letter was the subject of an application for annulment brought by the Kingdom of Belgium before the Court of First Instance. By order of 2 May 2006, the Court of First Instance dismissed the application as inadmissible on the ground that the letter at issue was not an act open to challenge for the purposes of Article 230 EC. ([3])

On 29 June 2006, Belgium addressed another letter to the Commission requesting reimbursement of the sum representing the balance of the amounts due by way of ESF debts that had not been offset — which it had paid in order to stop interest from running — on the basis of the arguments relied upon beforehand relating to the limitation period for the debt, as well as those relating to the lack of a legal basis for requiring interest. By letter of 18 October 2006 the Commission stated its refusal to effect the reimbursement sought. That letter is the contested act for the purposes of the present proceedings.

In support of the main forms of order sought, Belgium maintains that the only European legislation that fully addresses the recovery by the Commission of unused monies in accordance with the materially relevant provisions of European law is Regulation No 2988/95/EC, Euratom ([4]). According to Belgium, Article 3 of that Regulation, which lays down the limitation periods for proceedings, must be applied in the present case. Belgium also argues that if the Court of First Instance is obliged to find that Belgium cannot challenge the Commission on the basis of the limitation periods provided for in Article 3 of Regulation No 2988/95/EC, Euratom, it would be appropriate to refer to Article 2(4) of that Regulation, and to apply the Belgian law governing the length of limitation periods for 'personal' actions.

In support of the forms of order sought in the alternative, relating to the inappropriateness of the legal basis for the Commission's claim for default interest from Belgium, the latter submits that the Commission is committing an error by applying Article 86(2)(b) of Regulation No 2342/2002/EC, Euratom laying down the detailed rules for implementation of the Financial Regulation ([5]). Belgium argues that there are special rules which derogate from that Regulation and that, by virtue of those special rules, the Commission may take as a basis only the rules governing the operation of the ESF — the source of the debts in respect of which the Commission is requesting payment — in order to determine how much interest, if any, is payable. On that point, Belgium submits that the Commission may claim interest only if interest was provided for, and, according to Belgium, that was not the case at the material time.

In the further alternative, Belgium submits that, contrary to the conclusion reached by the Commission, the rate of the interest claimed is variable. In consequence, it claims that the Court should order the Commission to reimburse the excess interest that Belgium has paid on the debts at issue.

(1) Council Regulation (EEC) No 2950/83 of 17 October 1983 on the implementation of Decision 83/516/EEC the tasks of the European Social Fund (OJ L 289, 22.10.1983, p. 1).
(2) Commission Decision 83/673/EEC of 22 December 1983 on the management of the European Social Fund (ESF) (OJ L 377, 31.12.1983, p. 1).
(3) Order of the Court of First Instance in Case T-134/05 *Belgium* v *Commission* [2006] ECR II-0000.
(4) Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ L 312, 23.12.1995, p. 1).
(5) Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ L 357, 31.12.2002, p. 1).

Action brought on 2 January 2007 — Galderma v OHIM — Lelas (Nanolat)

(Case T-6/07)

(2007/C 56/64)

Language in which the application was lodged: German

Parties

Applicant: Galderma SA (Cham, Switzerland) (represented by N. Hebeis, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Tihomir Lelas

Form of order sought

— annul the decision of the Fourth Board of Appeal of 25 October 2006 in Case R 0146/2006-4 in so far as the opposition against the goods 'Pharmaceuticals; pharmaceutical and veterinary products and preparations for health care; soaps; cosmetics and hair lotions' was rejected;

— refuse Community trade mark application 003088986 NANOLAT for the goods mentioned above;

— order OHIM to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Tihomir Lelas

Community trade mark concerned: Word mark Nanolat for goods in Classes 1, 3 and 5 (application No 3 088 986)

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

Mark or sign cited in opposition: German word mark TANNOLACT for goods in Class 5

Decision of the Opposition Division: Opposition rejected

Decision of the Board of Appeal: Appeal dismissed

Pleas in law: Infringement of Article 8(1)(b) of Regulation (EC) No 40/94, (1) as there is a likelihood of confusion between the opposing marks

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

Action brought on 4 January 2007 — Torres v OHIM– Gala-Salvador Dalí (TG Torre Galatea)

(Case T-8/07)

(2007/C 56/65)

