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*(Notices)*

NOTICES FROM EUROPEAN UNION INSTITUTIONS AND BODIES

# COURT OF JUSTICE

(2008/C 313/01)

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

OJ C 301, 22.11.2008

**Past publications**

OJ C 285, 8.11.2008

OJ C 272, 25.10.2008

OJ C 260, 11.10.2008

OJ C 247, 27.9.2008

OJ C 236, 13.9.2008

OJ C 223, 30.8.2008

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 (Second Chamber) of 23 October 2008 — Commission of the European Communities v Hellenic Republic

**(Case C-274/05)** [1]

***(Failure of a Member State to fulfil obligations — Directive 89/48/EEC — Workers — Recognition of diplomas)***

(2008/C 313/02)

*Language of the case: Greek*

### Parties

*Applicant:* Commission of the European Communities (represented by: G. Zavvos and H. Støvlbæk, Agents)

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

### Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 1, 3, 4, 7, 8 and 10 of Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration (OJ 1989 L 19, p. 16) — Recognition of professional qualifications acquired in another Member State for the purposes of employment in the public sector and registration in the Tekhniko Epimelitirio Elladas

### Operative part of the judgment

1. *The Hellenic Republic,*

   — *by failing to recognise the diplomas awarded by the competent authorities of another Member State following education and training provided within the framework of an agreement pursuant to which education and training provided by a private body in Greece is homologated by those authorities;*

   — *by providing for the application of compensatory measures in more cases than those allowed by Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher education diplomas awarded on completion of professional education and training of at least three years' duration, as amended by Directive 2001/19/EC of the European Parliament and of the Council of 14 May 2001;*

   — *by entrusting to the Council Responsible for Recognising Professional Equivalence of Higher Education Qualifications the power to assess whether 'the educational establishment in which the applicant completed his education and training belongs to the higher education sector' and whether 'the applicant has the necessary professional experience, in a case where the duration of the education and training falls short by at least one year of that required in Greece in order to pursue that profession', and*

   — *by not allowing, in the public sector, the reclassification in a higher grade of persons recruited at a level lower than that to which they would have been entitled if their diplomas had been recognised in accordance with Article 3 of Directive 89/48, as amended by Directive 2001/19,*

   *has failed to fulfil its obligations under Articles 1, 3, 4, 8 and 10 of Directive 89/48 as amended by Directive 2001/19.*

2. *The action is dismissed as to the remainder.*

3. *The Hellenic Republic shall pay two thirds of the costs of the Commission of the European Communities and bear its own costs.*

4. *The Commission of the European Communities shall bear one third of its own costs.*

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[1] OJ C 129, 9.6.2007.

## Judgment of the Court (Second Chamber) of 23 October 2008 — Commission of the European Communities v Kingdom of Spain

**(Case C-286/06)** ([1])

***(Failure of a Member State to fulfil obligations — Directive 89/48/EEC — Workers — Recognition of diplomas — Engineer)***

(2008/C 313/03)

*Language of the case: Spanish*

### Parties

*Applicant:* Commission of the European Communities (represented by: H. Støvlbæk and R. Vidal Puig, Agents)

*Defendant:* Kingdom of Spain (represented by: M. Muñoz Pérez, Agent)

### Re:

Failure by a Member State to fulfil obligations — Breach of Article 3 of Council Directive 89/48/EEC of 21 December on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration (OJ 1989 L 19, p. 16) — Professional qualification of engineer obtained in Italy not recognised in Spain

### Operative part of the judgment

1. *The Kingdom of Spain,*

   — *by refusing to recognise the professional qualifications of engineer obtained in Italy on the basis of university education and training provided solely in Spain, and*

   — *by making admission to internal exams for promotion in the civil service subject in the case of engineers with professional qualifications obtained in another Member State to academic recognition of those qualifications,*

   *has failed to fulfil its obligations under Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher education diplomas awarded on completion of professional education and training of at least three years' duration, as amended by Directive 2001/19/EC of the European Parliament and of the Council of 14 May 2001, and in particular Article 3 thereof.*

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

([1]) OJ C 212, 2.9.2006.

## Judgment of the Court (Grand Chamber) of 14 October 2008 (reference for a preliminary ruling from the Amtsgericht Flensburg, Germany) — Proceedings brought by Stefan Grunkin, Dorothee Regina Paul

**(Case C-353/06)** ([1])

***(Right to move and reside freely within the territory of the Member States — Private international law relating to surnames — Applicable law determined by nationality alone — Minor child born and resident in one Member State with the nationality of another Member State — Non-recognition in the Member State of which he is a national of the surname acquired in the Member State of birth and residence)***

(2008/C 313/04)

*Language of the case: German*

### Referring court

Amtsgericht Flensburg

### Parties to the main proceedings

Stefan Grunkin, Dorothee Regina Paul

*Other parties:* Leonhard Matthias Grunkin-Paul, Standesamt Niebüll,

### Re:

Reference for a preliminary ruling — Amtsgericht Flensburg (Germany) — Interpretation of Articles 12 and 18 of the EC Treaty — National rule on conflict of laws connecting the law governing the determination of a person's surname to nationality alone — Refusal by the Member State of which he is a national to recognise the surname of a child, made up of the respective surnames of his parents, where the child was born and is resident in another Member State in which he has been registered under that double-barrelled name

### Operative part of the judgment

*In circumstances such as those of the case in the main proceedings, Article 18 EC precludes the authorities of a Member State, in applying national law, from refusing to recognise a child's surname, as determined and registered in a second Member State in which the child — who, like his parents, has only the nationality of the first Member State — was born and has been resident since birth.*

([1]) OJ C 281, 18.11.2006.

## Judgment of the Court (First Chamber) of 16 October 2008 (reference for a preliminary ruling from the High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court) (United Kingdom)) — The Queen, on the application of: Synthon BV v Licensing Authority of the Department of Health

**(Case C-452/06)** ([1])

***(Community code relating to medicinal products for human use — Marketing authorisation — Essentially similar medicinal products — Abridged procedure — Procedure for mutual recognition — Grounds for refusal — Liability of a Member State — Serious breach of Community law)***

(2008/C 313/05)

*Language of the case: English*

### Referring court

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

### Parties to the main proceedings

*Applicant:* Synthon BV

*Defendant:* Licensing Authority of the Department of Health

*Interested party:* SmithKline Beecham plc

### Re:

Reference for a preliminary ruling — High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court) — Interpretation of Articles 8, 10(1)(a)(iii) and 28 of Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ 2001 L 311, p. 67) — Abridged procedure for obtaining marketing authorisation — Proprietary medicinal product 'essentially similar' to an authorised product — Refusal to accept an application for recognition of marketing authorisation for a medicinal product granted by another Member State — Obligation to recognise the authorisation granted by the reference Member State, except where the procedure laid down by the directive for examining whether there exists a risk to public health is invoked — Sufficiently serious breach of Community law giving rise to an obligation to redress the damage caused

### Operative part of the judgment

1. *Article 28 of Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use precludes a Member State to which an application is made for mutual recognition of a marketing authorisation of a medicinal product for human use granted by another Member State under the abridged procedure provided for in Article 10(1)(a)(iii) of that directive from refusing that application on the ground that the medicinal product in question is not essentially similar to the reference product;*

2. *The failure on the part of a Member State to recognise, pursuant to Article 28 of Directive 2001/83, a marketing authorisation of a medicinal product for human use granted by another Member State under the abridged procedure provided for in Article 10(1)(a)(iii) of that directive, on the ground that the relevant medicinal product either is not essentially similar to the reference product or belongs to a category of medicinal products for which the Member State concerned has a general policy which does not allow it to be considered as essentially similar, constitutes a sufficiently serious breach of Community law, capable of rendering that Member State liable in damages.*

([1]) OJ C 326, 30.12.2006.

## Judgment of the Court (Third Chamber) of 16 October 2008 (reference for a preliminary ruling from the Hoge Raad der Nederlanden, Netherlands) — R.H.H. Renneberg v Staatssecretaris van Financiën

**(Case C-527/06)** ([1])

***(Freedom of movement for workers — Article 39 EC — Tax legislation — Income tax — Determination of the basis of assessment — National of a Member State receiving all or almost all of his income in that State — Residence in a different Member State)***

(2008/C 313/06)

*Language of the case: Dutch*

### Referring court

Hoge Raad der Nederlanden

### Parties to the main proceedings

*Applicant:* R.H.H. Renneberg

*Defendant:* Staatssecretaris van Financiën

**Re:**

Preliminary ruling — Hoge Raad der Nederlanden — Interpretation of Articles 39 EC and 56 EC — Determination of the taxable amount for purposes of income tax — National of a Member State receiving all of his income in that State but residing in a different Member State — National legislation which does not allow for deduction of negative income relating to a house situate in another Member State

**Operative part of the judgment**

*Article 39 EC must be interpreted as precluding national legislation such as that at issue in the main proceedings, pursuant to which a Community national who is not resident in the Member State in which he receives all or almost all of his taxable income cannot, for the purposes of determining the basis of assessment of that income in that Member State, deduct negative income relating to a house owned by him and used as a dwelling in another Member State, whereas a resident of the first Member State may deduct such negative income for the purposes of determining the basis of assessment of taxation of his income.*

([1]) OJ C 56, 10.3.2007.

**Judgment of the Court (Second Chamber) of 16 October 2008 — Commission of the European Communities v Kingdom of Spain**

**(Case C-136/07)** ([1])

***(Failure of a Member State to fulfil obligations — Directives 89/48/EEC and 92/51/EEC — Recognition of diplomas and professional education and training — Profession of air traffic controller)***

(2008/C 313/07)

*Language of the case: Spanish*

**Parties**

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

*Defendant:* Kingdom of Spain (represented by: M Muñoz Pérez, Agent)

**Re:**

Failure of Member State to fulfil its obligations — Infringement of Council Directives 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration (OJ 1989 L 19, p. 16) and 92/51/EEC of 18 June 1992 on a second general system for the recognition of professional education and training to supplement Directive 89/48/EEC (OJ 1992 L 209, p. 25) — Taking up the profession of air traffic controller.

**Operative part of the judgment**

*The Court:*

1. *Declares that, by failing to adopt, in connection with the profession of air traffic controller, the laws, regulations and administrative provisions necessary to comply with Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration and Council Directive 92/51/EEC of 18 June 1992 on a second general system for the recognition of professional education and training to supplement Directive 89/48, the Kingdom of Spain has failed to fulfil its obligations under those directives;*

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

([1]) OJ C 117, 26.5.2007.

**Judgment of the Court (Fourth Chamber) of 23 October 2008 (reference for a preliminary ruling from the Bundesfinanzhof — Germany) — Finanzamt für Körperschaften III in Berlin v Krankenheim Ruhesitz am Wannsee-Seniorenheimstatt GmbH**

**(Case C-157/07)** ([1])

***(Freedom of establishment — European Economic Area Agreement (EEA) — Tax legislation — Tax treatment of losses incurred by a permanent establishment situated in a Member State of the EEA and belonging to a company having its seat in a Member State of the European Union)***

(2008/C 313/08)

*Language of the case: German*

**Referring court**

Bundesfinanzhof

**Parties to the main proceedings**

*Applicant:* Finanzamt für Körperschaften III in Berlin

*Defendant:* Krankenheim Ruhesitz am Wannsee-Seniorenheimstatt GmbH

**Re:**

Reference for a preliminary ruling — Bundesfinanzhof — Interpretation of Article 31 of the Agreement on the European Economic Area (OJ 1994 L 1, p. 1) — Double taxation convention which provides for taxation of profits made by a branch office in the State where it is established — Deduction from taxable profit of company principal office of branch office losses — No possibility for branch office to carry over fiscal losses to a subsequent period of assessment — Reintegration by State where company principal office established of total deducted losses of branch office

**Operative part of the judgment**

*Article 31 of the Agreement on the European Economic Area of 2 May 1992 does not preclude a national tax system which, after having allowed the taking into account of losses incurred by a permanent establishment situated in a State other than the one in which its principal company is situated, for the purposes of calculating the tax on that company's income, provides for a tax reintegration of those losses at the time when that permanent establishment makes profits, where the State where that same permanent establishment is situated does not confer any right to carry forward losses incurred by a permanent establishment belonging to a company established in another State, and where, under a convention for the prevention of double taxation between the two States concerned, the income of such an entity is exonerated from taxation in the State in which the principal company has its seat.*

([1]) OJ C 129, 9.6.2007.

**Judgment of the Court (Grand Chamber) of 21 October 2008 (references for preliminary rulings from the Corte suprema di cassazione (Italy)) — Alfonso Luigi Marra v Eduardo De Gregorio (C-200/07), Antonio Clemente (C-201/07)**

**(Joined Cases C-200/07 and C-201/07)** ([1])

***(Reference for a preliminary ruling — European Parliament — Leaflet issued by a Member of the European Parliament containing insulting remarks — Claim for non-pecuniary damages — Immunity of Members of the European Parliament)***

(2008/C 313/09)

*Language of the cases: Italian*

**Referring court**

Corte suprema di cassazione

**Parties to the main proceedings**

*Appellant:* Alfonso Luigi Marra

*Respondents:* Eduardo De Gregorio (C-200/07), Antonio Clemente (C-201/07)

**Re:**

Reference for a preliminary ruling — Corte suprema di cassazione — Interpretation of Article 9 of the Protocol on the Privileges and Immunities of the European Communities (OJ 1967 152, p. 13) and Rule 6(2) of the Rules of Procedure of the European Parliament (OJ 2005 L 44, p. 1) — Claim for non-pecuniary damages in relation to insulting remarks made by a Member of the European Parliament — Competence of the civil court to rule as to the existence or otherwise of privilege in the absence of a decision of the European Parliament

**Operative part of the judgment**

*The Community rules relating to the immunity of Members of the European Parliament must be interpreted as meaning that, in an action for damages brought against a Member of the European Parliament in respect of opinions he has expressed,*

— *where the national court which has to rule on such an action has received no information regarding a request by that Member to the European Parliament seeking defence of the immunity provided for in Article 9 of the Protocol on the Privileges and Immunities of the European Communities of 8 April 1965, it is not obliged to request the European Parliament to give a decision on whether the conditions for that immunity are met;*

— *where the national court is informed of the fact that that Member has made a request to the European Parliament for defence of that immunity, within the meaning of Rule 6(3) of the Rules of Procedure of the European Parliament, it must stay the judicial proceedings and request the European Parliament to issue its opinion as soon as possible;*

— *where the national court considers that that Member enjoys the immunity provided for in Article 9 of the Protocol on the Privileges and Immunities of the European Communities, it is obliged to dismiss the action brought against the Member concerned.*

([1]) OJ C 229, 17.9.2005.

**Judgment of the Court (Fourth Chamber) of 16 October 2008 (reference for a preliminary ruling from the High Court of Justice of England and Wales (Chancery Division), United Kingdom) — Canterbury Hockey Club, Canterbury Ladies Hockey Club v The Commissioners for Her Majesty's Revenue and Customs**

**(Case C-253/07)** ([1])

***(Sixth VAT Directive — Exemption — Services linked to sport — Services supplied to persons taking part in sport — Services supplied to unincorporated associations and to corporate persons — Included — Conditions)***

(2008/C 313/10)

*Language of the case: English*

**Referring court**

High Court of Justice of England and Wales (Chancery Division)

**Parties to the main proceedings**

*Applicants:* Canterbury Hockey Club, Canterbury Ladies Hockey Club

*Defendant:* The Commissioners for Her Majesty's Revenue and Customs

**Re:**

Reference for a preliminary ruling — High Court of Justice (Chancery Division) — Interpretation of Article 13A(1)(m) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) — Exemption of certain services closely linked to sport or physical education — Meaning of 'persons taking part in sport or physical education' — Scope of persons covered

**Operative part of the judgment**

1. *Article 13A(1)(m) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment is to be interpreted as meaning that, in the context of persons taking part in sport, it includes services supplied to corporate persons and to unincorporated associations, provided that — which it is for the national court to establish — those services are closely linked and essential to sport, that they are supplied by non-profit-making organisations and that their true beneficiaries are persons taking part in sport;*

2. *The expression 'certain services closely linked to sport', in Article 13A(1)(m) of Sixth Directive 77/388, does not allow the Member States to limit the exemption under that provision by reference to the recipients of the services in question.*

([1]) OJ C 183, 4.8.2007.

**Judgment of the Court (Fourth Chamber) of 16 October 2008 (reference for a preliminary ruling from the Bundesgerichtshof — Germany) — Bundesverband der Verbraucherzentralen und Verbraucherverbände — Verbraucherzentrale Bundesverband eV v deutsche internet versicherung AG**

**(Case C-298/07)** ([1])

***(Directive 2000/31/EC — Article 5(1)(c) — Electronic commerce — Internet service provider — Electronic mail)***

(2008/C 313/11)

*Language of the case: German*

**Referring court**

Bundesgerichtshof

**Parties to the main proceedings**

*Applicant:* Bundesverband der Verbraucherzentralen und Verbraucherverbände — Verbraucherzentrale Bundesverband eV

*Defendant:* deutsche internet versicherung AG

**Re:**

Reference for a preliminary ruling — Bundesgerichtshof — Interpretation of Article 5(1)(c) of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') (OJ 2000 L 178, p. 1) — Service provider offering such services exclusively via the internet by indicating on his website only his electronic mail address and providing recipients with a field in which to ask written questions — Whether this service provider also has to provide a telephone number

**Operative part of the judgment**

*Article 5(1)(c) of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the internal market ('Directive on electronic commerce') must be interpreted as meaning that a service provider is required to supply to recipients of the service, before the conclusion of a contract with them, in addition to its electronic mail address, other information which allows the service provider to be contacted rapidly and communicated with in a direct and effective manner. That information does not necessarily have to be a telephone number. That information may be in the form of an electronic enquiry template through which the recipients of the service can contact the service provider via the internet, to whom the service provider replies by electronic mail except in situations where a recipient of the service, who, after contacting the service provider electronically, finds himself without access to the electronic network, requests the latter to provide access to another, non-electronic, means of communication.*

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([1]) OJ C 223, 22.9.2007.

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**Judgment of the Court (Fourth Chamber) of 16 October 2008 (reference for a preliminary ruling from the Lunds tingsrätt — Sweden) — Svenska staten represented by the Tillsynsmyndigheten i konkurser v Anders Holmqvist**

**(Case C-310/07)** ([1])

***(Approximation of laws — Protection of employees in the event of the insolvency of their employer — Directive 80/987/EEC — Article 8a — Activities carried out in a number of Member States)***

(2008/C 313/12)

*Language of the case: Swedish*

**Referring court**

Lunds tingsrätt

**Parties to the main proceedings**

*Applicant:* Svenska staten represented by the Tillsynsmyndigheten i konkurser

*Defendant:* Anders Holmqvist

**Re:**

Reference for a preliminary ruling — Lunds Tingsrätt — Interpretation of Article 8a 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), as amended by Directive 2002/74/EC of the European Parliament and of the Council of 23 September 2003 (OJ 2002 L 270, p. 10) — Wage guarantee for a worker employed in a road haulage undertaking having its head office and only establishment in a Member State and which carries out deliveries of goods between the Member State of origin and other Member States.

**Operative part of the judgment**

*Article 8a 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, as amended by Directive 2002/74/EC of the European Parliament and of the Council of 23 September 2003, must be interpreted as meaning that, in order for an undertaking established in a Member State to be regarded as having activities in the territory of another Member State, that undertaking does not need to have a branch or fixed establishment in that other State. The undertaking must, however, have a stable economic presence in the latter State, featuring human resources which enable it to perform activities there. In the case of a transport undertaking established in a Member State, the mere fact that a worker employed by it in that State delivers goods between that State and another Member State cannot demonstrate that the undertaking has a stable economic presence in another Member State.*

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([1]) OJ C 211, 8.9.2007.

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**Judgment of the Court (Fourth Chamber) of 16 October 2008 (reference for a preliminary ruling from the Juzgado de lo Mercantil — Barcelona) — Kirtruna SL, Elisa Vigano v Red Elite de Electrodomésticos SA, Cristina Delgado Fernández de Heredia, Sergio Sabini Celio, Miguel Oliván Bascones, Electro Calbet SA**

**(Case C-313/07)** ([1])

***(Social policy — Directive 2001/23/EC — Transfer of undertaking — Safeguarding of employees' rights — Insolvency proceedings — Assignment of lease)***

(2008/C 313/13)

*Language of the case: Spanish*

**Referring court**

Juzgado de lo Mercantil (Barcelona, Spain)

**Parties to the main proceedings**

*Applicants:* Kirtruna SL, Elisa Vigano

*Defendants:* Red Elite de Electrodomésticos SA, Cristina Delgado Fernández de Heredia, Sergio Sabini Celio, Miguel Oliván Bascones, Electro Calbet SA

**Re:**

Reference for a preliminary ruling — Juzgado de lo Mercantil — Interpretation of Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (OJ 2001 L 82, p. 16)

**Operative part of the judgment**

*Article 3(1) of Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses does not require, in the event of transfer of an undertaking, the preservation of the lease of commercial premises entered into by the transferor of the undertaking with a third party even though the termination of that lease is likely to entail the termination of contracts of employment transferred to the transferee.*

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([1]) OJ C 211, 8.9.2007.

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## Order of the Court of 6 October 2008 (reference for a preliminary ruling from the Tribunal de première instance de Bruxelles (Belgium)) — Raffinerie Tirlemontoise SA v Bureau d'intervention et de restitution belge (BIRB)

**(Case C-200/06)** ([1])

***(Article 104(3) of the Rules of Procedure — Sugar — Production levies — Detailed rules for the application of the quota system — Taking into account of the quantities of sugar contained in the processed products — Calculation of the exportable surplus — Calculation of the average loss)***

(2008/C 313/14)

*Language of the case: French*

**Referring court**

Tribunal de première instance de Bruxelles (Belgium)

**Parties**

*Applicant:* Raffinerie Tirlemontoise SA

*Defendant:* Bureau d'intervention et de restitution belge (BIRB)

**Re:**

Preliminary ruling — Tribunal de première instance de Bruxelles — Interpretation of Article 15 of Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector (OJ 2001 L 178, p. 1) — Validity of Commission Regulation (EC) No 314/2002 of 20 February 2002 laying down detailed rules for the application of the quota system in the sugar sector (OJ 2002 L 50, p. 40) — Validity of Commission Regulation (EC) No 1775/2004 of 14 October 2004 setting the production levies in the sugar sector for the 2003/04 marketing year (OJ 2004 L 316, p. 64); of Commission Regulation (EC) No 1762/2003 of 7 October 2003 fixing the production levies in the sugar sector for the 2002/03 marketing year (OJ 2003 L 254, p. 4); of Commission Regulation (EC) No 1837/2002 of 15 October 2002 fixing the production levies and the coefficient for the additional levy in the sugar sector for the marketing year 2001/02 (OJ 2002 L 278, p. 13); of Commission Regulation (EC) No 1993/2001 of 11 October 2001 fixing the production levies in the sugar sector for the 2000/01 marketing year (OJ 2001 L 271, p. 15); and of Commission Regulation (EC) No 2267/2000 of 12 October 2000 fixing the production levies and the coefficient for calculating the additional levy in the sugar sector for the 1999/2000 marketing year (OJ 2000 L 259, p. 29) — Calculation method used to evaluate the total loss to be financed by the production levy — Taking into account, for the calculation of the exportable surplus, of all quantities of sugar exported and, for the calculation of the average loss per tonne of sugar, only of the quantities which gave rise to the payment of the export refund

**Operative part of the order**

1. *Pursuant to Article 15(1)(c) of Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector, the exportable surplus includes the quantities of sugar which fall under that article contained in the processed products exported, regardless of whether or not refunds have actually been paid.*

   *Article 15(1)(d) of that regulation is to be interpreted as meaning that all the quantities of exported products which fall under that article must, regardless of whether or not refunds have actually been paid, be taken into account for the purpose of calculating both the exportable surplus and the average loss per tonne of product.*

   *Examination of Article 6(4) and (5) of Commission Regulation (EC) No 314/2002 of 20 February 2002 laying down detailed rules for the application of the quota system in the sugar sector, where appropriate, as amended by Commission Regulation (EC) No 1140/2003 of 27 June 2003 and Commission Regulation (EC) No 38/2004 of 9 January 2004 has not disclosed the existence of any factors such as to affect its validity.*

2. *Examination of Commission Regulation (EC) No 2267/2000 of 12 October 2000 fixing the production levies and the coefficient for calculating the additional levy in the sugar sector for the 1999/2000 marketing year; Commission Regulation (EC) No 1993/2001 of 11 October 2001 fixing the production levies in the sugar sector for the 2000/01 marketing year; and Commission Regulation (EC) No 1837/2002 of 15 October 2002 fixing the production levies and the coefficient for the additional levy in the sugar sector for the marketing year 2001/02 has not disclosed the existence of any factors such as to affect their validity.*

*Commission Regulation (EC) No 1762/2003 of 7 October 2003 fixing the production levies in the sugar sector for the 2002/03 marketing year and Commission Regulation (EC) No 1775/2004 of 14 October 2004 setting the production levies in the sugar sector for the 2003/04 marketing year are invalid.*

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([1]) OJ C 165 of 15.7.2006.

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**Order of the Court of 6 October 2008 (reference for a preliminary ruling from the Tribunal de grande instance de Nanterre (France)) — SA des sucreries de Fontaine-le-Dun-Bolbec-Auffay (SAFBA) (C-175/07), Sucreries et Raffineries d'Erstein SA (C-176/07), Sucreries & Distilleries de Souppes — Ouvré Fils SA (C-177/07), Sucrerie de Bourgogne SA (C-178/07), Sucrerie Bourdon (C-179/07), Sucreries du Marquenterre SA (C-180/07), Cristal Union (C-181/07), Lesaffre Frères SA (C-182/07) Vermendoise Industries SAS (C-183/07), Sucreries de Toury et Usines annexes SA (C-184/07) v Directeur général des douanes et droits indirects, Receveur principal des douanes et droits indirects de Gennevilliers**

**(Joined Cases C-175/07 to C-184/07)** ([1])

***(Article 104(3) of the Rules of Procedure — Sugar — Production levies — Detailed rules for the application of the quota system — Taking into account of the quantities of sugar contained in processed products — Determination of the exportable surplus — Determination of the average loss)***

(2008/C 313/15)

*Language of the case: French*

**Referring court**

Tribunal de grande instance de Nanterre (France)

**Parties**

*Applicants:* SA des sucreries de Fontaine-le-Dun-Bolbec-Auffay (SAFBA) (C-175/07), Sucreries et Raffineries d'Erstein SA (C-176/07), Sucreries & Distilleries de Souppes — Ouvré Fils SA (C-177/07), Sucrerie de Bourgogne SA (C-178/07), Sucrerie Bourdon (C-179/07), Sucreries du Marquenterre SA (C-180/07), Cristal Union (C-181/07), Lesaffre Frères SA (C-182/07) Vermendoise Industries SAS (C-183/07), Sucreries de Toury et Usines annexes SA (C-184/07)

*Defendants:* Directeur général des douanes et droits indirects, Receveur principal des douanes et droits indirects de Gennevilliers

**Re:**

Reference for a preliminary ruling — Tribunal de grande instance de Nanterre — Validity, having regard to Article 15 of Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector (OJ 2001 L 178, p. 1), and the principles of proportionality and non-discrimination, of Commission Regulation (EC) No 314/2002 of 20 February 2002 laying down detailed rules for the application of the quota system in the sugar sector (OJ 2002 L 50, p. 40) — Validity, having regard to Regulations (EC) No 1260/2001 and 314/2002, of Commission Regulation (EC) No 1686/2005 of 14 October 2005 setting the production levies and the coefficient for the additional levy in the sugar sector for the 2004/05 marketing year (OJ 2005 L 271, p. 12) — Production levies including quantities of sugar contained in processed products, exported without benefit of export refunds

**Operative part of the order**

1. *Examination of Article 6(4) of Commission Regulation (EC) No 314/2002 of 20 February 2002 laying down detailed rules for the application of the quota system in the sugar sector, as amended by Commission Regulation (EC) No 38/2004 of 9 January 2004, in so far as that provision does not, with regard to calculation of the production levy, provide for exclusion from the exportable surplus of the quantities of sugar contained in exported processed products for which no export refund has been granted has not shown that there are factors liable to affect its validity.*

2. *Commission Regulation (EC) No 1686/2005 of 14 October 2005 setting the production levies and the coefficient for the additional levy in the sugar sector for the 2004/05 marketing year is invalid.*

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([1]) OJ C 117, 26.5.2007.

## Order of the Court of 9 July 2008 (reference for a preliminary ruling from the Hof van beroep te Antwerpen (Belgium)) — Gerlach & Co. NV v Belgische Staat

**(Case C-477/07)** [1]

***(Article 104(3), first subparagraph of the Rules of Procedure — Community Customs Code — Concepts of 'entry in the accounts' and 'communication' of the amount of duty to the debtor — Prior entry in the accounts of the amount of the customs debt — Recovery of the customs debt)***

(2008/C 313/16)

*Language of the case: Dutch*

### Referring court

Hof van beroep te Antwerpen

### Parties

*Applicant:* Gerlach & Co. NV

*Defendant:* Belgische Staat

### Re:

Preliminary ruling — Hof van beroep te Antwerpen — Interpretation of Articles 217 and 221(1) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1) and Article 6 of Council Regulation (EEC, Euratom) No 1552/89 of 29 May 1989 implementing Decision 88/376/EEC, Euratom on the system of the Communities' own resources (OJ 1989 L 155, p. 1) (now Council Regulation 1150/2000 (EC, Euratom) of 22 May 2000 implementing Decision 2000/597/EC (OJ 2000 L 130, p. 1)) — Concepts of 'entry in the accounts' and 'communication' of the amount of duty to the debtor — Prior entry in the accounts of the amount of the customs debt — Recovery of the debt

### Operative part of the order

1. *Article 221(1) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code is to be interpreted as meaning that the 'entry in the accounts' of the amount of the duty to be recovered referred to therein is the 'entry in the accounts' of that amount as defined in Article 217(1) of that regulation and that that entry in the accounts is to be distinguished from the recording of that duty in the accounts of the own resources referred to in Article 6 of Council Regulation (EEC, Euratom) No 1552/89 of 29 May 1989 implementing Decision 88/376/EEC, Euratom on the system of the Communities' own resources.*

2. *Article 221(1) of Regulation No 2913/92 is to be interpreted as meaning that the communication of the amount of duty to be recovered must have been preceded by the entry in the accounts of that amount by the customs authorities of the Member State and that, in the absence of due notification in accordance with that provision, that amount may not be recovered by those authorities. However, those authorities remain entitled to proceed with a new notification of that amount, in accordance with the conditions laid down by that provision and the limitation rules in force at the time the customs debt arose.*

[1] OJ C 8 of 12.1.2007.

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## Reference for a preliminary ruling from the Tribunale Amministrativo Regionale del Lazio (Italy) lodged on 1 August 2008 — A. Menarini Industrie Farmaceutiche Riunite Srl and Others v Ministero della Salute and Agenzia Italiana del Farmaco (AIFA)

**(Case C-353/08)**

(2008/C 313/17)

*Language of the case: Italian*

### Referring court

Tribunale Amministrativo Regionale del Lazio

### Parties to the main proceedings

*Applicants:* A. Menarini Industrie Farmaceutiche Riunite Srl and Others

*Defendants:* Ministero della Salute and Agenzia Italiana del Farmaco (AIFA)

### Questions referred

1. After the provisions contained in Articles 2 and 3 [of Directive 89/105/EC [1]] which modulate the relationship between the public authorities of a Member State and the pharmaceutical companies — by allowing the pricing of a medicinal product or the raising of its price to be determined on the basis of information provided by the [latter], but only in so far as is acceptable to the competent authority, and thus on the basis of dialogue between the undertakings themselves and the authorities competent to supervise pharmaceutical expenditure — Article 4(1) [of that Directive] concerning *'price freeze[s] imposed on all medicinal products or on certain*

*categories of medicinal products*' characterises a price freeze as a general instrument, the continuing use of which is conditional upon a review which must be carried out, at least once a year, with reference to the macro-economic conditions existing in the Member State in question.

That provision allows the competent authorities a period of 90 days in which to take a final decision, requiring them, on expiry of that period, to announce what increases or decreases in prices are being made, if any.

This Court asks: **On a proper construction of the reference to '*decreases in prices … being made, if any*', is that provision to be interpreted as meaning that, as well as the general remedy of freezing the prices of all categories, or certain specific categories, of medicinal product, another general remedy may be applied in the form of a reduction in the prices of all categories, and of certain specific categories, of medicinal product?**

2. In requiring the competent authorities of a Member State to verify, at least once a year, in the case of price freezes, whether the macroeconomic conditions justify continuing that price freeze, may Article 4(1) [of Directive 89/105/EC] be interpreted as meaning that, if the reply to Question I is that a price reduction is permissible, it is possible to have recourse to such a measure even more than once in the course of a single year, and to do that again for many years (from 2002 until 2010)?

3. Under the terms of Article 4 [of Directive 89/105/EC] — read in the light of the preamble emphasising that the principal aim of measures controlling the prices of medicinal products is '*the promotion of public health by ensuring the availability of adequate supplies of medicinal products at a reasonable cost*' and preventing '*disparities in such measures [which] may hinder or distort intra-Community trade in medicinal products*' — is it compatible with the Community rules to adopt measures which refer to economic values attributed to that expenditure on the basis of 'predictions' rather than values which have been 'ascertained' (this question relates to both situations)?

4. Must the requirements relating to compliance with the ceilings for pharmaceutical expenditure which each Member State is competent to determine be linked, point by point, to pharmaceutical expenditure alone, or is it within the powers of the Member States to take account also of data relating to other health expenditure?

(1) Council Directive 89/105/EEC of 21 December 1988 relating to the transparency of measures regulating the prices of medicinal products for human use and their inclusion in the scope of national health insurance systems (OJ 1989 L 40, p. 8).

## Action brought on 2 September 2008 — Commission of the European Communities v Republic of Poland

**(Case C-385/08)**

(2008/C 313/18)

*Language of the case: Polish*

### Parties

*Applicant:* Commission of the European Communities (represented by: M. Šimerdová and K. Herrmann, acting as Agents)

*Defendant:* Republic of Poland

### Form of order sought

— declare that, by retaining in force marketing authorisations for medicinal products that are generics of the reference product Plavix, the Republic of Poland has failed to fulfil its obligations under Article 6(1) of Directive 2001/83/EC (1), in conjunction with Article 13(4) of Regulation (EEC) No 2309/93 (2) and Articles 89 and 90 of Regulation (EC) No 726/2004 (3);

— declare that, by placing and keeping on the market after 1 May 2004 medicinal products whose marketing authorisation was not issued in accordance with Article 6(1) of Directive 2001/83/EC, the Republic of Poland has failed to fulfil its obligations under that article;

— order the Republic of Poland to pay the costs.

### Pleas in law and main arguments

In the applicant's view, marketing of the medicinal products which are the subject of decisions of the Minister for Health of the Republic of Poland that were issued in the period from January to April 2004 and contain additional recommendations and requirements for additional investigation cannot be covered by the transitional period laid down in point 1.5 of Annex XII to the Act concerning the conditions of accession of the Republic of Poland to the European Union, because those decisions of the Minister for Health did not constitute before 1 May 2004 marketing authorisations for the purposes of point 1.5 of Annex XII. The medicinal products at issue therefore had to be placed on the market by means of a marketing authorisation issued in accordance with Directive 2001/83/EC or Regulation No 2309/93.

Furthermore, in the applicant's submission the marketing of medicinal products that are generics of the reference product Plavix could not be covered by the transitional period laid down in point 1.5 of Annex XII to the Act concerning the conditions of accession, because the exceptions provided for therein concerned exclusively the requirements of safety, quality and efficacy prescribed in Directive 2001/83/EC, and not the 10-year period of data protection laid down in Article 13(4) of Regulation (EEC) No 2309/93 and Articles 89 and 90 of Regulation (EC) No 726/2004.

(1) Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ L 311, 28.11.2001, p. 67).

(2) Council Regulation (EEC) No 2309/93 of 22 July 1993 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Agency for the Evaluation of Medicinal Products (OJ L 214, 24.8.1993, p. 1).

(3) Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency (OJ L 136, 30.4.2004, p. 1).

## Appeal brought on 19 September 2008 by Knauf Gips KG against the judgment of the Court of First Instance (Third Chamber) delivered on 8 July 2008 in Case T-52/03 Knauf Gips KG v Commission of the European Commission

**(Case C-407/08 P)**

(2008/C 313/19)

*Language of the case: German*

### Parties

*Appellant:* Knauf Gips KG (represented by: M. Klusmann and S. Thomas, Rechtsanwälte)

*Other party to the proceedings:* Commission of the European Communities

### Form of order sought

— Set aside the judgment of the Court of First Instance (Third Chamber) of 8 July 2008 in Case T-52/03 *Knauf Gips KG* v *Commission* in its entirety;

— in the alternative, refer the case back to the Court of First Instance for a fresh decision;

— in the further alternative, reduce the fine imposed on the appellant by Article 3 of the contested Commission Decision of 27 November 2002 in an appropriate manner, and in any event by at least EUR 54,51 million;

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

### Pleas in law and main arguments

The appeal against the judgment, by which the Court of First Instance dismissed the action brought by the appellant against Commission Decision 2005/471/EC of 27 November 2002, is based on three pleas in law.

1. By its first plea on appeal, the appellant submits that there was a breach of the rights of the defence, including a breach of the right to a fair hearing. The appellant submits that the Court of First Instance failed to observe the principles that apply with regard to the legal consequences of a refusal to grant access to incriminating documents and the withholding of exculpatory evidence. By the first part of this plea, the appellant submits that the Commission's decision should have been annulled, because the Commission denied the appellant access to incriminating evidence on which the decision was subsequently based. By the second part of the first plea, the appellant submits that the judgment under appeal involved a separate breach of the appellant's rights of defence, given that the Commission also illegally withheld exculpatory evidence, which likewise should have led to the annulment of the decision.

2. By its second plea on appeal, the appellant submits that there was an infringement of Article 81(1) EC, due to fundamental breaches of the rules on evidence, namely of the *in dubio pro reo* principle, as well as breaches of substantive law, namely as regards the elements constituting a concerted practice, which, in the judgment under appeal, led to the assumption — constituting an error of law — that Article 81(1) EC had been breached.

3. By its third plea on appeal, the appellant submits that there was an infringement of the 10 % ceiling under Article 15(2) of Regulation No 17/62. The appellant submits that the Court of First Instance wrongly attributed to the appellant the turnover of undertakings which the appellant does not control and which do not control the appellant. The appellant submits that it and those undertakings do not form part of the same economic unit.

**Reference for a preliminary ruling from the Finanzgericht Baden-Württemberg (Germany) lodged on 22 September 2008 — Swiss Caps AG v Hauptzollamt Singen**

**(Case C-410/08)**

(2008/C 313/20)

*Language of the case: German*

**Referring court**

Finanzgericht Baden-Württemberg

**Parties to the main proceedings**

*Applicant:* Swiss Caps AG

*Defendant:* Hauptzollamt Singen

**Questions referred**

1. Is heading 1517 of the Combined Nomenclature (Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 — Combined Nomenclature (CN)) [1] to be interpreted as meaning that preparations of only one (concentrated) oil or fat, to which vitamin E alone has been added and which has not otherwise been treated, are to be classified under that heading?

2. If the first question is to be answered in the affirmative:

   Is heading 1517 of the Combined Nomenclature to be interpreted as meaning that the addition of concentrated vitamin E (d-alpha-tocopherol concentrate) in a quantity of 22,8 mg to 600 mg of concentrated fish oil (Incromega EPA SR 500 TG) leads to the exclusion of the goods from that heading?

3. If the first question is to be answered in the affirmative and the second in the negative:

   Is Rule 5 of the General Rules for the Interpretation of the Combined Nomenclature to be interpreted as meaning that capsule casings consisting of 212,8 mg of gelatin, 77,7 mg of glycerol and 159,6 mg of purified water and containing food supplement substances are to be regarded as packing material?

4. If the third question is answered in the negative:

   Is heading 1517 of the Combined Nomenclature to be interpreted as meaning that a capsule casing consisting of 212,8 mg of gelatin, 77,7 mg of glycerol and 159,6 mg of purified water leads to the exclusion of the capsules described above from that heading?