Language in which the application was lodged: Spanish

Parties

Applicant: Miguel Torres S.A. (Barcelona, Spain) (represented by: E. Armijo Chávarri, M.A Baz de San Ceferino, and A. Castán Pérez-Gómez, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Fundación Gala-Salvador Dalí

Form of order sought

— Annul the decision of the Second Board of Appeal of the Office of 24 October 2006 in case R 168/2006-2

— Order expressly that the Office pay the costs

Pleas in law and main arguments

Applicant for a Community trade mark: Fundación Gala-Salvador Dalí

Community trade mark concerned: The figurative mark 'TG Torre Galatea' for goods in Class 33 (application No 2730513)

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

Mark or sign cited in opposition: Community word mark 'TORRES 10' for goods in Class 33 (No 466896) and numerous other Community, national and international trade marks

Decision of the Opposition Division: Opposition upheld and application for registration of the mark refused

Decision of the Board of Appeal: Appeal upheld, annulment of the contested decision and rejection of the opposition

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

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

Action brought on 9 January 2007 — Grupo Promer Mon-Graphic v OHIM — PepsiCo (Designs)

(Case T-9/07)

(2007/C 56/66)

Language in which the application was lodged: English

Parties

Applicant: Grupo Promer Mon-Graphic, SA (Sabadell, Spain) (represented by: R. Almaraz Palmero, lawyer)

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

Other party to the proceedings before the Board of Appeal: PepsiCo, Inc. (New York, USA)

Form of order sought

— Annulment of the decision of the Third Board of Appeal at OHIM of 27 October 2006 in Case R 1001/2005-3;

— order the Office for the Harmonisation in the Internal Market (OHIM) and the intervening party, Pepsico Inc., to pay all the costs of the dispute before the Court of First Instance, including those relating to the procedure before the Third Board of Appeal.

Pleas in law and main arguments

Registered Community design subject of the application for a declaration of invalidity: Registered Community design for 'promotional item[s] for games' — Community Design No 74463-1

Proprietor of the Community design: PepsiCo, Inc.

Party requesting the declaration of invalidity of the Community design: The applicant

Design of the party requesting the declaration of invalidity: Registered Community design for 'metal plate[s] for games' — Community Design No 53186-1

Decision of the Invalidity Division: Declaration of invalidity of the Community design

Decision of the Board of Appeal: Annulment of the Invalidity Division's decision and dismissal of the application for a declaration of invalidity of the registered Community design

Pleas in law: The contested Community Design No 74463-1 lacks novelty and individual character compared to the registered Community Design No 53186-1, which has claimed priority of an earlier Spanish design.

Action brought on 8 January 2007 — FVB v OHIM — FVD (FVB)

(Case T-10/07)

(2007/C 56/67)

Language in which the application was lodged: German

Parties

Applicant: FVB Gesellschaft für Finanz- und Versorgungsberatung mbH (Osnabrück, Germany) (represented by: P. Koehler, 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: FVD Gesellschaft für Finanzplanung und Vorsorgemanagement Deutschland mbH

Form of order sought

— Alter the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) in appeal case R 1343/2005-4 of 6 November 2006 so as to annul the decision of 12 September 2005 on opposition No B 549 362 of the Finanz- und Versorgungsdienstgesellschaft für Finanzberatung und Versorgemanagement mbH against application No 2 126 175 and to reject the opposition;

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

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The word mark 'FVB' for services in Classes 35 and 36 (Application No 2 126 175).

Proprietor of the mark or sign cited in the opposition proceedings: FVD Gesellschaft für Finanzplanung und Vorsorgemanagement Deutschland mbH.

Mark or sign cited in opposition: The German word mark 'FVD' for services in Class 36, the opposition being brought against the registration in Class 36.

Decision of the Opposition Division: Opposition granted, partial rejection of the application.

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

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

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

Action brought on 12 January 2007 — Frucona Košice v Commission

(Case T-11/07)

(2007/C 56/68)

Language of the case: English

Parties

Applicant: Frucona Košice a.s. (Košice, Slovak Republic) (represented by: B. Hartnett, O. Geiss, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Annul Commission's Decision C(2006)2082 final, of 7 June 2006, in state aid Case No C25/2005;

— annul in whole or in part Article 1 of the said decision;

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

Pleas in law and main arguments

By means of its application, the applicant seeks annulment of the Commission decision of 7 June 2006 on state aid implemented by the Slovak Republic for the applicant (C25/2005), insofar as it treats the applicant as a recipient of incompatible state aid and compels it to repay to the Slovak Republic the entirety of the tax write-off with interest.