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

**Reference for a preliminary ruling from the Finanzgericht Baden-Württemberg (Germany) lodged on 22 September 2008 — Swiss Caps AG v Hauptzollamt Singen**

**(Case C-412/08)**

(2008/C 313/21)

*Language of the case: German*

**Referring court**

Finanzgericht Baden-Württemberg

**Parties to the main proceedings**

*Applicant:* Swiss Caps AG

*Defendant:* Hauptzollamt Singen

**Questions referred**

1. Is heading 1517 of the Combined Nomenclature (Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 — Combined Nomenclature (CN)) [1] to be interpreted as meaning that the addition of 10 mg of lecithin, 18,8 mg of vitamin E, 8,2 mg of wax, 8 mg of calcium pantothenate, 0,2 mg of folic acid and 0,11 mg of biotin to a mixture consisting of 500 mg of cold-pressed black cumin oil (62,5 % or 83,3 %), 38,7 mg of soya oil and 16 mg of butterfat is to be regarded as so small that it does not affect the classification of such a preparation under that heading?

2. If the reply to the first question is in the affirmative:

   Is Rule 5 of the General Rules for the interpretation of the Combined Nomenclature to be interpreted as meaning that capsule casings containing the substances specified above are to be regarded as packing material?

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

   Is heading 1517 of the Combined Nomenclature to be interpreted as meaning that a capsule casing consisting of 313,97 mg of gelatin mass (47,3 % gelatin, 17,2 % glycerine, 35,5 % water), 4,30 mg of paste consisting of 50 % titanium dioxide and 50 % glycerine, and 1,73 mg of paste consisting of 25 % quinoline yellow lacquer and 75 % glycerine leads to the exclusion of the capsules described above from that heading?

(1) OJ 1987 L 256, p. 1.

**Appeal brought on 22 September 2008 by Complejo Agrícola against the judgment delivered on 14 July 2008 in Case T-345/06 Complejo Agrícola SA v Commission of the European Communities, supported by the Kingdom of Spain**

**(Case C-415/08 P)**

(2008/C 313/22)

*Language of the case: Spanish*

**Parties**

*Appellant:* Complejo Agrícola SA (represented by: A. Menéndez Menéndez and G. Yanguas Montero, lawyers)

*Other parties to the proceedings:* Commission of the European Communities and the Kingdom of Spain

**Form of order sought**

— allow the appeal;

— annul the judgment of the Court of First Instance of 14 July 2008, notified to the appellant on 18 July 2008 ('the CFI judgment') in which the CFI: (a) declared the action for annulment brought by Complejo Agrícola ('the action for annulment') against Commission Decision 2006/613/EC (1) of 19 July 2006 adopting, pursuant to Council Directive 92/43/EEC, the list of sites of Community importance for the Mediterranean biogeographical region ('Decision 2006/613'), and (b) ordered Complejo Agrícola to bear its costs and to pay those of the Commission of the European Communities ('the Commission');

— refer the case back to the CFI in order for it to uphold the action for annulment and give a ruling on the substance of the claims put forward by Complejo Agrícola in the action for annulment;

— order the Commission to pay the costs incurred by Complejo Agrícola in these proceedings.

**Pleas in law and main arguments**

The CFI judgment recognises that Decision 2006/613 is a measure which is capable of being challenged. However, in the judgment the CFI denies that Complejo Agrícola has standing to challenge it because, in its opinion, Decision 2006/613, which declares as a site of Community importance (SCI) Acebuchales de la Campiña Sur de Cádiz — cod. 6120015 ('SCI Acebuchales') that affects part of the Finca 'Las Lomas', which is owned by Complejo Agrícola, is not of direct concern to it as it does not impose any specific obligations on Complejo Agrícola and requires national implementing rules.

Complejo Agrícola takes the view that the order of the CFI incorrectly interprets Article 230 of the Treaty Establishing the European Community ('EC Treaty'), as it has been interpreted by the most recent case-law, Complejo Agrícola does have locus standi to challenge Decision 2006/613 as that decision is of direct and individual concern to it. That is why the order under appeal must be annulled.

Complejo Agrícola is directly concerned by Decision 2006/613 if it is analysed either in accordance the formal jurisprudential interpretation of direct concern, which is no longer current, or in accordance with the substantive interpretation now adopted by the Court.

The order under appeal compares Complejo Agrícola's situation with earlier precedents with which it has nothing in common, without analysing the specific circumstances of this case. In accordance with the case-law currently applicable, Complejo Agrícola's situation must lead to the recognition of its locus standi. The main difference between this case and those examined in the cases mentioned in the order of the CFI is that, when it adopted Decision 2006/613, the Spanish legislation on the protection of SCIs had already been approved and the legal consequences of the adoption of Decision 2006/613 for Complejo Agrícola were already well known so that the possibility that the Spanish State would not apply Decision 2006/613 was purely theoretical. That situation is not altered, as the CFI's order states, by the fact that in the future the Spanish state may amend the rules.

(1) OJ L 259, p. 1.

## Action brought on 24 September 2008 — Commission of the European Communities v Italian Republic

**(Case C-423/08)**

(2008/C 313/23)

*Language of the case: Italian*

### Parties

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

*Defendant:* Italian Republic

### Form of order sought

— declare that the Italian Republic has failed to fulfil its obligations under Articles 2, 6, 9, 10 and 11 of Council Regulation (EEC, Euratom) No 1552/89 of 29 May 1989 implementing Decision 88/376/EEC on the system of the Communities' own resources ([1]), Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources ([2]), and Article 220 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code ([3]), owing to failure to comply with the time-limits for entry of the Communities' own resources in the event of subsequent recovery and consequent delay in the payment of the same to the Communities;

— order the Italian Republic to pay the costs.

### Pleas in law and main arguments

The Commission complains that the Italian authorities failed to comply, in the event of subsequent recovery of customs resources, with the time-limits for entry of the own resources laid down by the relevant Community rules applicable, in so far as those authorities grant an extension (of sixty days) to taxable persons for the purposes of consultation of the minutes relating to the challenge before calculating the import duties, with the result that delays are caused to the crediting of the Communities' own resources in question. That instance emerged during an inspection of own resources carried out in Italy from 6 to 10 November 2000.

According to the Commission, that operating practice is incompatible with the Community provisions in force concerning subsequent recovery. In fact, the conditions for verification of the duties are satisfied as soon as the national authorities draw up the minutes in which the amount of the duties to be collected is communicated to the taxable person, since that document indicates at the same time the name of the debtor and the amount of the duties to be collected. In so far as in Italy duties are verified and registered only on expiry of the time-limit granted to taxable persons for challenging the correction of the duties communicated to them, the national rules concerned are inconsistent with the relevant Community provisions, and may give rise to delays, in the present case so far as concerns the date on which the Communities' own resources are made available.

([1]) OJ L 155, p. 1.
([2]) OJ L 130, p. 1.
([3]) OJ L 302, p. 1.

## Reference for a preliminary ruling from the Rechtbank 's-Gravenhage (Netherlands) lodged on 29 September 2008 — Monsanto Technology LLC v 1. Cefetra BV, 2. Cefetra Feed Service BV, 3. Cefetra Futures BV, and 4. State of Argentina and Miguel Santiago Campos, acting in his capacity as Secretary of State for Agriculture, Animal Husbandry, Fisheries and Food, and Monsanto Technology LLC v 1. Vopak Agencies Rotterdam BV, and 2. Alfred C. Toepfer International GmbH

**(Case C-428/08)**

(2008/C 313/24)

*Language of the case: Dutch*

### Referring court

Rechtbank 's-Gravenhage

### Parties to the main proceedings

*Applicant:* Monsanto Technology LLC

Defendants:

1. Cefetra BV,
2. Cefetra Feed Service BV,
3. Cefetra Futures BV,
4. State of Argentina and Miguel Santiago Campos, acting in his capacity as Secretary of State for Agriculture, Animal Husbandry, Fisheries and Food

*Applicant:* Monsanto Technology LLC

Defendants:

1. Vopak Agencies Rotterdam BV,

2. Alfred C. Toepfer International GmbH

**Questions referred**

1. Must Article 9 of Directive 98/44/EC ([1]) of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions be interpreted as meaning that the protection provided under that article can be invoked even in a situation such as that in the present proceedings, in which the product (the DNA sequence) forms part of a material imported into the European Union (soy meal) and does not perform its function at the time of the alleged infringement, but has indeed performed its function (in the soy plant) or would possibly again be able to perform its function after it has been isolated from that material and inserted into the cell of an organism?

2. Proceeding on the basis that the DNA sequence described in claim 6 of patent no EP 0 546 090 is present in the soy meal imported into the Community by Cefetra and ACTI, and that the DNA is incorporated in the soy meal for the purposes of Article 9 of Directive 98/44 and that it does not perform its function therein:

   does the protection of a patent on biological material as provided for by Directive 98/44, in particular Article 9, preclude the national patent legislation from offering (in parallel) absolute protection to the product (the DNA) as such, regardless of whether that DNA performs its function, and must the protection as provided under Article 9 of the Directive therefore be deemed to be exhaustive in the situation referred to in that article, in which the product consists of genetic information or contains such information, and the product is incorporated in material which contains the genetic information?

3. Does it make any difference, for the purpose of answering the previous question, that patent no EP 0 546 090 was applied for and granted (on 19 June 1996) prior to the adoption of Directive 98/44 and that such absolute product protection was granted under national patent legislation prior to the adoption of that directive?

4. Is it possible, in answering the previous questions, to take into consideration the TRIPS Agreement, in particular Articles 27 and 30 thereof?

([1]) OJ 1998 L 213, p. 13.

## Appeal brought on 1 October 2008 by Luigi Marcuccio against the judgment delivered on 9 July 2008 in Joined Cases T-296/05 and T-408/05 Marcuccio v Commission

**(Case C-432/08 P)**

(2008/C 313/25)

*Language of the case: Italian*

**Parties**

*Appellant:* Luigi Marcuccio (represented by: G. Cipressa, avvocato)

*Other party to the proceedings:* Commission of the European Communities

**Form of order sought**

— 1. In any event:

   (1.a) annul the judgment under appeal in its entirety;

   (1.b) declare that both the pending actions are fully admissible;

   and in addition:

— 2/A., primarily, grant the forms of order sought by the applicant at first instance, that is to say: (2/A.1) annul the contested decisions; (2/A.2) annul, in so far as necessary, both decisions dismissing the claims in question; (2/A.3) order the defendant, by way of reimbursement of the amount of the medical costs incurred by the applicant and referred to in the claims in question seeking 100 % reimbursement, or by way of compensation for the damage resulting from the unlawful conduct of the defendant, to pay to the applicant sums equal to EUR 2 572,32 (two thousand five hundred and seventy two point three two) and EUR 381,04 (three hundred and eight one point zero four), or greater or lesser sums than those stated above as the Court deems fair and equitable; (2/A.4) order the defendant to pay the applicant default interest on the sums stated above in point 2/A.3 of this appeal, in the amount to be capitalised on the start and end date in accordance with what is stated in the case-files; (2/A.5) order the defendant to pay the applicant's costs relating to this appeal and also to the pending cases;

   or

— 2/B., in the alternative, refer both the cases in question back to the Court of First Instance for it to give another ruling on the same.

**Pleas in law and main arguments**

Distortion and misrepresentation of the facts and statements of the applicant in its pleadings, following also from the material inaccuracy of the findings of the Court of First Instance (in particular, paragraphs 30, 44, 46 and 49 of the judgment under appeal).

Misinterpretation and misapplication of the concept of a challengeable act, also for confusion, unreasonableness and illogicalness, infringement of Article 231 of the EC Treaty and failure to appreciate the case-law concerning the effects of annulment by the Community courts of a decision issued by a Community institution, infringement of the principle of the authority of *res judicata*, infringement of the principle of the separation of powers (in particular, paragraphs 43, 44 and 49 of the judgment under appeal).

Complete absence of preliminary investigations and failure to rule on a fundamental issue of the dispute (in particular, paragraph 12 and paragraphs 43 to 51 inclusive of the judgment under appeal).

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## Reference for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 1 October 2008 — Yaesu Europe BV v Bundeszentralamt für Steuern

**(Case C-433/08)**

(2008/C 313/26)

*Language of the case: German*

**Referring court**

Bundesfinanzhof

**Parties to the main proceedings**

*Applicant:* Yaesu Europe BV

*Defendant:* Bundeszentralamt für Steuern

**Questions referred**

1. Is the term 'Signature' in the specimen in Annex A to the Eighth Council Directive 79/1072/EEC of 6 December 1979 on the harmonization of the laws of the Member States relating to turnover taxes — Arrangements for the refund of value added tax to taxable persons ([1]) not established in the territory of the country, which is to be used to submit an application for a refund of turnover tax pursuant to Article 3(a) of the directive, to be to be given a uniform Community law interpretation?

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

   Is the term 'Signature' to be understood as meaning that the application for a refund must be signed by the taxable person himself or, in regard to a legal person, by its statutory representative, or is the signature of an agent (for example, a representative for tax purposes or an employee of the taxable person) sufficient?

([1]) OJ L 331, 1979, p. 11.

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## Action brought on 3 October 2008 — Commission of the European Communities v Portuguese Republic

**(Case C-438/08)**

(2008/C 313/27)

*Language of the case: Portuguese*

**Parties**

*Applicant:* Commission of the European Communities (represented by: E. Traversa and M. Teles Romão, Agents)

*Defendant:* Portuguese Republic

**Form of order sought**

— A declaration that the Portuguese Republic, by imposing under, specifically, Articles 3(2), 6(1) and 7 of Decree-Law No 550/99 of 15 December 1999, and point 1(e) of Decree No 1165/2000 of 9 December 2000, restrictions on the freedom of establishment of entities of other Member States intending to carry on in Portugal the activity of vehicle inspection, including, in particular, making the grant of authorisations subject to the public interest, the requirement of minimum share capital of EUR 100 000, the limiting of the undertakings' company objects and the incompatibility rules with regard to other activities of members, managers and directors, has failed to fulfil its obligations under Article 43 of the EC Treaty;

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

**Pleas in law and main arguments**

Subordinating the grant of new authorisations to the public interest constitutes a restriction of freedom of establishment, given that legal persons from other Member States seeking to carry on the activity of vehicle inspection in Portugal are subject to the discretionary power of the competent national authorities, which leads to considerable legal uncertainty as to the extent of their rights.

The requirement of minimum share capital of EUR 100 000 must be regarded as a restriction of freedom of establishment, for it prevents a Community operator having less share capital than the minimum amount demanded by the Portuguese legislation from setting up subsidiaries or branches in Portugal.

Limiting an undertaking's company objects to the carrying on of the activity of vehicle inspection constitutes a restriction of freedom of establishment, for Community operators legally providing other services at the same time (inspecting, repairing and servicing vehicles) in the Member State of establishment would be obliged to alter the undertaking's objects and, perhaps, even its own internal structure in order to be able to extend to Portugal its vehicle-inspecting activity; in addition, this condition cannot be considered necessary in order to guarantee the independence and impartiality of the providers of that service.

The incompatibility rules imposed on the members, managers and directors of the undertaking who deal with the manufacture, repair, rental, import or marketing of vehicles, their parts or accessories or who are involved in transport activity are capable of having restrictive effects comparable to those produced by limiting the company objects and of creating significant restrictions of the freedom of establishment of undertakings from other Member States wishing to carry on the vehicle-inspection activities in Portugal, because the providers of vehicle-inspection services already legally established in another Member State, with members, managers or directors carrying on other activities in the Member State of establishment, would have to alter their internal structure, part company with those members or cause them to give up the incompatible activities.

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**Reference for a preliminary ruling from the Hof van Beroep te Brussel (Belgium) lodged on 6 October 2008 — VZW Vlaamse Federatie van Verenigingen van Brood- en Banketbakkers, Ijsbereiders en Chocoladebewerkers 'VEBIC', the other parties being: Raad voor de Mededinging and the Minister van Economie**

**(Case C-439/08)**

(2008/C 313/28)

*Language of the case: Dutch*

**Referring court**

Hof van Beroep te Brussel (Belgium)

**Parties to the main proceedings**

*Applicant:* VZW Vlaamse Federatie van Verenigingen van Brood- en Banketbakkers, Ijsbereiders en Chocoladebewerkers 'VEBIC'

*Other parties:* Raad voor de Mededinging and Minister van Economie

**Questions referred**

1. Must [Regulation (EC) No 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, in particular Articles 2, 15(3) and 35(1)] ([1]) above be interpreted to mean that national competition authorities derive directly from them an entitlement to formulate written observations on arguments raised, in the context of appeal proceedings, against a decision made by them, and that they can themselves present arguments in fact and in law, with the result that this entitlement cannot be excluded by a Member State?

2. Must the same provisions be interpreted to mean that, for the effective application of the competition rules with a view to protecting the public interest, the public enforcement bodies which are designated as the competition authorities are not only entitled but also have a duty to participate in the appeal proceedings against their decisions by stating their position in relation to the arguments raised in fact and in law?

3. If questions (1) and (2) are answered in the affirmative, must these provisions then be interpreted to mean that, in the absence of national provisions concerning the participation by the competition authority in the proceedings before the appeal body, and where various authorities are involved, it is the authority which is competent to take the decisions set out in Article 5 of the Regulation which shall participate in the appeal proceedings against its decision?

4. Are the answers to the above questions different if the competition authority acts, in accordance with national law, as a court of law and/or if the final decision is taken on completion of an investigation by a body belonging to that court and charged with drawing up the objections and a draft decision?

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

## Action brought on 20 October 2008 — Commission of the European Communities v Ireland

**(Case C-456/08)**

(2008/C 313/29)

*Language of the case: English*

### Parties

*Applicant:* Commission of the European Communities (represented by: G. Zavvos, M. Konstantinidis and D. Kukovec, Agents)

*Defendant:* Ireland

### The applicant claims that the Court should:

— Declare that, by way of the rules on time limits in the national legislation regulating the exercise of the right of tenderers to judicial review in public procurement procedures and by failing to notify the award decision to the complainant in the award decision in question, Ireland has failed to fulfil its obligations under, concerning the applicable time limits, Article 1(1) of Council Directive 89/665/EEC ([1]) on the application of review procedures to the award of public supply and public work contracts as interpreted by the Court and, concerning the lack of notification, under Article 1(1) of Directive 89/665/EEC as interpreted by the Court and Article 8(2) of council directive 93/37/EEC ([2]) on the coordination of procedures for the award of public works contracts.

— order Ireland to pay the costs.

### Pleas in law and main arguments

In the Commission's view Irish law does not appear to be in line with the fundamental principle of legal certainty and the requirement of effectiveness under directive 89/665/EEC which is an application of this principle, since tenderers are left in uncertainty as to their position if they intend to challenge an award decision of a contracting authority in two-phase award procedures where a preferred bidder is selected prior to the final award decision. Ireland must take measures to ensure that tenderers have clarity and certainty as to which decision of the contracting authority they may challenge and from which date time limits are to be considered. It must be made clear to tenderers if Order 84A applies not only to the award decisions but also to interim decisions of a contracting authority taken during the contract award procedure (e.g. regarding the selection of the preferred bidder), with the effect that the circumstances embodied in the interim decision cannot be challenged following the lapse of the time limit reckoned from that interim decision nor may the award decision be challenged on the basis of the circumstances already embodied in the interim decision.

Order 84A requires that actions need to be brought 'at the earliest opportunity and in any event within three months'. The Commission considers that this formulation leaves tenderers in uncertainty regarding their position when they consider making use of their Community law right to effective legal remedy against a decision of a contracting authority. In the Commission's view it needs to be made clear for tenderers which deadline applies for bringing an action against the contracting authority's decisions and that, with a view to the obligation to respect the fundamental principle of legal certainty, the applicable time limit needs to be a fixed one which can be interpreted in a clear and foreseeable manner by all tenderers.

([1]) OJ L 395, p. 33.
([2]) OJ L 199, p. 42.

## Action brought on 21 October 2008 — Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland

**(Case C-457/08)**

(2008/C 313/30)

*Language of the case: English*

### Parties

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

*Defendant:* United Kingdom of Great Britain and Northern Ireland

### The applicant claims that the Court should:

— declare that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Directive 2005/14/EC ([1]) of the European Parliament and of the Council of 11 May 2005 amending Council Directives 72/166/EEC, 84/5/EEC and 90/232/EEC and Directive 2000/26/EC of the European Parliament and of the Council relating to insurance against civil liability in respect of the use of motor vehicles, or in any event by failing to notify those provisions to the Commission, the United Kingdom has failed to fulfil its obligations under Article 6 of the Directive.

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

**Pleas in law and main arguments**

The period within which the directive had to be transposed expired on 11 June 2007.

(1) OJ L 149, p. 14.