In support of its action, the applicant relies on the following ten pleas in law:

By its first plea, the applicant claims that the Commission manifestly erred when determining the amount of the alleged state aid.

By its second plea, the applicant submits that the contested decision violates an essential procedural requirement and fails to have regard to Article 33 EC. In fact, the applicant contends it is DG Agriculture and not DG Competition which was the competent directorate to carry out the investigation and take the procedural and formal steps that led to the contested decision.

By its third plea, the applicant further submits that the contested decision violates Section 3, Annex IV of the Treaty of Accession, Article 253 EC, Article 88 EC and Regulation 659/1999 because the Commission lacked jurisdiction to issue the contested decision.

By its fourth plea, the applicant contends that the Commission has erred in fact and in law in applying Article 87(1) EC when it found bankruptcy proceedings to be more favourable than the tax settlement.

By its fifth plea, the applicant alleges that the Commission further erred by finding the tax execution procedure to be more beneficial than the tax settlement.

By its sixth plea, the applicant submits that the Commission manifestly erred in law and in fact by failing to discharge the burden of proof thereby violating Article 87(1) EC and Article 253 EC. In addition, the applicant submits that the Commission disregarded the legal standards set forth by the Court on the application of the private creditor test.

By its seventh plea, the applicant claims that the Commission erred in law and fact by failing to adequately assess and have regard to the evidence at its disposal.

By its eighth plea, the applicant alleges that the Commission erred in law and in fact by taking into account irrelevant evidence such as internal differences within the tax administration.

By its ninth plea, the applicant further submits that the decision violates Article 253 EC by lacking sufficient reasoning to justify its conclusions.

Lastly, by its tenth plea, the applicant alleges that the Commission erred by not exempting the tax settlement as restructuring aid and by retroactively applying the 2004 Restructuring Guidelines.

Action brought on 16 January 2007 — Polimeri Europa v Commission

(Case T-12/07)

(2007/C 56/69)

Language of the case: Italian

Parties

Applicant: Polimeri Europa SpA (Brindisi, Italy) (represented by: M. Siragusa, F.M. Moretti and L. Nascimbene, avvocati)

Defendant: Commission of the European Communities

Form of order sought

The applicant claims that the Court should:

— annul the decision in its entirety, as well as all acts inseparably connected therewith and, in consequence, direct the Commission to take steps to recover the copy, forwarded to Michelin, of the non-confidential version of the new statement of objections;

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

Pleas in law and main arguments

By the present application, the applicant contests the Commission's decision (COMP/F2/D (2006) 1095) adopted on 6 November 2006 in the proceeding initiated pursuant to Article 81 EC (Case COMP/F38.638 BR/ESBR), by which the Commission forwarded to Manufacture Française des Pneumatiques Michelin (MFPM) a copy of the non-confidential version of the statement of objections adopted on 6 April 2006. MFPM had previously been admitted to the administrative procedure as an interested third party, since it had been asked to forward possible observations.

In support of the forms of order sought, the applicant submits:

— infringement of its rights of defence. On that point, the applicant maintains that ever since the adoption of the decision, the Commission has concealed the true purpose and nature of Michelin's participation in the procedure, thus limiting the possibilities of defence open to the applicant and negatively affecting the applicant's position in the case;

— the decision is unlawful, regard being had to the legal basis cited, in particular Article 6 of Regulation No 773/2004 ([1]). The applicant maintains in this connection that Michelin cannot be regarded as a complainant, because the Form C submitted by Michelin is not an act capable of triggering the procedure launched following a complaint for the purposes of Article 7 of Regulation No 1/2003 ([2]). The decision is therefore vitiated for infringement of the latter provision, read in conjunction with Article 7 of Regulation No 773/2004.

([1]) Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty (OJ L 123, 27.4.2004, p. 18).

([2]) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, 4.1.2003, p. 1).