**Action brought on 21 October 2008 — Commission of the European Communities v Portuguese Republic**

**(Case C-459/08)**

(2008/C 313/31)

*Language of the case: Portuguese*

**Parties**

*Applicant:* Commission of the European Communities (represented by: H. Støvlbæk and M. França, acting as Agents)

*Defendant:* Portuguese Republic

**Form of order sought**

— Declare that, by failing to adopt and publish the laws, regulations and administrative provisions necessary to comply with Directive 2005/36/EC (1) of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications or, in any event, by failing to notify the Commission of such measures, the Portuguese Republic has failed to fulfil its obligations under that directive;

— order the Portuguese Republic to pay the costs.

**Pleas in law and main arguments**

The period prescribed for transposing the directive expired on 20 October 2007.

(1) OJ 2005 L 255, p. 22.

**Order of the President of the Court of 20 August 2008 (reference for a preliminary ruling from the Special Commissioner of Income Tax, London — United Kingdom) — Vodafone 2 v Her Majesty's Revenue and Customs**

**(Case C-203/05)** (1)

(2008/C 313/32)

*Language of the case: English*

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

(1) OJ C 182, 23.7.2005.

**Order of the President of the Court of 5 September 2008 (reference for a preliminary ruling from the Tribunale Amministrativo Regionale per la Lombardia — Italy) — Colasfalti S.r.l. v Provincia di Milano, ATI Legrenzi Srl, Impresa Costruzioni Edili e Stradali dei F. 11i Paccani Snc**

**(Case C-214/06)** (1)

(2008/C 313/33)

*Language of the case: Italian*

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

(1) OJ C 178, 29.7.2006.

**Order of the President of the Second Chamber of the Court of 11 September 2008 — Commission of the European Communities v Republic of Austria**

**(Case C-270/06)** ([1])

(2008/C 313/34)

*Language of the case: German*

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

([1]) OJ C 212, 2.9.2006.

**Order of the President of the Court of 18 August 2008 (reference for a preliminary ruling from the VAT and Duties Tribunal, Manchester — United Kingdom) — Azlan Group plc v Her Majesty's Commissioners of Revenue and Customs**

**(Case C-389/07)** ([1])

(2008/C 313/35)

*Language of the case: English*

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

([1]) OJ C 283, 24.11.2007.

**Order of the President of the Fourth Chamber of the Court of 3 September 2008 (reference for a preliminary ruling from the Bundesgerichtshof — Germany) — Health Research Inc**

**(Case C-452/07)** ([1])

(2008/C 313/36)

*Language of the case: German*

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

([1]) OJ C 297, 8.12.2007.

**Order of the President of the Fifth Chamber of the Court of 18 August 2008 — Commission of the European Communities v Republic of Malta**

**(Case C-563/07)** ([1])

(2008/C 313/37)

*Language of the case: English*

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

([1]) OJ C 51, 23.2.2008.

**Order of the President of the Court of 8 September 2008 (reference for a preliminary ruling from the Verwaltungsgerichtshof Baden-Württemberg — Germany) — Michael Mario Karl Kerner v Land Baden-Württemberg**

**(Case C-4/08)** ([1])

(2008/C 313/38)

*Language of the case: German*

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

([1]) OJ C 79, 29.3.2008.

**Order of the President of the Court of 4 August 2008 (reference for a preliminary ruling from the Bundesverwaltungsgericht — Germany) — Khoshnaw Abdullah v Federal Republic of Germany**

**(Case C-177/08)** ([1])

(2008/C 313/39)

*Language of the case: German*

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

([1]) OJ C 197, 2.8.2008.

# COURT OF FIRST INSTANCE

## Judgment of the Court of First Instance of 15 October 2008 — Gogos v Commission

**(Case T-66/04)** ([1])

***(Staff case — Officials — Internal competition for change of category — Appointment — Classification in grade — Article 31(2) of the Staff Regulations)***

(2008/C 313/40)

*Language of the case: Greek*

### Parties

*Applicant:* Christos Gogos (Waterloo, Belgium) (represented by: C. Tagaras initially, then N. Korogiannakis, lawyers)

*Defendant:* Commission of the European Communities (represented by: J. Currall, Agent, and P. Anestis, lawyer)

### Re:

Application for annulment of the Commission's decision classifying the applicant in Grade A7, step 3, and the decision of 24 November 2003, rejecting the administrative complaint.

### Operative part of the judgment

*The Court:*

1. *Dismisses the action;*

2. *Orders the Commission to pay all the costs.*

([1]) OJ C 94, 17.4.2004.

## Judgment of the Court of First Instance of 15 October 2008 — Potamianos v Commission

**(Case T-160/04)** ([1])

***(Staff case — Temporary staff — Failure to renew a fixed-term contract)***

(2008/C 313/41)

*Language of the case: French*

### Parties

*Applicant:* Gerasimos Potamianos (Grimbergen, Belgium) (represented by: S. Orlandi, A. Coolen, J.-N. Louis and É. Marchal, lawyers)

*Defendant:* Commission of the European Communities (represented by: J. Currall and H. Tserepa-Lacombe, Agents)

### Re:

Application for annulment of the decision of the authority authorised to conclude contracts of employment not to renew the applicant's contract as a member of the temporary staff.

### Operative part of the judgment

*The Court:*

1. *Dismisses the action;*

2. *Orders Mr Gerasimos Potamianos and the Commission to each bear their own costs.*

([1]) OJ C 168, 26.6.2004.

## Judgment of the Court of First Instance of 22 October 2008 — TV 2/Danmark v Commission

**(Joined Cases T-309/04, T-317/04, T-329/04 and T-336/04)** ([1])

***(State aid — Measures implemented by the Danish authorities for the public broadcaster TV 2 to finance its public service remit — Measures classified as State aid partly compatible and partly incompatible with the common market — Actions for annulment — Admissibility — Interest in bringing proceedings — Rights of the defence — Public broadcasting service — Definition and financing — State resources — Obligation to state the reasons on which the decision is based — Obligation to examine)***

(2008/C 313/42)

*Language of the case: English and Danish*

### Parties

*Applicant in Case T-309/04*: TV 2/Danmark A/S (Odense, Denmark) (represented by: O. Koktvedgaard and M. Thorninger, Lawyers)

*Intervener in support of the applicant in Case T-309/04*: European Broadcasting Union (EBU) (Grand-Saconnex, Switzerland) (represented by: A. Carnelutti, Lawyer)

*Applicant in Case T-317/04*: Kingdom of Denmark (represented by: J. Molde, Agent, assisted by P. Biering and K. Lundgaard Hansen, Lawyers)

*Applicant in Case T-329/04*: Viasat Broadcasting UK Ltd (West Drayton, Middlesex, United Kingdom) (S. Hjelmborg and M. Honoré, Lawyers)

*Interveners in support of the applicant in Case T-329/04*: SBS TV A/S, formerly TV Danmark A/S (Skovlunde, Denmark); and SBS Danish Television Ltd, formerly Kanal 5 Denmark Ltd (Hounslow, Middlesex, United Kingdom) (represented by: D. Vandermeersch, K.-U. Karl and H. Peytz, Lawyers)

*Applicants in Case T-336/04*: SBS TV A/S and SBS Danish Television Ltd

*Intervener in support of the applicanst in Case T-336/04*: Viasat Broadcasting UK Ltd

*Defendant in Cases T-309/04, T-317/04, T-329/04 and T-336/04*: Commission of the European Communities (represented by: in Cases T-309/04, T-317/04 and T-329/04 by H. Støvlbæk and M. Niejahr, in Case T-329/04, also by N. Kahn and in Case T-336/04 by N. Kahn and M. Niejahr, Agents)

*Interveners in support of the defendant in Case T-309/04*: SBS TV A/S; SBS Danish Television Ltd and Viasat Broadcasting UK Ltd

*Interveners in support of the defendant in Case T-329/04 and T-336/04*: Kingdom of Denmark; TV 2/Danmark A/S and European Broadcasting Union (EBU)

**Re:**

APPLICATION, in Cases T-309/04 and T-317/04, for annulment of Commission Decision 2006/217/EC of 19 May 2004 on measures implemented by Denmark for TV 2/Danmark (OJ 2006 L 85, p. 1; corrigendum in OJ 2006 L 368, p. 112) and, in the alternative, of Article 2 of that decision or of paragraphs 3 and 4 of that Article, and, in Cases T-329/04 and T-336/04, for annulment of that decision in so far as it establishes the existence of State aid which is partly compatible with the common market.

**Operative part of the judgment**

*The Court:*

1. *Joins Cases T-309/04, T-317/04, T-329/04 and T-336/04 for the purposes of the judgment;*

2. *Annuls Commission Decision 2006/217/EC of 19 May 2004 on measures implemented by Denmark for TV 2/Danmark;*

3. *Orders TV 2/Danmark A/S, the Kingdom of Denmark and the Commission each to bear their own costs in Cases T-309/04 R and T-317/04 R;*

4. *Orders the Commission to bear its own costs in Cases T-309/04 and T-317/04, together with the costs incurred by TV 2/Danmark A/S and the Kingdom of Denmark in those cases;*

5. *Orders the European Broadcasting Union (EBU), SBS TV A/S, SBS Danish Television Ltd and Viasat Broadcasting UK Ltd each to bear their own costs in Case T-309/04;*

6. *Orders SBS TV, SBS Danish Television and Viasat Broadcasting UK each to bear their own costs, incurred both in their capacity as applicants and in their capacity as interveners, in Cases T-329/04 and T-336/04;*

7. *Orders Viasat Broadcasting UK to pay one-tenth of the costs incurred by the Commission, by TV 2/Danmark A/S, by the Kingdom of Denmark and by the EBU in Case T-329/04;*

8. *Orders SBS TV and SBS Danish Television to pay one-tenth of the costs incurred by the Commission, by TV 2/Danmark A/S, by the Kingdom of Denmark and by the EBU in Case T-336/04;*

9. *Orders the Commission, TV 2/Danmark A/S, the Kingdom of Denmark and the EBU each to bear nine-tenths of their own costs in Cases T-329/04 and T-336/04.*

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([1]) OJ C 262, 23.10.2004.

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## Judgment of the Court of First Instance of 9 October 2008 — Di Bucci v Commission

**(Case T-312/04)** ([1])

***(Action for annulment — Action for damages — Staff case — Promotion — Award of priority points)***

(2008/C 313/43)

*Language of the case: French*

**Parties**

*Applicant:* Vittorio Di Bucci (Brussels, Belgium) (represented by: M. van der Woude and V. Landes and, subsequently, by M. van der Woude, lawyers)

*Defendant:* Commission of the European Communities (represented by: H. Tserepa-Lacombe and V. Joris, Agents, and, subsequently, by V. Joris and G. Berscheid, Agents, and D. Wealbroeck, lawyer)

**Re:**

An action for annulment of:

— the decision of the Director General of the Legal Service of the Commission to award the applicant only one Directorate-General priority point for the 2003 promotion procedure, communicated on 2 July 2003, confirmed by a decision of the appointing authority notified on 16 December 2003;

— the decision of the appointing authority not to award the applicant any special priority points for additional activity in the interests of the institution for the 2003 promotion procedure, notified through the Sysper 2 system on 16 December 2003;

— the following decisions: the decision of the appointing authority to award the applicant a total of 20 points for the 2003 promotion procedure; the merit list of officials in grade A 5 for the 2003 promotion procedure published in Administrative Notices No 69-2003 of 13 November 2003; the list of officials promoted to grade A 4 for the 2003 promotion procedure and published in Administrative Notices No 73-2003 of 27 November 2003 and, in any event, the decision not to include the applicant's name on those lists.

— in so far as it is necessary, the decision of the appointing authority of 15 June 2004 rejecting the complaint brought on 12 February 2004 by the applicant;

— the decision of 11 April 2007, notified on 16 April 2003, by which the appointing authority decided to award the applicant one additional priority point for the 2003 promotion procedure, yielding a total of 2 priority points, and a total number of 21 points;

and for a declaration of the nullity of all decisions taken in the course of the 2003 promotion procedure contested in the present action and not replaced in 2007 and, in particular, the merit list of officials in grade A 5 for the 2003 promotion procedure, published in Administrative Notices No 69-2003 of 13 November 2003 and the list of officials promoted to grade A 4 for the 2003 promotion procedure, published in Administrative Notices No 73-2003 of 27 November 2003, and compensation of EUR 5 000.

**Operative part of the judgment**

*The Court:*

1. *Annuls the decisions of the Commission fixing the total promotion points for the applicant at 21 points and refusing to include his name on the list of officials promoted to grade A 4 for the 2003 promotion procedure;*

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

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

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([1]) OJ C 262, 23.10.2004.

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## Judgment of the Court of First Instance of 9 October 2008 — Wilms v Commission

**(Case T-328/04)** ([1])

***(Action for annulment — Action for damages — Staff case — Promotion — Award of priority points)***

(2008/C 313/44)

*Language of the case: French*

**Parties**

*Applicant:* Günter Wilms (Brussels, Belgium) (represented by: M. van der Woude and V. Landes and, subsequently, by M. van der Woude, lawyers)

*Defendant:* Commission of the European Communities (represented by: H. Tserepa-Lacombe and V. Joris, Agents, and, subsequently, by V. Joris and G. Berscheid, Agents, and D. Wealbroeck, lawyer)

**Re:**

An action for annulment of:

— the decision of the Director General of the Legal Service of the Commission to award the applicant only one Directorate-General priority point for the 2003 promotion procedure, communicated on 2 July 2003, confirmed by a decision of the appointing authority notified on 19 December 2003;

— the decision of the appointing authority not to award the applicant any special priority points for additional activity in the interests of the institution for the 2003 promotion procedure, notified through the Sysper 2 system on 19 December 2003;

— the following decisions: the decision of the appointing authority to award the applicant a total of 19 points for the 2003 promotion procedure; the merit list of officials in grade A 6 for the 2003 promotion procedure published in Administrative Notices No 69-2003 of 13 November 2003; the list of officials promoted to grade A 5 for the 2003 promotion procedure and published in Administrative Notices No 73-2003 of 27 November 2003 and, in any event, the decision not to include the applicant's name on those lists.

— in so far as it is necessary, the decision of the appointing authority of 14 June 2004 rejecting the complaint brought on 12 February 2004 by the applicant;

— the decision of the appointing authority of 17 April 2007 not to award the applicant any additional priority points for the 2003 promotion procedure;

and for compensation of EUR 5 000.

**Operative part of the judgment**

*The Court:*

1. *Annuls the decisions of the Commission fixing the total promotion points for the applicant at 19 points and refusing to include his name on the list of officials promoted to grade A 5 for the 2003 promotion procedure;*

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

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

([1]) OJ C 273, 6.11.2004.

## Judgment of the Court of First Instance of 9 October 2008 — Miguelez Herreras v Commission

**(Case T-407/04)** ([1])

***(Action for annulment — Action for damages — Civil service — Promotion — Award of priority points)***

(2008/C 313/45)

*Language of the case: French*

**Parties**

*Applicant:* Benedicta Miguelez Herreras (Brussels, Belgium) (represented initially by M. van der Woude and V. Landes, then M. van der Woude, lawyers)

*Defendant:* Commission of the European Communities (represented initially by H. Tserepa-Lacombe and V. Joris, then V. Joris and G. Berscheid, Agents, and D. Waelbroeck, lawyer)

**Re:**

Application for annulment of:

— the decision of the Director General of the Commission Legal Service to award the applicant 2 directorate general priority points under the 2003 promotion exercise, notified on 2 July 2003 and confirmed by a decision of the AIPN notified on 16 December 2003;

— the following decisions: decision of the AIPN to award the applicant a total of 23 points under the 2003 promotion exercise; the merit list of Grade C2 officials under the 2003 promotion exercise; the list of officials promoted to Grade C1 under the 2003 promotion exercise, published in Administrative Notice No 76-2003 of 3 December 2003; in any event, the decision not to include the applicant's name on those lists;

— in so far as necessary, the decision of the AIPN of 17 June 2004 dismissing the complaint brought by the applicant on 24 February 2004;

— the decision of the AIPN of 17 April 2007 not to award the applicant any supplementary priority points under the 2003 promotion exercise;

and a declaration that all the decisions taken in the 2003 promotion exercise challenged in this action and not replaced in 2007 are non-existent, and in particular the merit list for officials in Grade C2 under the 2003 promotion exercise, published in Administrative Notice No 71-2003 of 25 November 2003 and the list of officials promoted to Grade C1 under the 2003 promotion exercise published in Administrative Notice No 76-2003 of 3 December 2003 and seeking compensation of EUR 5 000.

**Operative part of the judgment**

*The Court:*

1. *Annuls the Commission decisions setting the applicant's total number of promotion points at 23 points and refusing to include her on the list of officials promoted to Grade C1 under the 2003 promotion exercise.*

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

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

([1]) OJ C 300, 4.12.2004.

## Judgment of the Court of First Instance of 15 October 2008 — Camar v Commission

**(Joined Cases T-457/04 and T-223/05)** ([1])

***(Common organisation of the markets — Bananas — Transitional measures — Article 30 of Council Regulation (EEC) No 404/93 — Judgment finding that the Commission had failed to act — Failure to give effect to a judgment of the Court — Action for annulment — Application for an order that effect be given to the judgment by way of financial equivalent — Compensation for non-material damage — Unlawful failure to act on the part of the Commission — Action for damages — Suspension of the limitation period — Article 46 of the Statute of the Court of Justice — Inadmissibility)***

(2008/C 313/46)

*Language of the case: Italian*

### Parties

*Applicant:* Camar Srl (Florence, Italy) (represented by: W. Viscardini, S. Donà and M. Paolin, lawyers)

*Defendant:* Commission of the European Communities (represented initially by: L. Visaggio, later by F. Clotuche-Duvieusart, agents, assisted by A. Dal Ferro, lawyer)

### Re:

In Case T-457/04, application, first, for annulment of the Commission's decision not to give effect to paragraph 1 of the operative part of the judgment of the Court of 8 June 2000, *Camar and Tico* v *Commission and Council* (Joined Cases T-79/96, T-260/97 and T-117/98 [2000] ECR II-2193), contained in the letter of 10 September 2004, secondly, for an order that the Commission give effect to paragraph 1 of the operative part of the abovementioned judgment in *Camar and Tico* v *Commission and Council* by the financial equivalent of the value of the certificates that it has not issued and, thirdly, for an order that the Commission pay compensation for non-material loss, and in Case T-223/05, application for an order that the Commission pay compensation, on the basis of the non-contractual liability of the European Community, for the loss which the applicant has suffered.

### Operative part of the judgment

*The Court:*

1. *annuls the decision of the Commission contained in the letter of 10 September 2004 from the Director General of the Directorate General 'Agriculture' refusing to give effect to paragraph 1 of the operative part of the judgment of the Court of 8 June 2000, Camar and Tico v Commission and Council (Joined Cases T-79/96, T-260/97 and T-117/98 [2000] ECR II-2193);*

2. *for the rest, dismisses the action in Case T-457/04 as unfounded;*

3. *dismisses the action in T-223/05 as inadmissible;*

4. *in Case T-457/04, orders Camar Srl and the Commission each to bear half of their own costs and to pay half of the costs of the other party;*

5. *in Case T-223/05, orders Camar Srl to bear its own costs and to pay the Commission's costs.*

([1]) OJ C 31, 5.2.2005.

## Judgment of the Court of First Instance of 15 October 2008 — Mote v Parliament

**(Case T-345/05)** ([1])

***(Privileges and immunities — Member of the European Parliament — Waiver of immunity)***

(2008/C 313/47)

*Language of the case: English*

### Parties

*Applicant:* Ashley Neil Mote (represented by: J. Lofthouse and C. Hayes, Barristers, and M. Monan, Solicitor)

*Defendant:* European Parliament (represented by: H. Krück, D. Moore and M. Windisch, acting as Agents)

### Re:

Application for the annulment of the decision of the Parliament of 5 July 2005 waiving the applicant's parliamentary immunity.

### Operative part of the judgment

*The Court:*

1. *Dismisses the action;*

2. *Orders Ashley Neil Mote to bear his own costs and to pay those of the European Parliament.*

([1]) OJ C 296, 26.11.2005.

## Judgment of the Court of First Instance of 15 October 2008 — Le Canne v Commission

**(Case T-375/05)** ([1])

***(Agriculture — Community financial assistance — Financial irregularity vitiating the request for payment of the balance — Decision to reduce the assistance — Expiry of the limitation period — Action for annulment and damages)***

(2008/C 313/48)

*Language of the case: French*

### Parties

*Applicant:* Azienda Agricola 'Le Canne' Srl (Rovigo, Italy) (represented by: G. Carraro and F. Mazzonetto, lawyers)

*Defendant:* Commission of the European Communities (represented by: C. Cattabriga and L. Visaggio, Agents, and A. Dal Ferro, lawyer)

### Re:

Application to annul Decision C(2005) 2939 of 26 July 2005 reducing the outstanding balance of Community financial assistance granted to the application for the modernisation and renovation of its fish farm facilities and an application for compensation for harm arising from that reduction.

### Operative part of the judgment

*The Court:*

1. *Annuls Commission Decision C(2005) 2939 of 26 July 2005 in so far as it reduces the Community financial assistance granted to Azienda Agricola 'Le Canne' Srl for project IT/0016/90/02 on account of the imputation to the eligible expenditure to that assistance of the profit made by Giradello SpA for the performance of works related to that project.;*

2. *Dismisses the action for damages*

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

([1]) OJ C 296, 26.11.2005.

## Order of the Court of First Instance of 15 October 2008 — Powerserv Personalservice v OHIM — Manpower (MANPOWER)

**(Case T-405/05)** ([1])

***(Community trade mark — Invalidity proceedings — Community word mark MANPOWER — Absolute grounds for refusal — Descriptive character — Partial alteration — Distinctive character acquired through use — Article 7(1)(c), Article 51(1) and (2) and Article 63(3) of Regulation (EC) No 40/94)***

(2008/C 313/49)

*Language of the case: German*

### Parties

*Applicant:* Powerserv Personalservice GmbH, formerly Manpower Personalservice GmbH (Sankt Pölten, Austria) (represented by: B. Kuchar, lawyer)

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

*Other party to the proceedings before the Board of Appeal of OHIM, and intervener before the Court of First Instance:* Manpower, Inc. (Milwaukee, Wisconsin, United States) (represented initially by: R. Moscona, Solicitor, subsequently by R. Moscona and A. Bryson, Barrister, and lastly by A. Bryson and V. Marsland, Solicitor)

### Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 22 July 2005 (Case R 499/2004-4) relating to an application for a declaration that Community trade mark No 76059, MANPOWER, is invalid.

### Operative part of the order

1. *Alters the Decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 22 July 2005 in Case R 499/2004-4 relating to an application for a declaration that Community trade mark No 76059, MANPOWER, is invalid, to the effect that that trade mark is not descriptive, in the Netherlands, Sweden, Finland or Denmark, of the goods and services for which it was registered. The operative part of that decision is maintained.*

2. *Dismisses, as to the remainder, the application by Manpower Inc. seeking alteration of the above decision of the Board of Appeal of OHIM.*

3. *Dismisses the action.*

4. *Orders Powerserv Personalservice GmbH to pay the costs.*

(1) OJ C 22, 28.1.2006.

## Judgment of the Court of First Instance of 21 October 2008 — Cassegrain v OHIM (Shape of a bag)

**(Case T-73/06)** (1)

***(Community trade mark — Application for a Community figurative mark — Shape of a bag — Absolute ground for refusal — Lack of distinctive character — Article 7(1)(b) of Regulation (EC) No 40/94)***

(2008/C 313/50)

*Language of the case: French*

### Parties

*Applicant:* Jean Cassegrain SAS (Paris, France) (represented by: Y. Coursin and T. van Innis, lawyers)

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

### Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 8 December 2005 (Case R 687/2005-2) concerning the registration of the figurative sign Shape of a bag as a Community trade mark.

### Operative part of the judgment

*The Court:*

1. *Dismisses the action;*

2. *Orders Jean Cassegrain SAS to pay the costs.*

(1) OJ C 108, 6.5.2006.

## Judgment of the Court of First Instance of 23 October 2008 — TIM and TTV v OHIM — PAST PERFECT

**(Case T-133/06)** (1)

***(Community trade mark — Invalidity proceedings — Community word mark PAST PERFECT — Rejection of the application for a declaration of invalidity — Article 7(1)(b), (c) and (d) of Regulation (EC) No 40/94 — Article 7(2))***

(2008/C 313/51)

*Language of the case: English*

### Parties

*Applicants:* TIM The International Music Company AG and TTV Tonträger-Vertrieb-2000 GmbH (Hamburg, Germany) (represented initially by J. Wendt and G. Kukuk, and subsequently by J. Wendt, lawyers)

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

*Other party to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance:* Past Perfect Ltd (Bucknell, Oxfordshire, United Kingdom) (represented initially by S. Disraeli, and subsequently by K. Tinkler, Solicitors)

### Re:

Action brought against the decision of the First Board of Appeal of OHIM of 3 February 2006 (Case R 150/2005-1), relating to invalidity proceedings between TIM The International Music Company AG and TTV Tonträger-Vertrieb-2000 GmbH, on the one hand, and Past Perfect Ltd, on the other.

### Operative part of the judgment

*The Court:*

1. *Dismisses the action;*

2. *Orders TIM The International Music Company AG and TTV Tonträger-Vertrieb-2000 GmbH to pay the costs.*

(1) OJ C 154, 1.7.2006.

## Judgment of the Court of First Instance of 23 October 2008 — Adobe v OHIM (FLEX)

**(Case T-158/06)** ([1])

***(Community trade mark — Application for the Community word mark FLEX — Absolute ground for refusal — Descriptive character — Article 7(1)(c) of Regulation (EC) No 40/94)***

(2008/C 313/52)

*Language of the case: English*

### Parties

*Applicant:* Adobe Systems Inc. (San Jose, California, United States) (represented by: M. Graf and F. Wesel, lawyers)

*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: P. Bullock, D. Botis and G. Schneider, Agents)

### Re:

Action for annulment of the decision of the Second Board of Appeal of OHIM of 11 April 2006 (Case R 1430/2005-2) concerning registration of the Community trade mark FLEX No 3 795 011.

### Operative part of the judgment

*The Court:*

1. *Dismisses the action;*

2. *Orders Adobe Systems Inc. to pay the costs.*

([1]) OJ C 190, 12.8.2006.

## Judgment of the Court of First Instance of 15 October 2008 — Rewe-Zentrale v OHIM (PORT LOUIS)

**(Case T-230/06)** ([1])

***(Community trade mark — Application for the Community word mark PORT LOUIS — Absolute grounds for refusal — Descriptive character — Designation of the geographical origin of the goods — Article 7(1)(c) of Regulation (EC) No 40/94)***

(2008/C 313/53)

*Language of the case: German*

### Parties

*Applicant:* Rewe-Zentrale AG (Cologne, Germany) (represented by: M. Kinkeldey and A. Bognár, lawyers)

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

### Re:

Action brought against the decision of the First Board of Appeal of OHIM of 21 June 2006 (Case R 25/2006-1) concerning an application to register the word mark PORT LOUIS as a Community trade mark.

### 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 21 June 2006 (Case R 25/2006-1);*

2. *orders OHIM to pay the costs.*

([1]) OJ C 261 of 28.10.2006.

## Judgment of the Court of First Instance of 15 October 2008 — Air Products and Chemicals v OHIM — Messer (Ferromix, Inomix and Alumix)

**(Joined Cases T-305/06 to T-307/06)** ([1])

***(Community trade mark — Opposition proceedings — Applications for the Community word marks Ferromix, Inomix and Alumix — Earlier Community word marks FERROMAXX, INOMAXX and ALUMAXX — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94)***

(2008/C 313/54)

*Language of the case: English*

### Parties

*Applicant:* Air Products and Chemicals, Inc. (Allentown, Pennsylvania, United States) (represented by: S. Heurung and C. Probst, lawyers)

*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: S. Laitinen and D. Botis, acting as Agents)

*Other party to the proceedings before the Board of Appeal of OHIM, intervener before the Court of First Instance:* Messer Group GmbH (Sulzbach, Germany) (represented by: W. Graf v. Schwerin and J. Schmidt, lawyers)

**Re:**

Actions brought against three decisions of the Second Board of Appeal of OHIM of 12 September 2006 (Joined Cases R 1270/2005-2 and R 1408/2005-2; R 1226/2005-2 and R 1398/2005-2; R 1225/2005-2 and R 1397/2005-2), concerning opposition proceedings between Air Products and Chemicals, Inc. and Messer Group GmbH.

**Operative part of the judgment**

*The Court:*

1. *Annuls the decisions of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 12 September 2006 (Joined Cases R 1270/2005-2 and R 1408/2005-2; R 1226/2005-2 and R 1398/2005-2; R 1225/2005-2 and R 1397/2005-2);*

2. *Orders OHIM to bear its own costs and pay the costs of Air Products and Chemicals, Inc.;*

3. *Orders Messer Group GmbH to bear its own costs.*

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([1]) OJ C 326, 30.12.2006.

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## Judgment of the Court of First Instance of 21 October 2008 — Aventis Pharma v OHIM — Nycomed (Prazol)

**(Case T-95/07)** ([1])

***(Community trade mark — Opposition proceedings — Application for the Community word mark PRAZOL — Earlier national word mark PREZAL — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94)***

(2008/C 313/55)

*Language of the case: English*

**Parties**

*Applicant:* Aventis Pharma SA (Antony, France) (represented by: R. Gilbey, lawyer)

*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented initially by S. Laitinen, and subsequently by Ó. Mondéjar Ortuño, acting as Agents)

*Other party to the proceedings before the Board of Appeal of OHIM, intervener before the Court of First Instance:* Nycomed GmbH, formerly Altana Pharma AG (Konstanz, Germany) (represented by: A. Ferchland, lawyer)

**Re:**

Action brought against the decision of the Fourth Board of Appeal of OHIM of 8 February 2007 (Case R 302/2005-4), relating to opposition proceedings between Altana Pharma AG and Aventis Pharma SA.

**Operative part of the judgment**

*The Court:*

1. *Annuls the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 8 February 2007 (Case R 302/2005-4);*

2. *Orders OHIM to bear its own costs and to pay those incurred by Aventis Pharma SA;*

3. *Orders Nycomed GmbH to bear its own costs.*

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([1]) OJ C 117, 26.5.2007.

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## Judgment of the Court of First Instance of 23 October 2008 — People's Mojahedin Organization of Iran v Council

**(Case T-256/07)** ([1])

***(Common foreign and security policy — Restrictive measures directed against certain persons and entities with a view to combating terrorism — Freezing of funds — Actions for annulment — Rights of the defence — Statement of reasons — Judicial review)***

(2008/C 313/56)

*Language of the case: English*

**Parties**

*Applicant:* People's Mojahedin Organization of Iran (Auvers sur Oise, France) (represented by: J.-P. Spitzer, lawyer, and D. Vaughan QC)

*Defendant:* Council of the European Union (represented by: M. Bishop and E. Finnegan, Agents)

*Interveners in support of the defendant:* United Kingdom of Great Britain and Northern Ireland (represented: initially by V. Jackson and T. Harris, and subsequently by V. Jackson, Agents, and assisted by S. Lee and M. Gray, Barristers); Commission of the European Communities (represented: initially by S. Boelaert and J. Aquilina, and subsequently by S. Boelaert, P. Aalto and P. van Nuffel, Agents); Kingdom of the Netherlands (represented by: M. de Grave and Y. de Vries, Agents)

**Re:**

APPLICATION, initially, for annulment of Council Decision 2007/445/EC of 28 June 2007 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 Decisions 2006/379/EC and 2006/1008/EC (OJ 2007 L 169, p. 58), so far as it concerns the applicant.

**Operative part of the judgment**

*The Court:*

1. *Dismisses the action as unfounded in so far as it seeks annulment of Council Decision 2007/445/EC of 28 June 2007 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 Decisions 2006/379/EC and 2006/1008/EC*

2. *Annuls Article 1 of Council Decision 2007/868/EC of 20 December 2007 implementing Article 2(3) of Regulation No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Decision 2007/445, and point 2.19 of the list annexed to that decision, in so far as they concern the People's Mojahedin Organization of Iran;*

3. *Dismisses the action as unfounded in so far as it seeks annulment of the other provisions of Decision 2007/868, so far as the People's Mojahedin Organization of Iran is concerned;*

4. *Orders the Council to bear, in addition to its own costs, one third of the costs of the People's Mojahedin Organization of Iran;*

5. *Orders the United Kingdom of Great Britain and Northern Ireland, the Commission and the Kingdom of the Netherlands to pay their own costs.*

([1]) OJ C 211, 8.9.2007.

## Judgment of the Court of First Instance of 20 October 2008 — Marcuccio v Commission

**(Case T-278/07 P)** ([1])

***(Appeal — Staff cases — Officials — Social security — Industrial accident — Decision to close the procedure for the application of Article 73 of the Staff Regulations — Lack of an act causing adverse effect — Appeal unfounded)***

(2008/C 313/57)

*Language of the case: Italian*

**Parties**

*Applicant:* Luigi Marcuccio (Tricase, Italy) (represented by: G. Cipressa, lawyer)

*Defendant:* Commission of the European Communities (represented by: J. Currall and C. Berardis-Kayser, agents, assisted by A. Dal Ferro, lawyer)

**Re:**

Appeal against the order of the European Union Civil Service Tribunal (First Chamber) of 11 May 2007 *Marcuccio* v *Commission* (Case F-2/06, not yet published in the ECR), for the annulment of that order.

**Operative part of the judgment**

*The Court:*

1. *dismisses the appeal;*

2. *orders Mr Luigi Marcuccio to bear his own costs and to pay the Commission's costs before this Court.*

([1]) OJ C 211, 8.9.2007.

## Judgment of the Court of First Instance of 15 October 2008 — TridonicAtco v OHIM (Intelligent Voltage Guard)

**(Case T-297/07)** ([1])

***(Community trade mark — Application for the Community figurative mark Intelligent Voltage Guard — Absolute grounds for refusal — Lack of distinctive character — Article 7(1)(b) of Regulation (EC) No 40/94)***

(2008/C 313/58)

*Language of the case: German*

### Parties

*Applicant:* TridonicAtco GmbH & Co. KG (Dornbirn, Austria) (represented initially by: L. Wiltschek, lawyer, later by L. Wiltschek and E. Tremmel, lawyers)

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

### Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 31 May 2007 (Case R 108/2007-2) concerning an application to register the figurative mark Intelligent Voltage Guard as a Community trade mark.

### Operative part of the judgment

*The Court:*

1. *Dismisses the application;*

2. *Orders TridonicAtco & Co. KG to pay the costs.*

([1]) OJ C 235 of 6.10.2007.

## Order of the Court of First Instance of 25 September 2008 — Regione Siciliana v Commission

**(Joined Cases T-392/03, T-408/03, T-414/03 and T-435/03)** ([1])

***(Action for annulment — ERDF — Withdrawal of financial aid — Recovery of sums already paid — Claims for payment of default interest — Compensation — Regional or local entity — No direct concern — Admissibility)***

(2008/C 313/59)

*Language of the case: Italian*

### Parties

*Applicant:* Regione Siciliana (Italy) (represented by: G. Aiello and A. Cingolo, avvocati dello Stato)

*Defendant:* Commission of the European Communities (represented by: E. de March, L. Flynn and G. Wilms, Agents, and A. Dal Ferro, lawyer)

### Re:

Case T-392/03: application to annul the Commission's letter of 6 October 2003, as far as it concerns the procedure for recovery of sums paid by the European Regional Development Fund (ERDF) in respect of the infrastructure project 'Dam across the Gibbesi' and the earlier and derivative acts; Case T-408/03: application for annulment of of the letter of 6 October 2003 as far as it concerns the procedure for the recovery of sums paid by the ERDF for the infrastructure projects 'Aragona Favara' and 'Plain of Catania' and the earlier and derivative acts, including the Commission's letter of 13 August 2003 and 14 August 2003; Case T-414/03: application for annulment of the letter of 6 October 2003 in so far as it concerns the procedure for the recovery of sums paid by the ERDF of the infrastructure project 'Messine-Palermo Motorway' and the earlier and derivative acts, including Commission debit note No 3240406591 of 25 September 2002, and in Case T-435/03: application to annul the Commission's letter of 24 October 2003 relating to the offsetting of Commission credits and debt connected to the ERDF assistance 'Porto Empedocle', 'Dam across the Gibbesi', 'Messine-Palermo', 'Aragona Favara' and 'Plain of Catania' together with the earlier and derivative acts.

### Operative part of the order

1. *The actions are dismissed as inadmissible.*

2. *The Regione Siciliana is ordered to pay the costs.*

([1]) OJ C 35 of 7.2.2004.

## Order of the Court of First Instance of 8 October 2008 — Gippini Fournier v Commission

**(Case T-23/05)** ([1])

***(Action for annulment — Action for damages — Staff case — Promotion — Award of priority points — Act not capable of being appealed — Preparatory acts — Inadmissibility)***

(2008/C 313/60)

*Language of the case: French*

### Parties

*Applicant:* Éric Gippini Fournier (Brussels, Belgium) (represented by: A. Theissen and, subsequently, by F. Ruggeri Laderchi, lawyers)

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

**Re:**

First, annulment of the Commission decisions not to award the applicant any priority points under the 2003 promotion procedure; to reject his appeal to the Promotions Committee seeking the award of priority points of any description; and to refuse to award priority points for work in the interest of the institution and, second, a claim for damages.

**Operative part of the order**

1. *The action is dismissed as inadmissible.*

2. *Each party is ordered to bear its own costs.*

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([1]) OJ C 82, 2.4.2005.

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## Order of the Court of First Instance of 6 October 2008 — Kaloudis v OHIM — Fédération française de tennis (RolandGarros SPORTSWEAR)

**(Case T-380/07)** ([1])

***(Community trade mark — Opposition proceedings — Application for Community figurative mark RolandGarros SPORTSWEAR — Previous national word mark Roland Garros — Late payment of the appeal fees — Decision of the Board of Appeal deeming the action to be unfounded)***

(2008/C 313/61)

*Language of the case: French*

**Parties**

*Applicant:* Dimitrios Kaloudis (Dassia, Greece) (represented by: G. Kaloudis, lawyer)

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

*Other party to the proceedings before the Board of Appeal of OHIM, intervening before the Court of First Instance:* Fédération française de tennis (FFT) (Paris, France) (represented by: F. Fajgenbaum, lawyer)

**Re:**

Action brought against the decision of the Fourth Board of Appeal of OHIM of 19 July 2007 (Case R 876/2006-4) concerning opposition proceedings between the Fédération française de tennis (FFT) and Mr Dimitrios Kaloudis.

**Operative part of the order**

*The Court:*

1. *Dismisses the action is as being in part manifestly lacking any foundation in law and in part manifestly inadmissible.*

2. *Orders Mr Dimitrios Kaloudis to pay the costs.*

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([1]) OJ C 283, 24.11.2007.

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## Action brought on 10 September 2008 — Murnauer Markenvertrieb v OHIM — Fitne Gesundheit und Wellness (Notfall Bonbons)

**(Case T-372/08)**

(2008/C 313/62)

*Language in which the application was lodged: German*

**Parties**

*Applicant:* Murnauer Markenvertrieb GmbH (Trebur, Germany) (represented by: H. Daniel and O.I. Haleen, 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:* Fitne Gesundheits- und Wellness GmbH (Salzhemmendorf, Germany)

**Form of order sought**

— Annul the decision of the Board of Appeal of OHIM of 10 July 2008 in Case R 909/2007-1;

— order the defendant to pay the costs.

**Pleas in law and main arguments**

*Registered Community trade mark in respect of which a declaration of invalidity has been sought:* Word mark 'Notfall Bonbons' for goods in classes 5 and 30 (Community trade mark No 3 563 251)

*Proprietor of the Community trade mark:* The applicant

*Applicant for the declaration of invalidity:* Fitne Gesundheits- und Wellness GmbH

*Decision of the Cancellation Division:* Rejection of the application for a declaration of invalidity of the trade mark concerned.

*Decision of the Board of Appeal:* Annulment of the decision of the Cancellation Division and granting of the application for a declaration of invalidity of the trade mark concerned.

*Pleas in law:* Infringement of Article 7(1)(b) and (c) of Council Regulation No 40/94, since the trade mark 'Notfall Bonbons' is not descriptive of the protected goods, nor does it lack the requisite distinctive character.

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## Action brought on 10 September 2008 — Aldi Einkauf v OHIM — Illinois Tools Works (TOP CRAFT)

**(Case T-374/08)**

(2008/C 313/63)

*Language in which the application was lodged: German*

### Parties

*Applicant:* Aldi Einkauf GmbH & Co. OHG (Essen, Germany) (represented by: N. Lützenrath, U. Rademacher, L. Kolks and C. Fürsen, 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:* Illinois Tools Works, Inc. (Glenview, United States)

### Form of order sought

— annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 25 June 2008 in Case No R 952/2007-2;

— order the defendant to pay the costs.