Action brought on 12 January 2007 — Cemex UK Cement v Commission

(Case T-13/07)

(2007/C 56/70)

Language of the case: English

Parties

Applicant: Cemex UK Cement Ltd (Thorpe, United Kingdom), (represented by: D. Wyatt QC, S. Taylor, Solicitor, S. Tromans and C. Thomann, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— to annul the Commission decision of 29 November 2006, concerning the national allocation plan for the allocation of greenhouse gas emission allowances notified by the United Kingdom in accordance with Directive 2003/87/EC ([1]); insofar as

  — the latter decision failed to object to/approved an allocation of allowances to the applicant in respect of its Rugby plant which was inadequate and unlawful to the extent of 343 838 tonnes;

  — the latter decision failed to object to/approved an allocation to cement manufacturers in competition with the applicant which was excessive and unlawful to the extent of the 343 838 tonnes comprising as it did the under-allocation to the applicant;

— the latter decision failed to object to/approved the allocation methodology laid down in paragraphs 3(7) and 3(8) of the UK national allocation plan, and paragraphs 28 and 30 of Appendix C to the UK national allocation plan insofar as the latter methodology treats a cement plant as commencing operations in a year in which the plant was undergoing commissioning, and treats this year as the first year of operation of such a plant, and calculates emission allowances on the basis of average emissions for the baseline period 2000-2003, excluding the lowest year's emissions, regardless of the actual length of the commissioning period of the plant in question;

— to order the Commission to bear the applicant's costs.

Pleas in law and main arguments

The application at stake is made pursuant to Article 230 EC for the annulment, in relevant part, of Commission decision of 29 November 2006 concerning the national allocation plan for the allocation of greenhouse gas emission allowances notified by the United Kingdom in accordance with Directive 2003/87/EC of the European Parliament and of the Council.

The grounds for annulment advanced by the applicant are mainly that the Commission allegedly failed to object to/approved an under-allocation of allowances to the applicant's Rugby plant, which, according to the applicant:

— unlawfully discriminates against that plant by failing to take sufficient account of the latter plant's period of commissioning, and by basing the allocation to the plant on a period of emissions which the United Kingdom authorities knew to be unrepresentative;

— restricts the right of establishment of the applicant's parent company Cemex Espana, since it allegedly hinders and makes less attractive the exercise by the latter of a fundamental freedom, and cannot be justified by imperative requirements in the general interest; and

— along with the resulting over-allocation to the applicant's competitors, amounts to state aid contrary to Article 87 and 88 EC.

(1) Directive 2003/87/EC of the European Parliament and of the Council concerning the establishment of a scheme for greenhouse gas emission allowance trading in the Community and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32).

Action brought on 1 February 2007 — US Steel Košice v Commission

(Case T-22/07)

(2007/C 56/71)

Language of the case: English

Parties

Applicant: US Steel Košice s.r.o. (Košice, Slovak Republic) (represented by: E. Vermulst, S. Van Cutsem, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Annul Commission's Decision D/59829 of 22 November 2006 concerning the application of the sales cap to Bulgaria and Romania; and

— order the Commission to pay the applicants costs.

Pleas in law and main arguments

By means of its application, the applicant seeks annulment of Commission Decision D/59829 of 22 November 2006 extending the application of the sales cap provided in Title 4, point 2(a)(i) of Annex XIV to the Act of Accession so as to include Bulgaria and Romania. The contested decision determined that the sales cap for 2007 and subsequent years had to be recalculated taking into account 2001 sales data for Romania and Bulgaria. To this end, it required the Slovak Republic to provide the applicant's 2001 sales data for these countries.

The applicant benefits from aid in the form of tax exemption, on the basis of transitional measures in the field of state aid that the Slovak Republic is permitted to apply to one beneficiary in the steel sector.

In support of its claims, the applicant argues that the contested decision is illegal insofar as it requires the applicant to modify its sales policy and cap its sales of certain steel products to customers in Bulgaria and Romania in order to benefit from aid authorized under Community law.

The applicant submits that the contested decision imposes an additional condition that did not exist when the Act of Accession entered into force and, thus, contradicts the wording, the spirit and the general scheme of the Act of Accession. According to the applicant the term 'enlarged EU' referred to in Annex XIV, Title 4, point 2(a)(i) does not include Romania and Bulgaria.

In addition, the applicant claims that the contested decision must be annulled since the Commission acted where it had no competence, violated the applicant's legitimate expectations and failed to respect the principle of proportionality.

Order of the Court of First Instance of 22 January 2007 — BA.LA. di Lanciotti Vittorio and Others v Commission

(Case T-163/06) ([1])

(2007/C 56/72)

Language of the case: Italian

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

([1]) OJ C 190 of 12.8.2006.