### Pleas in law and main arguments

*Applicant for a Community trade mark:* Aldi Einkauf GmbH & Co. OHG

*Community trade mark concerned:* the figurative mark 'TOP CRAFT' for goods in Classes 1 and 3 (Application No 3 444 767)

*Proprietor of the mark or sign cited in the opposition proceedings:* Illinois Tools Works, Inc.

*Mark or sign cited in opposition:* The national figurative marks 'krafft' for goods in Classes 1 and 3

*Decision of the Opposition Division:* Opposition upheld in part

*Decision of the Board of Appeal:* Annulment of the Opposition Division's decision in so far as the opposition in respect of the goods 'Chemicals used in agriculture, horticulture and forestry' in Class 1 was upheld

*Pleas in law:* Infringement of Article 8(1)(b) and Article 43(2) and (3) of Council Regulation No 40/94 and of Rule 22(3) of Commission Regulation No 2868/95 because:

— the documents submitted by the opponent cannot prove use of the opposing marks,

— there are significant graphical differences between the marks at issue,

— the word element 'TOP' is not descriptive and of slight distinctive character, and

— owing to the clear graphical differences and the additional word element 'TOP' in the mark applied for, a likelihood of confusion may be ruled out even if the goods are identical or similar.

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## Action brought on 11 September 2008 — Mustang v OHIM

**(Case T-379/08)**

(2008/C 313/64)

*Language in which the application was lodged: German*

### Parties

*Applicant:* Mustang-Bekleidungswerke GmbH + Co. KG (Künzelsau, Germany) (represented by: A. Klett and K. Weimer, 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:* Decathlon SA (Villeneuve d'Ascq, France)

### Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 8 July 2008 in Case R 859/2007-4;

— order the defendant to pay the costs of these proceedings and the proceedings before the Board of Appeal, including the applicant's costs in both proceedings.

**Pleas in law and main arguments**

*Applicant for a Community trade mark:* Mustang

*Community trade mark concerned:* Representation of a wavy line for goods and services in Classes 3, 18 and 25 (Application No 4 081 352)

*Proprietor of the mark or sign cited in the opposition proceedings:* Decathlon SA

*Mark or sign cited in opposition:* Existing national and international figurative mark constituted by the representation of a white wavy line on a black background, for goods in Classes 3, 18 and 25.

*Decision of the Opposition Division:* Upheld the opposition

*Decision of the Board of Appeal:* Rejection of the appeal

*Pleas in law:* Infringement of Article 8(1)(b) of Council Regulation No 40/94, because there are no aural, visual and conceptual similarities between the opposing marks that could give rise to a likelihood of confusion.

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## Action brought on 15 September 2008 — DAI v Commission

**(Case T-381/08)**

(2008/C 313/65)

*Language of the case: Portuguese*

**Parties**

*Applicant:* DAI — Sociedade de Desenvolvimento Agro-Industrial, SA (Coruche, Portugal) (represented by: J. da Cruz Vilaça, L. Romão and A. Mestre, lawyers)

*Defendant:* Commission of the European Communities

**Form of order sought**

— A declaration that the action is admissible;

— a decision allowing the action and annulment in part of Commission Decision 2008/445/EC of 11 June 2008 fixing the amounts per Member State of retroactive restructuring aid for growers and undertakings having restructured in the 2006/07 and 2007/08 marketing years in the framework of the temporary scheme for the restructuring of the sugar industry of the Community (notified under document number C(2008) 2557) ([1]), in so far as it refers to the amount of restructuring aid allocated to Portugal to be paid to growers and undertakings having restructured in the 2006/07 and 2007/08 marketing years;

— an order that the Commission should pay the costs.

**Pleas in law and main arguments**

Infringement of Article 1(1)(c) of Regulation (EC) No 1261/2007 ([2]) and of Article 16a of Regulation (EC) No 1264/2007 ([3]).

Breach of the principles of equality, legal certainty and of the non-retroactive effect of laws.

([1]) OJ 2008 L 156, p. 20.
([2]) Council Regulation (EC) No 1261/2007 of 9 October 2007 amending Regulation (EC) No 320/2006 establishing a temporary scheme for the restructuring of the sugar industry in the Community.
([3]) Commission Regulation (EC) No 1264/2007 of 26 October 2007 amending Regulation (EC) No 968/2006 laying down detailed rules for the implementation of Council Regulation (EC) No 320/2006 establishing a temporary scheme for the restructuring of the sugar industry in the Community.

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## Action brought on 15 September 2008 — Nadine Trautwein Rolf Trautwein v OHIM (Representation of a dog)

**(Case T-385/08)**

(2008/C 313/66)

*Language in which the application was lodged: German*

**Parties**

*Applicant:* Nadine Trautwein Rolf Trautwein GbR, Research Development (Leopoldshöhe, Germany) (represented by C. Czychowski, A. Nordemann and A. Dustmann)

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

**Form of order sought**

— annul Decision R 1734/2007-1 of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade marks and Designs) of 30 June 2008, together with the decision of the examiner of 25 September 2007 to the extent that protection was refused for the application for Community trade mark 4829321 for goods 'leather goods included in Class 18; bags' in Class 18 and 'foodstuffs for animals and drinks for domestic animals' in Class 31;

— authorise the publication of the application for the registration of Community trade mark 4829321 in respect of those goods as well and

— order the defendant to pay the costs.

**Pleas in law and main arguments**

*Community trade mark concerned:* Representation of a dog for goods in Classes 18, 25 and 31 — Application No 4 829 321

*Decision of the Examiner:* Rejection of the application

*Decision of the Board of Appeal:* Annulment of the contested decision as regards 'clothing, footwear and headgear; belts' in Class 25

*Pleas in law:* Infringement of Article 7(1)(b) and (c) of Council Regulatin No 40/94, as the mark applied for is neither directly nor exclusively descriptive, and has a sufficiently distinctive character.

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**Action brought on 15 September 2008 — Nadine Trautwein Rolf Trautwein v OHIM (Representation of a horse)**

**(Case T-386/08)**

(2008/C 313/67)

*Language in which the application was lodged: German*

**Parties**

*Applicant:* Nadine Trautwein Rolf Trautwein GbR, Research Development (Leopoldshohe, Germany) (represented by C. Czychowski, A. Nordemann and A. Dustmann)

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

**Form of order sought**

— annul the Decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 7 July 2008 in Case R 1730/2007-1 together with the decision of the examiner of 25 September 2007 and

— to authorise the publication of the application for the registration of Community trade mark 4829354;

— order the defendant to pay the costs.

**Pleas in law and main arguments**

*Community trade mark concerned:* Representation of a horse for goods in Classes 18, 25 and 31 — Application No 4 829 354

*Decision of the Examiner:* Rejection of the application

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

*Pleas in law:* Infringement of Article 7(1)(b) and (c) of Council Regulation No 40/94 as the trade mark applied for is neither directly nor exclusively descriptive, and has a sufficiently distinctive character.

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**Action brought on 22 September 2008 — Chocoladefabriken Lindt & Sprüngli v OHIM (Shape of a chocolate rabbit)**

**(Case T-395/08)**

(2008/C 313/68)

*Language in which the application was lodged: German*

**Parties**

*Applicant:* Chocoladefabriken Lindt & Sprüngli AG (Kilchberg, Switzerland) (represented by R. Lange, E. Schalast and G. Hild, lawyers)

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

**Form of order sought**

— annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 18 July 2008 (Case No R 419/2008-4);

— order the defendant to pay the costs.

**Pleas in law and main arguments**

*Community trade mark concerned:* the three-dimensional mark in the form of a chocolate rabbit for goods in Class 30 — Application No 3 664 372

*Decision of the Examiner:* Rejection of the application

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

*Pleas in law:* The mark applied for is unusual, has the function of indicating origin and has the necessary distinctive character.

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**Action brought on 24 September 2008 — Säveltäjäin Tekijänoikeustoimisto Teosto v Commission**

**(Case T-401/08)**

(2008/C 313/69)

*Language of the case: Finnish*

**Parties**

*Applicant:* Säveltäjäin Tekijänoikeustoimisto Teosto (Helsinki, Finland) (represented by: H. Pokela, lawyer)

*Defendant:* Commission of the European Communities

**Form of order sought**

— annul Decision C(2008) 3435 final of the Commission of 16 July 2008 in Case COMP/C2/38.698-CISAC in its entirety, and

— order the Commission to pay Teoston's costs.

**Pleas in law and main arguments**

The applicant seeks the annulment of Commission Decision C(2008) 3435 final (Case COMP/C2/38.698 CISAC) of 16 July 2008, according to which the undertakings mentioned therein have infringed Article 81 of the EC Treaty and Article 53 of the EEA Agreement by using in their reciprocal agreements membership restrictions contained in the International Confederation of Societies of Authors and Composers model contract ('the CISAC model contract') or by applying those membership restrictions in practice.

The Commission did not state sufficient reasons for its decision. In its decision, the Commission did not analyse the points of departure and the particular features of the various authors' associations which differed from one another. The Commission incorrectly considered that the reasons for this situation are restrictions on competition when it is a result of natural market development. Teostso has described to the Commission the nature of its business environment and the special circumstances relating to the music market in Finland, but the Commission made no mention of them at all in its decision. Since the Commission did not take account of the rationale for the way in which Teosto operated in the prevailing circumstances, Teosto considers that the grounds for the decision are not clear from the Commission's reasoning.

The Commission states that authors' associations whose membership conditions infringe Article 81(1) have done so either by including conditions in the agreement which are considered by the Commission to be prohibited or by continuing to apply such conditions despite the fact that they have been removed from the contracts. The Commission failed to specify by which of those two methods it considers that Teosto infringed Article 81(1). Further the decision does not indicate the grounds on which the Commission considered that Teosto had actually applied the membership conditions. There is an error of law in the decision because the Commission should be able to state more precisely what kind of infringements it considers the addressee of the decision to have committed and on what grounds.

The Commission's reasoning is contradictory as regards to the alleged coordination of regional restrictions.

The Commission has incorrectly applied Article 81 EC. Teosto has not infringed Article 81(1) by applying the membership conditions similar to those in Article 11(II) of the CISAC model contract, as the Commission claims. Teosta has not applied membership conditions considered to be prohibited by the Commission. The object of the membership conditions was not to restrict competition nor have they had such an effect.

Teosto has not infringed Article 81(1) by coordinating regional restrictions on licensing rights as the Commission claims. The regional restrictions were not the result of coordination. The object of the regional limits was not to restrict competition nor did they have such an effect. Restricting a mandate to a particular area, even if the national territory of a party to the agreement, is not prohibited. Such a practice has been permitted and, in Teosto's view, is the most logical solution, based on normal market conditions.

Teosto has not infringed Article 81(1) by applying exclusivity clauses similar to those in 1(I) and (II) of the CISAC's model contract. The exclusivity clause is competition neutral as its object was not to restrict competition nor did it have such an effect. Teosto did not apply an exclusivity clause; the extension of the regional scope of its own operations and the mandates granted to the parties to the contract have been dictated by the reasons of normal market logic.

If Teosto were to be considered to have infringed the prohibition in Article 81(1) in some way, the practice would however be authorised on the basis of Article 81(3). The present system and in particular that contained in the mandates' regional limits produce significant advantages in terms of efficiency, which benefit consumers without eliminating competition and without going further than necessary in order to achieve efficiency advantages.

The Commission has exceeded the limits of its competence by requiring the authors' associations to renegotiate the contracts. The Commission cannot order effective measures to change a practice which is not contrary to Article 81.

## Action brought on 30 September 2008 — GEMA v Commission

**(Case T-410/08)**

(2008/C 313/70)

*Language of the case: German*

### Parties

*Applicant:* Gesellschaft fur musikalische Aufführungs- und mechanische Vervielfältigungsrechte (GEMA) (Berlin, Germany) (represented by: R. Bechtold and I. Brinker, lawyers)

*Defendant:* Commission of the European Communities

### Form of order sought

— declare Article 3, Article 4(2) and, in so far as it refers to Article 3, Article 4(3) of the decision of the Commission of 16 July 2008 void under Article 231(1) EC, in so far as the applicant is concerned by it;

— order the Commission to pay the applicant's costs under Article 87(2) of the Rules of Procedure of the Court.

### Pleas in law and main arguments

The application concerns the decision of the Commission of 16 July 2008 in Case COMP/C2/38.698 — CISAC, in which the Commission declared that concerted practices in connection with the mutual exchange of musical copyright between societies of authors and composers belonging to the International Confederation of Societies of Authors and Composers (CISAC) were incompatible with Article 81 EC and Article 53 of the EEA Agreement. The applicant challenges the complaint concerning a concerted practice in Article 3 and the obligations arising from Article 4(2) and (3) of the decision in that regard to bring the infringement to an end.

It relies on four pleas in law in that regard.

First, the applicant submits that the decision of the Commission does not satisfy the requirements of Article 7 of Regulation (EC) No 1/2003 [1]. The decision infringes the principle of legality because it does not make it clear which practices are prohibited, is contradictory in itself and is, in addition, contrary to other administrative practice of the Commission. The applicant also complains of an infringement of the principle of proportionality and misuse of powers, as the Commission was guided by irrelevant considerations beyond criteria relevant to competition law and thereby exceeded its powers.

Secondly, the applicant pleads that the Commission committed a substantial procedural error since it gave inadequate reasons for its decision contrary to its obligation under Article 253 EC.

Thirdly, the decision is based on a manifest error of law and assessment, since the Commission concluded that there was a concerted practice from the structure of the market alone and therefore unlawfully reversed the distribution of the burden of proof laid down by law to the detriment of the applicant.

Fourthly, the Commission assumed incorrectly in law that there was an infringement of Article 81 EC, since it failed to understand that the grant of rights restricted to the national territory in the reciprocal contracts concluded between the members of CISAC in accordance with the CISAC standard contract is an essential and necessary element of the international collective protection of rights and an expression of the generally recognised principle of territoriality in copyright law and therefore is not a restriction of competition within the meaning of Article 81 EC.

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

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## Action brought on 29 September 2008 — AKKA/LAA v Commission

**(Case T-414/08)**

(2008/C 313/71)

*Language of the case: English*

### Parties

*Applicant:* Autortiesību un komunicēšanās konsultāciju aģentūra/Latvijas Autoru apvienība (AKKA/LAA) (Riga, Latvia) (represented by: M. Favart, lawyer)

*Defendant:* Commission of the European Communities

### Form of order sought

— Annul Article 3 of the Commission Decision of 16 July 2008 relating to a proceeding under Article 81 EC and Article 53 EEA (Case COMP/C2/38698 — CISAC); and

— Order the Commission to pay the costs.

**Pleas in law and main arguments**

By means of the present application, the applicant seeks, pursuant to Article 230 EC, the annulment of Article 3 of Commission Decision C(2008) 3435 of 16 July 2008 relating to a proceeding under Article 81 EC and Article 53 EEA (Case COMP/C2/38698 — CISAC) alleging that 24 of CISAC's ([1]) EEA based societies, including the applicant, engaged in a concerted practice 'by coordinating the territorial delineations of the reciprocal representation mandates granted to one another in a way which limits a licence to the domestic territory of each collecting society'.

The main pleas and arguments are similar or identical to those raised in Case T-413/08.

([1]) Refers to the International Confederation of Societies of Authors and Composers ('CISAC').

## Action brought on 29 September 2008 — IMRO v Commission

**(Case T-415/08)**

(2008/C 313/72)

*Language of the case: English*

**Parties**

*Applicant:* Irish Music Rights Organisation Ltd (The) — Eagras um Chearta Cheolta (IMRO) (Dublin, Ireland) (represented by: M. Favart, lawyer and D. Collins, Solicitor)

*Defendant:* Commission of the European Communities

**Form of order sought**

— Annul Article 3 of the Commission decision of 16 July 2008 relating to a proceeding under Article 81 EC and Article 53 EEA (Case COMP/C2/38.698-CISAC); and

— Order the Commission to pay the costs.

**Pleas in law and main arguments**

By means of this application the applicant seeks partial annulment, pursuant to Article 230 EC, of Commission Decision C(2008) 3435 final of 16 July 2008 (Case COMP/C2/38.698 — CISAC) relating to a proceeding under Article 81 EC and Article 53 EEA. Precisely, the applicant contests the Commission findings in Article 3 of the contested decision stating that territorial delineations of the reciprocal representation mandates granted by the authors' society to another constitute a concerted practice in violation of Article 81 EC and Article 53 EEA.

The applicant puts forward two pleas in law in support of its claims.

First, the applicant submits that the Commission committed an error of assessment, infringed the Article 81 EC and violated its obligation to state reasons foreseen by Article 253 EC by deciding that the parallel territorial delineation included in the reciprocal representation agreements concluded by the applicant and the other CISAC members is the result of a concerted practice. It claims that the level of evidence put forward by the Commission in the decision is insufficient to establish that the parallel conduct is not the result of normal competitive condition but constitutes such a concerted practice. The applicant further states that the presence of the delineation clause in all of its reciprocal agreements is justified by the interest of its members.

Second, in the alternative, the applicant argues that, contrary to the findings of the contested decision, the territorial delineation by CISAC societies in their reciprocal representation agreements is not restrictive of competition within the meaning of Article 81(1) EC because it concerns a form of competition that is not worthy of protection. Nevertheless, to the extent that the alleged concerted practice on territorial delineations should be considered to restrict competition, the applicant claims that it cannot be considered illegal or infringing Article 81(1) EC because it is necessary and proportionate to the legitimate objective of protecting the rights of the societies' members and the authors.

## Action brought on 29 September 2008 — EAÜ v Commission

**(Case T-416/08)**

(2008/C 313/73)

*Language of the case: English*

**Parties**

*Applicant:* Eesti Autorite Ühing (EAÜ) (Tallinn, Estonia) (represented by: M. Favart, lawyer)

*Defendant:* Commission of the European Communities

**Form of order sought**

— Annul Article 3 of the Commission decision of 16 July 2008 relating to a proceeding under Article 81 EC and Article 53 EEA (Case COMP/C2/38.698 — CISAC); and

— Order the Commission to pay the costs.

**Pleas in law and main arguments**

By means of this application the applicant seeks partial annulment pursuant to Article 230 EC of Commission Decision C(2008) 3435 final of 16 July 2008 (Case COMP/C2/38.698 — CISAC) relating to a proceeding under Article 81 EC and Article 53 EEA. Precisely, the applicant contests the Commission findings in Article 3 of the contested decision stating that territorial delineations of the reciprocal representation mandates granted by one authors' society to another constitute a concerted practice in violation of Article 81 EC and Article 53 EEA.

The pleas in law and main arguments raised by the applicant are identical to those raised by the applicant in Case T-415/08 IMRO v Commission.

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## Action brought on 29 September 2008 — SPA v Commission

**(Case T-417/08)**

(2008/C 313/74)

*Language of the case: English*

**Parties**

*Applicant:* Sociedade Portuguesa de Autores CRL (SPA) (Lisbon, Portugal) (represented by: M. Favart, lawyer)

*Defendant:* Commission of the European communities

**Form of order sought**

— Annul Article 3 of the Commission decision of 16 July 2008 relating to a proceeding under Article 81 EC and Article 53 EEA (Case COMP/C2/38.698 — CISAC); and

— Order the Commission to pay the costs.

**Pleas in law and main arguments**

By means of this application the applicant seeks partial annulment pursuant to Article 230 EC of Commission Decision C(2008) 3435 final of 16 July 2008 (Case COMP/C2/38.698 — CISAC) relating to a proceeding under Article 81 EC and Article 53 EEA. Precisely, the applicant contests the Commission findings in Article 3 of the contested decision stating that territorial delineations of the reciprocal representation mandates granted by one authors' society to another constitute a concerted practice in violation of Article 81 EC and Article 53 EEA.

The pleas in law and main arguments raised by the applicant are identical to those raised by the applicant in Case T-415/08 IMRO v Commission.

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## Action brought on 29 September 2008 — OSA v Commission

**(Case T-418/08)**

(2008/C 313/75)

*Language of the case: English*

**Parties**

*Applicant:* Ochranný svaz autorský pro práva k dílům hudebním (OSA) (Prague, Czech Republic) (represented by: M. Favart, lawyer)

*Defendant:* Commission of the European Communities

**Form of order sought**

— Annul Article 3 of the Commission decision of 16 July 2008 relating to a proceeding under Article 81 EC and Article 53 EEA (Case COMP/C2/38.698 — CISAC); and

— Order the Commission to pay the costs.