Order of the Court of First Instance of 12 January 2007 — Kretschmer v Parliament

(Case T-229/06) ([1])

(2007/C 56/73)

Language of the case: French

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

([1]) OJ C 294, 2.12.2006.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Judgment of the Civil Service Tribunal (Second Chamber) of 1 February 2007 — Rossi Ferreras v Commission

(Case F-42/05) ([1])

(Officials — Appraisal — Career development report — 2003 appraisal procedure — Action for annulment — Action for damages)

(2007/C 56/74)

Language of the case: French

Parties

Applicant: Francisco Rossi Ferreras (Luxembourg, Luxembourg) (represented by: G. Bounéou and F. Frabetti, lawyers)

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

Re:

First, annulment of the applicant's Career Development Report under the 2003 appraisal procedure and, secondly, an application for damages

Operative part of the judgment

The Tribunal:

1. *dismisses the action;*

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

([1]) OJ C 217, 3.9.2005, p. 45 (case initially registered before the Court of First Instance of the European Communities under number T-222/05 and transferred to the Civil Service Tribunal of the European Union by order of 15.12.2005).

Judgment of the Civil Service Tribunal (Third Chamber) of 23 January 2007 — Chassagne v Commission

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

(Officials — Pay — Annual travel expenses — Provisions applicable to officials originating from French overseas departments — Article 8 of Annex VII to the amended Staff Regulations)

(2007/C 56/75)

Language of the case: French

Parties

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

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

Re:

First, a declaration that Article 8 of Annex VII to the new Staff Regulations concerning the flat-rate payment of travelling expenses is unlawful and therefore inapplicable to the applicant and, secondly, an application for damages

Operative part of the judgment

The Tribunal:

1. *Dismisses the action.*

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

([1]) OJ C 205, 20.8.2005, p. 27 (case initially registered before the Court of First Instance of the European Communities under number T-224/05 and transferred to the Civil Service Tribunal of the European Union by order of 15.12.2005.

Judgment of the Civil Service Tribunal (Second Chamber) of 1 February 2007 — Tsarnavas v Commission

(Case F-125/05) ([1])

(Officials — Promotion — Consideration of comparative merits of officials in different services — Application for damages — Admissibility — Reasonable period — Lawyers' fees — Pre-litigation procedure — Non-material harm)

(2007/C 56/76)

Language of the case: French

Parties

Applicant: Vassilios Tsarnavas (Athens, Greece) (represented by: N. Lhoëst, lawyer)

Defendant: Commission of the European Communities (represented by: C. Berardis-Kayser and D. Martin, Agents)

Re:

The applicant is seeking, first, annulment of the Commission decisions of 1 April 2005 and 7 October 2005, dismissing its applications for damages in respect of the material and non-material harm suffered under the 1998 and 1999 promotion procedures and, secondly, an order that the defendant is to pay damages valued on an equitable basis at EUR 72 000 in respect of the material and non-material harm suffered.

Operative part of the judgment

The Tribunal:

1. *orders the Commission of the European Communities to pay Mr Tsarnavas EUR 3 000 by way of compensation for the non-material harm;*

2. *dismisses the remainder of the action;*

3. *orders the Commission of the European Communities to bear its own costs and to pay one third of the costs incurred by Mr Tsarnavas;*

4. *orders Mr Tsarnavas to bear two thirds of his own costs.*

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

Judgment of the Civil Service Tribunal of 25 January 2007 — de Albuquerque v Commission

(Case F-55/06) ([1])

(Officials — Reassignment — Article 7(1) of the Staff Regulations — Manifest error of assessment — Principle of equal treatment — Abuse of power — Interest of the service)

(2007/C 56/77)

Language of the case: French

Parties

Applicant: Augusto de Albuquerque (Woluwé-St-Étienne, Belgium) (represented by: C. Mourato, lawyer)

Defendant: Commission of the European Communities (represented by: J. Currall and K. Herrmann, Agents)

Re:

Annulment of the decision of the Appointing Authority of 2 February 2006 dismissing the claim brought by the applicant against the decision of 23 September 2005 of the Director-General of DG INFSO to transfer the applicant in the interest of the service as head of unit INFSO.G.2 'Micro and nanosystems'.

Operative part of the judgment

The Court:

1. *Dismisses the action.*

2. *Orders the parties to bear their own costs.*

([1]) OJ C 154 of 1.7.2006, p. 28.

Order of the President of the Civil Service Tribunal of 1 February 2007 — Bligny v Commission

(Case F-142/06 R)

(Interim measures — Application for suspension of operation — Application for provisional measures — Urgency — None)

(2007/C 56/78)

Language of the case: French

Parties

Applicant: Francesco Bligny (Tassin-la-Demi-Lune, France) (represented by: P. Lebel-Nourissat, lawyer)

Defendant: Commission of the European Communities (represented by: J. Currall and K. Herrmann, Agents)

Re:

First, suspend the decisions of the selection board of 23 November and 7 December 2006 refusing to admit the applicant to Open Competition EPSO/AD/26/05 and secondly, as a provisional measure, order the marking of his written test in that competition.

Operative part of the order

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

2. *Costs are reserved.*

Action brought on 22 December 2006 — Pascual García v Commission

(Case F-145/06)

(2007/C 56/79)

Language of the case: French

Parties

Applicant: César Pascual García (Madrid, Spain) (represented by: B. Cortese and C. Cortese, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Annul the decision of 7 April 2006 of the Director General of the Joint Research Centre (JRC) of the Commission of the European Communities, notified to the applicant on 17 April 2006, in so far as it did not take his application into consideration for the post relating to notice of vacancy COM/2005/2969 — B/3/B*11 — JRC.I.04 — IHCP — Ispra, and added a comment in the reserve list of competition EPSO/B/23/04 ([1]), informing the Commission's departments that the applicant does not meet the conditions of eligibility for that competition;

— If necessary, annul the decision of the Commission's Appointing Authority of 22 September 2006, notified to the applicant on 13 November 2006, rejecting his claim No R/400/06;

— Order the defendant to pay the costs.

Pleas in law and main arguments

The applicant, a successful candidate in general competition EPSO/B/23/04, was not recruited by the JRC because the Director General of the JRC considered that he did not meet the required conditions of eligibility for that competition.

In his action, the applicant argues that the contested decision: (i) is vitiated by an abuse of procedure in that it unduly modified the assessment of his qualifications and experience done by the selection board, without that board having committed a manifest error of assessment; (ii) infringes the legal framework imposed by the notice of competition; (iii) is vitiated by a manifest error of assessment and a serious failure to state reasons due to its illogical nature; (iv) infringes the principle of the protection of legitimate expectations.

In the alternative, according to the applicant, the contested decision infringes the principle of equal treatment. Since the provisions of the notice of competition infringe that principle, it must be declared unlawful for the purposes of Article 241 EC.

([1]) Notice of open competition EPSO/B/23/04 to constitute a reserve pool of laboratory technicians (B 5/B 4) in technical and research fields (OJ C 81A of 31 March 2004, p. 17).

Action brought on 11 December 2006 — Speiser v Parliament

(Case F-146/06)

(2007/C 56/80)

Language of the case: German

Parties

Applicant: Michael Alexander Speiser (Neu-Isenburg, Germany) (represented by: F. Theumer)

Defendant: European Parliament

Form of order sought

— Annul the defendant's decision of 11 September 2006 (No 115521) dismissing the applicant's complaint of 31 March 2006 pursuant to Article 90(2) of the Staff Regulations in respect of payment of the expatriation allowance;

— Order the defendant to pay the applicant the expatriation allowance pursuant to Article 4(1)(a) of Annex VII to the Staff Regulations with retroactive effect from 3 October 2005;

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

Pleas in law and main arguments

The applicant, who started working as a 'temporary agent' for the EPP-ED Group on 3 October 2005, is challenging the rejection of his application for payment of the expatriation allowance. He claims that he submitted all the documents and information necessary for claiming the allowance and that he satisfies all the criteria.

Action brought on 12 January 2007 — Matos Martins v Commission

(Case F-2/07)

(2007/C 56/81)

Language of the case: French

Parties

Applicant: José Carlos Matos Martins (Brussels, Belgium) (represented by: M.-A Lucas, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— annul the decision of 27 February 2006 of the European Personnel Selection Office (EPSO) laying down the applicant's results in the pre-selection tests for contract agents EU 25;

— annul the decision of EPSO and/or of the Selection Committee not to register the applicant in the data base of candidates who had passed the pre-selection tests;

— annul the consequences of the selection procedure;

— order the defendant to pay the costs.

Pleas in law and main arguments

In support of his action, the applicant raises two pleas.