**Pleas in law and main arguments**

By means of this application the applicant seeks partial annulment pursuant to Article 230 EC of Commission Decision C(2008) 3435 final of 16 July 2008 (Case COMP/C2/38.698 — CISAC) relating to a proceeding under Article 81 EC and Article 53 EEA. Precisely, the applicant contests the Commission findings in Article 3 of the contested decision stating that territorial delineations of the reciprocal representation mandates granted by one authors' society to another constitute a concerted practice in violation of Article 81 EC and Article 53 EEA.

The pleas in law and main arguments raised by the applicant are identical to those raised by the applicant in Case T-415/08 IMRO v Commission.

**Action brought on 29 September 2008 — LATGA-A v Commission**

**(Case T-419/08)**

(2008/C 313/76)

*Language of the case: English*

**Parties**

*Applicant:* Lietuvos Autorių Teisių Gynimo Asociacijos Agentūra (LATGA-A) (Vilnius, Lithuania) (represented by: M. Favart, lawyer)

*Defendant:* Commission of the European communities

**Form of order sought**

— Annul Article 3 of the Commission decision of 16 July 2008 relating to a proceeding under Article 81 EC and Article 53 EEA (Case COMP/C2/38.698 — CISAC); and

— Order the Commission to pay the costs.

**Pleas in law and main arguments**

By means of this application the applicant seeks partial annulment pursuant to Article 230 EC of Commission Decision C(2008) 3435 final of 16 July 2008 (Case COMP/C2/38.698 — CISAC) relating to a proceeding under Article 81 EC and Article 53 EEA. Precisely, the applicant contests the Commission findings in Article 3 of the contested decision stating that territorial delineations of the reciprocal representation mandates granted by one authors' society to another constitute a concerted practice in violation of Article 81 EC and Article 53 EEA.

The pleas in law and main arguments raised by the applicant are identical to those raised by the applicant in Case T-415/08 IMRO v Commission.

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**Action brought on 29 September 2008 — SAZAS v Commission**

**(Case T-420/08)**

(2008/C 313/77)

*Language of the case: English*

**Parties**

*Applicant:* Združenje skladateljev, avtorjev in založnikov za zaščito avtorskih pravic Slovenije (Sazas) (Trzin, Slovenia) (represented by: M. Favart, lawyer)

*Defendant:* Commission of the European Communities

**Form of order sought**

— Annul Article 3 of the Commission Decision of 16 July 2008 relating to a proceeding under Article 81 EC and Article 53 EEA (Case COMP/C2/38698 — CISAC); and

— Order the Commission to pay the costs.

**Pleas in law and main arguments**

By means of the present application, the applicant seeks, pursuant to Article 230 EC, the annulment of Article 3 of Commission Decision C(2008) 3435 of 16 July 2008 relating to a proceeding under Article 81 EC and Article 53 EEA (Case COMP/C2/38698 — CISAC) alleging that 24 of CISAC's [1] EEA based societies, including the applicant, engaged in a concerted practice 'by coordinating the territorial delineations of the reciprocal representation mandates granted to one another in a way which limits a licence to the domestic territory of each collecting society'.

The main pleas and arguments are similar or identical to those raised in Case T-413/08.

[1] Refers to the International Confederation of Societies of Authors and Composers ('CISAC').

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**Action brought on 29 September 2008 — Performing Right Society v Commission**

**(Case T-421/08)**

(2008/C 313/78)

*Language of the case: English*

**Parties**

*Applicant:* Performing Right Society Ltd (London, United Kingdom) (represented by: J. Rivas Andrés and M. Nissen, lawyers)

*Defendant:* Commission of the European Communities

**Form of order sought**

— Annul the Commission decision dated 16 July 2008 relating to a proceeding under Article 81 EC and Article 53 EEA (Case COMP/C2/38.698 — CISAC) on the ground of the absence of a starting date of the infractions and hence of their duration;

— Annul Article 3 and/or Article 4(2) of the Commission decision dated 16 July 2008 relating to a proceeding under Article 81 EC and Article 53 EEA (Case COMP/C2/38.698 — CISAC);

— In the alternative, annul Article 3 and/or Article 4(2) of the Commission decision dated 16 July 2008 relating to a proceeding under Article 81 EC and Article 53 EEA (Case COMP/C2/38.698 — CISAC) as regards to the inclusion of the applicant;

— Order that the Commission pay the costs incurred by the applicant.

**Pleas in law and main arguments**

By means of the present application, the applicant seeks, pursuant to Article 230 EC, the annulment, in whole or in part, of Commission Decision C(2008) 3435 of 16 July 2008 relating to a proceeding under Article 81 EC and Article 53 EEA (Case COMP/C2/38.698 — CISAC).

Under the first plea in law, the applicant alleges that the reasoning in the contested decision does not support a finding of infringement for any of the following three forms of exploitation: satellite broadcasting, on-line and cable retransmission. On this basis, the applicant contends that the Commission failed to provide evidence relating to the alleged existence of a concerted practice in which all EEA CISAC members engaged by limiting the scope of their reciprocal mandates to their respective territories. This constitutes, according to the applicant, an error of assessment and an infringement of Article 81 EC and Article 253 EC. Indeed, the applicant submits that there is no parallel behaviour amongst all EEA CISAC members as illustrated by the exceptions to the territorial delineation mentioned in the contested decision itself. In addition, the applicant claims that the contested decision suffers from inadequate reasoning due to its silence as to the starting date and therefore the duration of the infringements, notably the concerted practice, thereby also infringing Articles 2 and 16(1) of Regulation (EC) No 1/2003 ([1]).

Under the second plea in law the applicant submits that the reasoning in the contested decision is faulty as it does not prove that the applicant participated in the alleged concerted practice. Further, according to the applicant there is a plausible explanation to its behaviour other than the existence of a concerted practice, namely, that is chooses those solutions which it deems to be commercially preferable. It is submitted, moreover, that the Commission, in accordance with established case-law, should have looked into whether it is rational individual economic behaviour to appoint one or more additional collecting societies to be able to compete with both the local collecting society and the grantor society doing direct licensing.

Under the third plea in law put forward by the applicant, the remedies imposed by Article 4(2) of the contested decision are legally uncertain, unjustified, not necessary and/or disproportionate to bring the alleged infringement to an end.

Under its fourth plea, the applicant submits that the Commission infringed its right to be heard by not informing it of its reasons not to accept the proposed commitments.

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

## Action brought on 27 September 2008 — INTER-NETT 2000 v OHIM

**(Case T-423/08)**

(2008/C 313/79)

*Language in which the application was lodged: Hungarian*

**Parties**

*Applicant(s):* INTER-NETT 2000 Kereskedelmi és Szolgáltató kft (Inter-Nett 2000 Kft) (Mór, Hungary) (represented by: E. Petruska, lawyer)

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

*Other party/parties to the proceedings before the Board of Appeal of OHIM:* Unión de Agricultores, S.A. (El Ejido, Spain)

**Form of order sought**

— Set aside the decision of the second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 22 July 2008 (Case R 71/2008-2) and

— Order the defendant to pay the costs.

**Pleas in law and main arguments**

*Applicant for a Community trade mark:* INTER-NETT 2000

*Community trade mark concerned:* the figurative mark 'HUNGARO' for goods and services in classes 29, 31 and 35 (application No 004508917).

*Proprietor of the mark or sign cited in the opposition proceedings:* Unión de Agricultores, S.A.

*Mark or sign cited in opposition:* Community trade mark 'UNIAGRO' for goods in class 31.

*Decision of the Opposition Division:* Opposition partly upheld.

*Decision of the Board of Appeal:* Appeal dismissed.

*Pleas in law:* Breach of Article 8(1)(b) of Regulation No 40/94, in that OHIM misinterpreted that provision, and breach of Article 12(a) and (b) of Regulation No 40/94, in that the decision of OHIM prevents the applicant from using the name of its proprietor and the designation of the geographical origin of the goods.

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## Action brought on 24 September 2008 — CEAHR v Commission

**(Case T-427/08)**

(2008/C 313/80)

*Language of the case: English*

### Parties

*Applicant:* Confédération Européenne des Associations d'Horlogers-Réparateurs (CEAHR) (Brussels, Belgium) (represented by: P. Mathijsen, lawyer)

*Defendant:* Commission of the European Communities

### Form of order sought

— Annul Commission Decision SG-Greffe(2008) D/204448 of 10 July 2008;

— Order the Commission to pay the costs.

### Pleas in law and main arguments

In the present case, the applicant seeks the annulment of Commission Decision SG-Greffe(2008) D/204448 of 10 July 2008 by which the Commission rejected, for lack of Community interest, the applicant's complaint regarding the alleged violations of Article 81 and 82 EC in connection with the watch manufacturers' refusal to supply spare parts to independent watch repairers [Case C(2008) 3600].

In support of its claims the applicant argues that the Commission infringed the Treaty by deforming the applicant's complaint and thus, using materially incorrect facts in its decision.

Furthermore, the applicant submits that the Commission committed errors in law and infringed Articles 81 and 82 EC by deciding that the watch manufacturers complained of didn't held a dominant position and that their refusal to sell spare parts outside the selective distribution system didn't constitute an abuse of their dominant position. The applicant also contests the Commission's conclusions that there were agreements or concerted practices between watch manufacturers.

The applicant contends that the Commission misused its power by using the argument of lack of Community interest after a four-year investigation of the applicant's complaint.

Moreover, the applicant claims that the Commission failed to state reasons thereby infringing Article 253 EC.

Finally, in the applicant's opinion, the Commission infringed the principle of impartiality in investigating its complaint.

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## Action brought on 30 September 2008 — STEF v Commission

**(Case T-428/08)**

(2008/C 313/81)

*Language of the case: English*

### Parties

*Applicant:* Samband tónskálda og eigenda flutningsréttar (STEF) (Reykjavík, Island) (represented by: H. Melkorka Óttarsdóttir, lawyer)

*Defendant:* Commission of the European Communities

### Form of order sought

— Annul Article 3 of the Commission decision of 16 July 2008 relating to a proceeding under Article 81 EC and Article 53 EEA (Case COMP/C2/38.698 — CISAC); and

— Order the Commission to pay the costs.

**Pleas in law and main arguments**

By means of this application the applicant seeks partial annulment pursuant to Article 230 EC of Commission Decision C(2008) 3435 final of 16 July 2008 (Case COMP/C2/38.698 — CISAC) relating to a proceeding under Article 81 EC and Article 53 EEA. Precisely, the applicant contests the Commission findings in Article 3 of the contested decision stating that territorial delineations of the reciprocal representation mandates granted by one authors' society to another constitute a concerted practice in violation of Article 81 EC and Article 53 EEA.

The applicant puts forward four pleas in law in support of its claims.

First, the applicant submits that the Commission committed an error of assessment and infringed Article 81 EC by deciding that the parallel territorial delineation included in the reciprocal representation agreements concluded by the applicant and the other CISAC members is the result of a concerted practice. It claims that the level of evidence put forward by the Commission in the decision is insufficient to establish that the parallel conduct is not the result of normal competitive conditions but constitutes such a concerted practice. The applicant further states that the presence of the delineation clause in all of its reciprocal agreements is necessary to protect effectively and sufficiently the interest of the authors represented by the applicant and the other CISAC members.

Secondly, the applicant contends that, contrary to the findings of the contested decision, the territorial delineation by CISAC societies in their reciprocal representation agreements is not restrictive of competition within the meaning of Article 81(1) EC because to create and protect the competition between the authors' societies would be inconsistent with the fundamental nature of the collecting society which is to protect the rights of its members and operate exclusively for its members.

Thirdly, in the alternative, the applicant argues that, even if the territorial delineation constituted a concerted practice within the meaning of Article 81(1) EC, the conditions of Article 81(3) EC are fulfilled. It states that the challenged practice improves the distribution of music, allows consumers fair share of the resulting benefits, does not impose restrictions on undertakings which are not indispensable to the attainment of the objective nor afford them the possibility of eliminating competition in respect of a substantial part of the products. This practice should be then considered to be necessary and proportionate, in the meaning of Article 81(3) EC to the legitimate objective of protecting the rights of the societies' members and the authors.

Finally, the applicant claims that the Commission failed to apply Article 151(4) EC in its decision which states that the Community shall take into account cultural aspects in its action under other provisions of the Treaty, in particular in order to respect and to promote the diversity of its cultures.

## Action brought on 30 September 2008 — Grain Millers v OHIM — Grain Millers (GRAIN MILLERS)

**(Case T-429/08)**

(2008/C 313/82)

*Language in which the application was lodged: English*

**Parties**

*Applicant:* Grain Millers, Inc. (Eden Prairie, United States) (represented by: L.-E. Ström, lawyer)

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

*Other party to the proceedings before the Board of Appeal:* Grain Millers GmbH & Co. KG (Bremen, Germany)

**Form of order sought**

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 23 July 2008 in case R 1192/2007-2; and

— Order the other party to the proceedings before the Board of Appeal to pay the costs.

**Pleas in law and main arguments**

*Applicant for the Community trade mark:* The applicant

*Community trade mark concerned:* The figurative mark 'GRAIN MILLERS' for goods in classes 29, 30 and 31 — application No 363 8657

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

*Mark or sign cited:* German 'business designation' 'GRAIN MILLERS' and its figurative version

*Decision of the Opposition Division:* Rejected the opposition in its entirety

*Decision of the Board of Appeal:* Partial dismissal of the appeal

*Pleas in law:* Infringement of Article 8(4) of Council Regulation No 40/94 as the Board of Appeal has overestimated the value of the evidence submitted by the other party to the proceedings before the Board of Appeal in order to substantiate prior rights over the earlier trade mark.

## Action brought on 30 September 2008 — Grain Millers v OHIM — Grain Millers (GRAIN MILLERS)

**(Case T-430/08)**

(2008/C 313/83)

*Language in which the application was lodged: English*

### Parties

*Applicant:* Grain Millers, Inc. (Eden Prairie, United States) (represented by: L.-E. Ström, lawyer)

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

*Other party to the proceedings before the Board of Appeal:* Grain Millers GmbH & Co. KG (Bremen, Germany)

### Form of order sought

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 23 July 2008 in case R 478/2007-2; and

— Order the other party to the proceedings before the Board of Appeal to pay the costs.

### Pleas in law and main arguments

*Applicant for the Community trade mark:* The applicant

*Community trade mark concerned:* The word mark 'GRAIN MILLERS' for goods in classes 29, 30 and 31 — application No 3 650 256

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

*Mark or sign cited:* German 'business designation' 'GRAIN MILLERS' and its figurative version

*Decision of the Opposition Division:* Partially rejected the opposition

*Decision of the Board of Appeal:* Partial dismissal of the appeal

*Pleas in law:* Infringement of Article 8(4) of Council Regulation No 40/94 as the Board of Appeal has overestimated the value of the evidence submitted by the other party to the proceedings before the Board of Appeal in order to substantiate prior rights over the earlier trade mark.

## Action brought on 1 October 2008 — Bulur Giyim Sanayi ve Ticaret Sirketi v OHIM — Denim (VIGOSS)

**(Case T-431/08)**

(2008/C 313/84)

*Language in which the application was lodged: English*

### Parties

*Applicant:* Bulur Giyim Sanayi ve Ticaret Sirketi (Istanbul, Turkey) (represented by: R. Böhm, lawyer)

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

*Other party to the proceedings before the Board of Appeal:* A V Denim, Inc. (trading as A&V Denim, Inc.) (New York, United States)

### Form of order sought

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 18 July 2008 in case R 1366/2007-2, insofar as it dismissed the appeal lodged by the applicant against the decision of the Opposition Division of 26 June 2007 ruling on opposition No B 923 005; and

— Order the defendant to pay the costs.

### Pleas in law and main arguments

*Applicant for the Community trade mark:* The other party to the proceedings before the Board of Appeal

*Community trade mark concerned:* The word mark 'VIGOSS' for goods in classes 14, 18 and 25

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

*Mark or sign cited:* International trade mark registration No 771 374 of the figurative mark 'VIGOSS' for goods in class 25

*Decision of the Opposition Division:* Partially rejected the application

*Decision of the Board of Appeal:* Partially annulled the contested decision and dismissed the appeal for the reminder

*Pleas in law:* Infringement of Article 8(1)(b) of Council Regulation No 40/94 as the Board of Appeal failed to take into account all relevant factors when assessing the likelihood of confusion between the conflicting trade marks.

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## Action brought on 1 October 2008 — TONO v Commission

**(Case T-434/08)**

(2008/C 313/85)

*Language of the case: English*

### Parties

*Applicant:* TONO (Oslo, Norway) (represented by: S. Teigum and A. Ringnes, lawyers)

*Defendant:* Commission of the European Communities

### Form of order sought

The applicant respectfully requests the Court of First Instance of the European Communities to:

— Annul Article 3 of Commission Decision COMP/C2/38.698 — CISAC;

— In the alternative, annul Article 3 of Commission Decision COMP/C2/38.698 — CISAC with regard to cable retransmission;

— Order the Commission to bear the applicant's costs;

### Pleas in law and main arguments

By means of its application the applicant seeks partial annulment of Commission Decision C(2008) 3435, of 16 July 2008, relating to a proceeding under Article 81 EC and Article 53 EEA (Case COMP/C2/38.698 — CISAC) and in particular, of its Article 3, determining that the EEA CISAC ([1]) members engaged in a concerted practice in violation of Article 81 EC and Article 53 EEA 'by coordinating the territorial delineations of the reciprocal representation mandates granted to one another in a way which limits a licence to the domestic territory of each collecting society'. In the alternative, the applicant seeks annulment of Article 3 of the contested decision with regards to cable retransmission.

The applicant submits that the contested decision is vitiated both by errors of fact and of law, as well the breach of the applicant's procedural guarantees relating to its right to be heard.

With regards to the alleged errors of fact, the applicant claims that the Commission has failed to acknowledge the system of collective licensing copyrights for musical works and thereby also the Norwegian factual context.

With regards to the alleged errors of law, the applicant submits the following:

First, the applicant claims that the contested decision suffers from a formal error which should result in the decision being repealed. Namely, the applicant argues that its right to be heard has been violated since the final decision differs from the statement of objections on a central point relating to the description of the infringement.

Second, the applicant contests the fact that the inclusion of territorial delineation in the reciprocal agreements, in which it participated, is the result of concerted practices between the EEA CISAC members.

Third, the applicant contends that the Commission erroneously concluded that the parallel territorial delineation as regards retransmission in cable is restrictive of competition in violation of Article 81(1) EC. According to the applicant, the alleged concerted practice on territorial delineation concerns a form of competition that is not in itself protected by Article 81(1) EC. In addition, the applicant argues that the Commission committed an error of fact when assuming that there is a national monopoly in Norway for multi-repertoire licensing of public performance rights covering retransmission in cable networks. Moreover, the applicant submits that, even if the alleged concerted practice was considered to restrict competition, it does not infringe Article 81(1) EC because it is necessary and proportionate to a legitimate objective, having regard to the particular requirements of the management of licensing, performing rights, auditing, monitoring and enforcement in relation to re-transmission by cable.

Fourth, the applicant claims that the territorial delineations of its reciprocal agreements are exempted under Article 81(3) EC. The applicant's submission in this respect is that the abovementioned delineations are indispensable to the upholding of the efficient one-stop-shop principles and the Norwegian extended licensing system, thereby ensuring a minimum degree of administration, whilst at the same time safeguarding the interests of the rights holders.

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([1]) International Confederation of Societies of Authors and Composers.

## Action brought on 3 October 2008 — Tokita Management Service v OHIM — Eminent Food (TOMATOBERRY)

**(Case T-435/08)**

(2008/C 313/86)

*Language in which the application was lodged: English*

### Parties

*Applicant:* Tokita Management Service Corp. (Saitama, Japan) (represented by: P. Brownlow and N. Jenkins, Solicitors and A. Bryson, Barrister)

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

*Other party to the proceedings before the Board of Appeal:* Eminent Food BV (Bussum, Netherlands)

### Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 18 July 2008 in case R 1219/2007-4; and

— Order OHIM to pay the costs.