Under the first part of his first plea, the applicant asserts that the level of difficulty and the cut-off mark to be attained in the pre-selection tests, and in particular the level of difficulty of the numerical test for Function Group IV candidates was set on the basis of the number of candidates, so as to result in a predetermined number of successful candidates, whilst it is claimed that they should have been laid down solely in the light of the demands of the duties of the posts to be filled.

Under the second part of that plea, the applicant asserts that the content of the pre-selection tests was laid down for each function group on the basis of a random choice from a set of questions of different levels whilst the content of the tests should have been the same for all the candidates of the same function group, or at the very least should have been laid down by a random choice from a set of questions of the same level.

The second plea is based on breach of the duty of transparency, of the duty to provide reasons for decisions adversely affecting individuals, of the rule of public access to Commission documents and of the principle of the protection of legitimate expectations. The applicant asserts that he was not sent the questions which he had been asked and that the reasons put forward by EPSO to justify that denial of information were clearly factually inaccurate and legally inadmissible. In particular, it is claimed, first, that Annex III to the Staff Regulations providing that the work of the section board is secret is not applicable in the present case and, secondly, that the communication of the questions became essential in the light of the doubts and reservations that EPSO itself and the Joint Selection Committee expressed as to the validity of the tests.

Action brought on 18 January 2007 — Moschonaki v EUROFOUND

(Case F-3/07)

(2007/C 56/82)

Language of the case: French

Parties

Applicant: Chrysanthe Moschonaki (Ballybrack, Ireland) (represented by: S. Orlandi, A. Coolen, J.-N Louis and E. Marchal, lawyers)

Defendant: European Foundation for the Improvement of Living and Working Conditions (EUROFOUND)

Form of order sought

— annul the decision of the director of EUROFOUND not to authorise the applicant's mission to take part in the meeting of 30 and 31 March 2006 of the Assembly of Agency Staff Committees,

— order the defendant to pay the costs.

Pleas in law and main arguments

In support of her action, the applicant asserts principally that in refusing her mission application to attend the meeting of 30 and 31 March 2006 of the Assembly of Agency Staff Committees, EUROFOUND infringed Articles 24b and 9(3) of the Staff Regulations and the sixth paragraph of Article 1 of Annex 2 to the Staff Regulations, which lay down freedom of association and trade union representation, the consultation and management role of the Staff Committee and the prohibition on any disadvantages accruing to a member of staff by virtue of carrying out the functions of members of the Staff Committee.

The applicant relies moreover on the infringement of Article 110(4) of the Staff Regulations and Article 126 of the Conditions of Employment of other Servants. It follows from these provisions that regular consultations must take place between the administrations of the institutions and agencies, with the participation of Staff Committees, in order to ensure a uniform application of the Staff Regulations.

It is claimed that the contested decision also infringes the principle of good management and sound administration.

Action brought on 19 January 2007 — Skoulidi v Commission

(Case F-4/07)

(2007/C 56/83)

Language of the case: French

Parties

Applicant: Eleni-Eleftheria Skoulidi (Brussels, Belgium) (represented by: G. Vandersanden)

Defendant: Commission of the European Communities

Forms of order sought

— Award the applicant compensation for non-pecuniary damage suffered as a result of the decision of the Appointing Authority of 28 March 2006 refusing to allow her to benefit under the exchange agreement concluded between the Commission and the Greek Government;

— Assess that damage on equitable principles at EUR 200 000;

— Order the defendant to pay the costs.

Pleas in law and main arguments

The applicant, after having been made available to the Greek Ministry of National Education and Religious Affairs for eight months, applied to be able to benefit under the Scheme of Exchanges of officials between the Commission and the Member States in order to complete the tasks she had performed during that period. After having obtained the agreement of a number of Commission departments and the Greek Government, the applicant received a negative decision from her institution, on the grounds that the exchange was contrary to the applicable provisions governing the making available of officials.

In her action, the applicant considers that the Commission is guilty of misconduct on a number of points, namely:

— failure to demonstrate the diligence required of every administration;

— failure to comply with the commitments resulting from the exchange agreement which it itself concluded with the Greek Government, thereby infringing the applicant's legitimate expectations and the general Community interest;

— inappropriate remarks about the applicant;

— discrimination against the applicant in relation to other officials who were made available to certain national administrations for a longer period.

Action brought on 21 January 2007 — Nijs v Court of Auditors

(Case F-5/07)

(2007/C 56/84)

Language of the case: French

Parties

Applicant: Bart Nijs (Bereldange, Belgium) (represented by: F. Rollinger, lawyer)

Defendant: European Court of Auditors

Form of order sought

— annul the Appointing Authority's decision to appoint the applicant's superior to his current post;

— annul the result, so far as it concerns the applicant, of competition CC/LA/1/99 and all connected and/or subsequent decisions;

— annul the decision of the polling office of the Court Auditors to reject the applicant's challenge to the ballot of 2, 3, and 4 May 2006;

— annul the result of the Court Auditors' Staff Committee elections of 2, 3 and 4 May 2006 and all connected and subsequent decisions;

— annul the decisions not to promote the applicant, and to promote Mr X, in 2006;

— order the payment of compensation for the material and non-material loss suffered by the applicant;

— order the defendant to pay the costs.

Pleas in law and main arguments

In support of his action, the applicant argues, inter alia, that: (i) the Appointing Authority's decisions were vitiated by a failure to give relevant reasons; (ii) the Secretary General of the Court of Auditors acted unlawfully in his capacity as Appointing Authority when he rejected the applicant's complaints, inasmuch as he had a personal interest such as to impair his independence; (iii) the Appointing Authority has performed its duties unlawfully since 1984; (iv) the applicant's superior performed his duties unlawfully; in breach inter alia of Article 7 and Article 11a (ex Article 14) of the Staff Regulations; (v) competition CC/LA/1/99 was prejudiced by a number of illegalities, for which there is new evidence; (vi) the 2006 Staff Committee elections are unlawful on a number of grounds; (vii) the promotion of Mr X stems from the interest of the applicant's hierarchical superior in obstructing the applicant's career.

Action brought on 26 January 2007 — Suvikas v Council

(Case F-6/07)

(2007/C 56/85)

Language of the case: French

Parties

Applicant: Risto Suvikas (Helsinki, Finland) (represented by: M.-A Luxas, lawyer)

Defendant: Council of the European Union

Form of order sought

— annul the decision of the Advisory Selection Committee not to include the applicant's name on the list of the best candidates for selection concerning Council vacancy notice B/024;

— annul that list and the Council decisions to recruit the candidates included on it to the posts to be filled and not to recruit the applicant;

— order the Council to pay to the applicant, in compensation for the damage to his career, the difference for six years between the remuneration which he would have received if he had been recruited and that received on another basis, and EUR 25 000 for his non-material loss;

— order the defendant to pay the costs.

Pleas in law and main arguments

On 14 October 2005, the Council published a vacancy notice for eight temporary staff posts to work as Duty Officer. The applicant, who had already performed these functions as a national expert on secondment (SNE), applied. On 20 February 2006, he was informed that he had not been included on the short-list following the selection procedure.

In support of his action, the applicant relies on three pleas.

In the context of the first, he asserts the infringement of paragraph 4 of the notice and of the principles of objectivity, transparency and equal treatment. In particular, whilst external candidates were evaluated by the Advisory Selection Committee on the basis of interviews and the examination of their qualifications, candidates who had already worked as duty officers as SNEs were assessed on the basis of the opinions of their superiors as to the way that they had carried out their tasks. It is claimed that the Council has not proved that that alleged irregularity did not affect the results of the selection.

In the context of the second plea, the applicant relies on the infringement of his rights of defence in that, internal candidates having been assessed according to the procedure described above, it is claimed that the opinions of their hierarchical superiors should have been communicated to them in advance, so that they could defend themselves.

The third, based on the infringement of Article 9 and 12(1) of the Conditions of Employment of other Servants and the principles of impartiality, objectivity and equal treatment, is made up of three parts.

Under the first, the applicant asserts that certain members of the Selection Committee found themselves in a situation of conflict of interest in relation to certain candidates and that, because of this, certain candidates were assessed outside of the selection procedures provided for in the vacancy notice.

Under the second part, the applicant maintains that the Committee assessed the qualifications of the candidates without taking into account the level, duration and specific nature of their training and work experience.

Under the third part, the applicant asserts that, even if the assessment of internal candidates on the basis of the opinion of their hierarchical superiors could be accepted in principle, the procedure would still be irregular in so far as the said opinions were not correctly taken into account when the list of successful candidates was drawn up, particularly because of the abovementioned conflict of interest.