### Pleas in law and main arguments

*Applicant for the Community trade mark:* The applicant

*Community trade mark concerned:* The word mark 'TOMATOBERRY' for goods in class 31 — application No 3 797 909

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

*Mark or sign cited:* Community trade mark registration No 3 344 711 of the figurative mark 'Tomberry' for goods and services in classes 31, 35 and 44

*Decision of the Opposition Division:* Upheld the opposition in its entirety

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

*Pleas in law:* Infringement of Article 8(1)(b) of Council Regulation No 40/94 as the Board of Appeal erred in its finding that the trade marks concerned are highly similar visually and conceptually; infringement of Article 8(1)(a) and/or Article 73 and/or Article 74(1) of Council Regulation No 40/94 as the Board of Appeal erred in its conclusion that the Opposition Division's finding that the opposition must be upheld on the ground of Article 8(1)(a) of Council Regulation No 40/94 was correct.

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## Action brought on 6 October 2008 — CDC Hydrogene Peroxide v Commission

**(Case T-437/08)**

(2008/C 313/87)

*Language of the case: German*

### Parties

*Applicant:* CDC Hydrogene Peroxide Cartel Damage Claims (CDC Hydrogene Peroxide) (represented by: R. Wirtz, lawyer)

*Defendant:* Commission of the European Communities

### Form of order sought

— declare that decision SG.E3/MM/psi D(2008) 6658 of the Commission of 8 August 2008 is void pursuant to Article 231(1) EC;

— order the defendant to pay the applicant's necessary costs under Article 87(2) of the Rules of Procedure of the Court of First Instance.

### Pleas in law and main arguments

The applicant, which brings actions for compensation of undertakings injured by the European hydrogen peroxide cartel, challenges the decision of the Commission of 8 August 2008, by which its application on the basis of Article 2(1) of Regulation (EC) No 1049/2001 [1] for full access to the statement of contents of the case-file in Case COMP/F/38.620 — *Hydrogen peroxide and perborate* was refused.

In support of its claims the applicant complains of the infringement of the first and third indent of Article 4(2) of Regulation (EC) No 1049/2001, as the exceptions contained in those provisions were misinterpreted or misapplied.

The applicant relies on four pleas in law in that regard.

First, the decision infringes the principle of strict interpretation and application of the exception. The Commission has not demonstrated any actual foreseeable and not merely hypothetical risk of detriment to the interests protected.

Secondly, the contested decision is inconsistent with the principles of law of effective compensation for infringements of EC competition law, as the interest of the injured parties in the details of the infringement is to be valued more highly than the interest of the undertakings in not disclosing to the public the details of the infringement alleged by the Commission and the scope of its cooperation with the Commission within the framework of the leniency notice.

Thirdly, the contested decision is not justified by the exception in the first indent of Article 4(2) of Regulation (EC) No 1049/2001 concerning the protection of commercial interests.

Fourthly, the contested decision is not justified by the exception in the third indent of Article 4(2) of Regulation (EC) No 1049/2001 concerning the protection of the purpose of inspections and investigations.

(1) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145 of 31.5.2001, p. 43).

## Action brought on 29 September 2008 — FIFA v OHIM — Ferrero (WORLD CUP 2006)

**(Case T-444/08)**

(2008/C 313/88)

*Language in which the application was lodged: English*

### Parties

*Applicant:* Fédération Internationale de Football Association (FIFA) (Zurich, Switzerland) (represented by: D. Alexander QC, A. Barav, Barrister, R. Buchel and C. Rassmann, lawyers)

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

*Other party to the proceedings before the Board of Appeal:* Ferrero OHG mbH (Stadtallendorf, Germany)

### Form of order sought

— Annul, in whole or in part, the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 20 June 2008 in case R 1466/2005-1; and

— Order OHIM to pay the costs.

### Pleas in law and main arguments

*Registered Community trade mark subject of the application for a declaration of invalidity:* The word mark 'WORLD CUP 2006' for goods and services in classes 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 18, 20, 21, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41 and 42 — Community trade mark registration No 2 152 817

*Proprietor of the Community trade mark:* The applicant

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

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

*Decision of the Board of Appeal:* Annulment of the decision of the Cancellation Division

*Pleas in law:* (i) Infringement of Article 73 and 74(1) of Council Regulation No 40/94 in so far as the Board of Appeal has based, largely, its decision on Article 7(1)(c) of Council Regulation No 40/94, a provision which was neither invoked by the other party to the proceedings before the Board of Appeal, nor relied upon by the Cancellation Division; (ii) Alternatively, infringement of Article 7(1)(c) of Council Regulation No 40/94 as the Board of Appeal failed to consider the registered Community trade mark subject of the application for a declaration of invalidity as a whole, through the eyes of the average consumer and to apply the relevant law relating to the assessment of descriptiveness of the goods and/or services applied for; and (iii) Infringement of Article 7(1)(b) of Council Regulation No 40/94 as the Board of Appeal erred in its finding that the registered Community trade mark subject of the application for a declaration of invalidity was devoid of the necessary distinctive character; and (iv) Infringement of Articles 7(3) and 51(2) of Council Regulation No 40/94 as the Board of Appeal erred in its finding that the registered Community trade mark subject of the application for a declaration of invalidity had not acquired a distinctive character for services in class 41.

**Action brought on 29 September 2008 — FIFA v OHIM — Ferrero (GERMANY 2006)**

**(Case T-445/08)**

(2008/C 313/89)

*Language in which the application was lodged: English*

**Parties**

*Applicant:* Fédération Internationale de Football Association (FIFA) (Zurich, Switzerland) (represented by: D. Alexander QC, A. Barav, Barrister, R. Buchel and C. Rassmann, lawyers)

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

*Other party to the proceedings before the Board of Appeal:* Ferrero OHG mbH (Stadtallendorf, Germany)

**Form of order sought**

— Annul, in whole or in part, the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 30 June 2008 in case R 1467/2005-1; and

— Order OHIM to pay the costs.

**Pleas in law and main arguments**

*Registered Community trade mark subject of the application for a declaration of invalidity:* The word mark 'GERMANY 2006' for goods and services in classes 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 18, 19, 20, 21, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41 and 42 — Community trade mark registration No 2 153 005

*Proprietor of the Community trade mark:* The applicant

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

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

*Decision of the Board of Appeal:* Annulment of the decision of the Cancellation Division

*Pleas in law:* (i) Infringement of Article 73 and 74(1) of Council Regulation No 40/94 in so far as the Board of Appeal has based, largely, its decision on Article 7(1)(c) of Council Regulation No 40/94, a provision which was neither invoked by the other party to the proceedings before the Board of Appeal, nor relied upon by the Cancellation Division; (ii) Alternatively, infringement of Article 7(1)(c) of Council Regulation No 40/94 as the Board of Appeal failed to consider the registered Community trade mark subject of the application for a declaration of invalidity as a whole, through the eyes of the average consumer and to apply the relevant law relating to the assessment of descriptiveness of the goods and/or services applied for; and (iii) Infringement of Article 7(1)(b) of Council Regulation No 40/94 as the Board of Appeal erred in its finding that the registered Community trade mark subject of the application for a declaration of invalidity was devoid of the necessary distinctive character; and (iv) Infringement of Articles 7(3) and 51(2) of Council Regulation No 40/94 as the Board of Appeal erred in its finding that the registered Community trade mark subject of the application for a declaration of invalidity had not acquired a distinctive character for services in class 41 and for all goods which are subject for merchandising.

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**Action brought on 29 September 2008 — FIFA v OHIM — Ferrero (WM 2006)**

**(Case T-446/08)**

(2008/C 313/90)

*Language in which the application was lodged: English*

**Parties**

*Applicant:* Fédération Internationale de Football Association (FIFA) (Zurich, Switzerland) (represented by: D. Alexander QC, A. Barav, Barrister, R. Buchel and C. Rassmann, lawyers)

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

*Other party to the proceedings before the Board of Appeal:* Ferrero OHG mbH (Stadtallendorf, Germany)

**Form of order sought**

— Annul, in whole or in part, the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 30 June 2008 in case R 1468/2005-1; and

— Order OHIM to pay the costs.

**Pleas in law and main arguments**

*Registered Community trade mark subject of the application for a declaration of invalidity:* The word mark 'WM 2006' for goods and services in classes 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 18, 20, 21, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41 and 42 — Community trade mark registration No 2 155 521

*Proprietor of the Community trade mark:* The applicant

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

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

*Decision of the Board of Appeal:* Annulment of the decision of the Cancellation Division

*Pleas in law:* (i) Infringement of Article 73 and 74(1) of Council Regulation No 40/94 in so far as the Board of Appeal has based, largely, its decision on Article 7(1)(c) of Council Regulation No 40/94, a provision which was neither invoked by the other party to the proceedings before the Board of Appeal, nor relied upon by the Cancellation Division; (ii) Alternatively, infringement of Article 7(1)(c) of Council Regulation No 40/94 as the Board of Appeal failed to consider the registered Community trade mark subject of the application for a declaration of invalidity as a whole, through the eyes of the average consumer and to apply the relevant law relating to the assessment of descriptiveness of the goods and/or services applied for; and (iii) Infringement of Article 7(1)(b) of Council Regulation No 40/94 as the Board of Appeal erred in its finding that the registered Community trade mark subject of the application for a declaration of invalidity was devoid of the necessary distinctive character; and (iv) Infringement of Articles 7(3) and 51(2) of Council Regulation No 40/94 as the Board of Appeal erred in its finding that the registered Community trade mark subject of the application for a declaration of invalidity had not acquired a distinctive character for services in class 41.

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## Action brought on 29 September 2008 — FIFA v OHIM — Ferrero (WORLD CUP GERMANY)

**(Case T-447/08)**

(2008/C 313/91)

*Language in which the application was lodged: English*

**Parties**

*Applicant:* Fédération Internationale de Football Association (FIFA) (Zurich, Switzerland) (represented by: D. Alexander QC, A. Barav, Barrister, R. Buchel and C. Rassmann, lawyers)

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

*Other party to the proceedings before the Board of Appeal:* Ferrero OHG mbH (Stadtallendorf, Germany)

**Form of order sought**

— Annul, in whole or in part, the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 30 June 2008 in case R 1469/2005-1; and

— Order OHIM to pay the costs.

**Pleas in law and main arguments**

*Registered Community trade mark subject of the application for a declaration of invalidity:* The word mark 'WORLD CUP GERMANY' for goods and services in classes 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 18, 20, 21, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41 and 42 — Community trade mark registration No 2 152 635

*Proprietor of the Community trade mark:* The applicant

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

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

*Decision of the Board of Appeal:* Annulment of the decision of the Cancellation Division

*Pleas in law:* (i) Infringement of Article 73 and 74(1) of Council Regulation No 40/94 in so far as the Board of Appeal has based, largely, its decision on Article 7(1)(c) of Council Regulation No 40/94, a provision which was neither invoked by the other party to the proceedings before the Board of Appeal, nor relied upon by the Cancellation Division; (ii) Alternatively, infringement of Article 7(1)(c) of Council Regulation No 40/94 as the Board of Appeal failed to consider the registered Community trade mark subject of the application for a declaration of invalidity as a whole, through the eyes of the average consumer and to apply the relevant law relating to the assessment of descriptiveness of the goods and/or services applied for; and (iii) Infringement of Article 7(1)(b) of Council Regulation No 40/94 as the Board of Appeal erred in its finding that the registered Community trade mark subject of the application for a declaration of invalidity was devoid of the necessary distinctive character.

## Action brought on 29 September 2008 — FIFA v OHIM — Ferrero (WORLD CUP 2006 GERMANY)

**(Case T-448/08)**

(2008/C 313/92)

*Language in which the application was lodged: English*

### Parties

*Applicant:* Fédération Internationale de Football Association (FIFA) (Zurich, Switzerland) (represented by: D. Alexander QC, A. Barav, Barrister, R. Buchel and C. Rassmann, lawyers)

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

*Other party to the proceedings before the Board of Appeal:* Ferrero OHG mbH (Stadtallendorf, Germany)

### Form of order sought

— Annul, in whole or in part, the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 30 June 2008 in case R 1470/2005-1; and

— Order OHIM to pay the costs.

### Pleas in law and main arguments

*Registered Community trade mark subject of the application for a declaration of invalidity:* The word mark 'WORLD CUP 2006 GERMANY' for goods and services in classes 1, 3, 4, 6, 7, 8, 9, 11, 12, 14, 16, 18, 20, 25, 28, 29, 30, 32, 35, 36, 37, 38, 41 and 42 — Community trade mark registration No 2 047 843

*Proprietor of the Community trade mark:* The applicant

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

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

*Decision of the Board of Appeal:* Annulment of the decision of the Cancellation Division

*Pleas in law:* (i) Infringement of Article 73 and 74(1) of Council Regulation No 40/94 in so far as the Board of Appeal has based, largely, its decision on Article 7(1)(c) of Council Regulation No 40/94, a provision which was neither invoked by the other party to the proceedings before the Board of Appeal, nor relied upon by the Cancellation Division; (ii) Alternatively, infringement of Article 7(1)(c) of Council Regulation No 40/94 as the Board of Appeal failed to consider the registered Community trade mark subject of the application for a declaration of invalidity as a whole, through the eyes of the average consumer and to apply the relevant law relating to the assessment of descriptiveness of the goods and/or services applied for; and (iii) Infringement of Article 7(1)(b) of Council Regulation No 40/94 as the Board of Appeal erred in its finding that the registered Community trade mark subject of the application for a declaration of invalidity was devoid of the necessary distinctive character.

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## Action brought on 2 October 2008 — Stim v Commission

**(Case T-451/08)**

(2008/C 313/93)

*Language of the case: English*

### Parties

*Applicant:* Föreningen Svenska Tonsättares Internationella Musikbyrå (Stim) u.p.a. (Stockholm, Sweden) (represented by: C. Thomas, Solicitor and N. Pourbaix, lawyer)

*Defendant:* Commission of the European Communities

### Form of order sought

— Annul Articles 3 and 4(2), and Article 4(3) to the extent that it refers to Article 3, of the Commission decision of 16 July 2008 relating to a proceeding under Article 81 EC and Article 53 EEA in case COMP/C2/38.698 — CISAC;

— Order the Commission to pay the applicant's costs.

### Pleas in law and main arguments

By means of its application the applicant seeks partial annulment of the Commission decision of 16 July 2008 relating to a proceeding under Article 81 EC and Article 53 EEA (Case COMP/C2/38.698 — CISAC) and in particular, of its Article 3, determining that the EEA CISAC ([1]) members engaged in a concerted practice in violation of Article 81 EC and Article 53 EEA by coordinating the territorial delineations of the reciprocal representation mandates granted to one another in a way which limits a licence to the domestic territory of each collecting society.

In support of its claims the applicant submits the following:

According to the applicant the contested decision infringes Article 151(4) EC in that the Commission did not sufficiently take into account the consequences for cultural diversity in Europe in requiring termination of the alleged concerted practice on the territorial delineation of mandates granted by EEA collecting societies to other EEA collecting societies to issue licences of their repertoire for satellite, cable and internet use. Moreover, the applicant claims that the decision will harm cultural diversity in Europe, since authors of music of a less extensive cultural appeal will lose the certainty they have under the current system, that their music will be licensed and that revenues will be received in respect of all the territories in which their music may be performed.

The applicant further submits that the Commission should have taken into account the fact that the restriction of competition it identified is fictitious or, at most, marginal. In deed, in the applicant's submission, there is no restriction of competition within the meaning of Article 81(1) EC. Hence, the applicant claims that the Commission committed an error of law, or a manifest error of appreciation, when applying the aforementioned provision. Finally, the applicant contends that the Commission could have lawfully exempted the concerted practice pursuant to Article 81(3) EC. By not doing so, it needlessly caused harm to cultural diversity in Europe.

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([1]) International Confederation of Societies of Authors and Composers.

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## Action brought on 10 October 2008 — Commission v Acentro Turismo

**(Case T-460/08)**

(2008/C 313/94)

*Language of the case: Italian*

### Parties

*Applicant:* Commission of the European Communities (represented by: A. Aresu, A. Caeiros, acting as Agents)

*Defendant:* Acentro Turismo SpA (Milan, Italy)

### Form of order sought

— order Acentro Turismo SpA to pay the sum of EUR 13 497,46 by way of capital;

— order that company to pay the sum of EUR 2 278,55 in default interest payable up to the date of lodging of the present application, and default interest which will be payable after the date of lodging of this application up to the date of the actual payment of the capital, to be quantified ultimately on the basis of the interest rate established by Italian law;

— order that company to pay default interest on the aforesaid interest payable up to the date of lodging of the present application, to be quantified ultimately on the basis of the interest rate established by Italian law;

— order that company to pay the costs.

### Pleas in law and main arguments

By the present application the European Commission, as representative of the European Atomic Energy Community (Euratom), asks the Court to order the company incorporated under Italian law, Acentro Turismo SpA, to pay the sum of EUR 13 497,46, plus default interest, owed on the basis of the rules relating to performance laid down by contract No 349-90-04 TL ISP I for the provision of services, concluded in 1990 and intended to give that company the functions of travel agent on the Ispra site.

The Commission submits in that regard that Acentro did not honour two invoices, issued by the Commission itself on the basis of Article 8 of the contested contract, and that the existence of that credit is sufficiently proven with regard to the content of that contract and the credit in question is therefore irrefutable, liquid and collectable.

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## Action brought on 13 October 2008 — Zeta Europe v OHIM (Superleggera)

**(Case T-464/08)**

(2008/C 313/95)

*Language in which the application was lodged: Italian*

### Parties

*Applicant:* Zeta Europe BV (Het Ambacht, Netherlands) (represented by V. Bilardo, C. Bacchini and M. Mazzitelli, lawyers)

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

**Form of order sought**

— annul the decision of the First Board of Appeal of OHIM of 17 July 2008 in Case R 666/2008-1 concerning the applicant;

— order OHIM to pay the costs

**Pleas in law and main arguments**

*Community trade mark concerned:* Figurative mark 'Superleggera' (Community trade mark application No 5.456.207) for goods in Classes 12, 18 and 25.

*Decision of the Examiner:* Refusal of the application for registration, having noted that the mark in question consists of the adjective 'superleggera' and that that will therefore be understood as a descriptive indication of the weight of goods.

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

*Pleas in law:* Infringement of Articles 7(1)(b), 73 and 74 of Regulation (EC) No 40/94 on the Community trade mark.

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## Order of the Court of First Instance of 9 October 2008 — Stephens v Commission

**(Case T-438/03)** ([1])

(2008/C 313/96)

*Language of the case: French*

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

([1]) OJ C 47, 21.2.2004.

# EUROPEAN UNION CIVIL SERVICE TRIBUNAL

## Judgment of the Civil Service Tribunal (Second Chamber) of 9 October 2008 — Nijs v Court of Auditors

**(Case F-49/06)** ([1])

***(Staff case — Officials — Promotion — 2005 promotion procedure)***

(2008/C 313/97)

*Language of the case: French*

### Parties

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

*Defendant:* Court of Auditors of the European Communities (represented by: T. Kennedy, J.-M. Stenier and G. Corstens, Agents)

### Re:

First, annulment of the decision of the appointing authority not to promote the applicant to grade A*11 pursuant to the 2005 promotion procedure and, second, a claim for damages.

### Operative part of the judgment

*The Tribunal:*

1. *Dismisses the action as partly inadmissible and partly unfounded;*

2. *Orders Mr Nijs to pay all the costs.*

([1]) OJ C 154, 1.7.2006, p. 26.

## Judgment of the Civil Service Tribunal (Second Chamber) of 11 September 2008 — Spee v Europol

**(Case F-121/06)** ([1])

***(Staff case — Members of the Europol staff — Remuneration — Articles 28 and 29 of the Europol Staff Regulations — Incremental points awarded on the basis of an assessment — Retroactive application of rules — Calculation method)***

(2008/C 313/98)

*Language of the case: Dutch*

### Parties

*Applicant:* David Spee (Rijswijk, Netherlands) (represented by: D. C. Coppens, lawyer)

*Defendant:* European Police Office (Europol) (represented by: Urban and D. Neumann and, subsequently, by D. Neumann and D. El Khoury, Agents, and B. Wägenbaur and R. van der Hout, lawyers)

### Re:

Annulment of the Europol decision of 5 July 2006 to grant the applicant only one of the two incremental points provided for in Article 29 of the Staff Regulations of Europol.

### Operative part of the judgment

*The Tribunal:*

1. *Dismisses the action;*

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

([1]) OJ C 326, 30.12.2006, p. 84.

## Judgment of the Civil Service Tribunal (Second Chamber) of 4 September 2008 — Dragoman v Commission

**(Case F-147/06)** ([1])

***(Staff case — Open competition — Non-admission to the oral test)***

(2008/C 313/99)

*Language of the case: French*

### Parties

*Applicant:* Adriana Dragoman (Brussels, Belgium) (represented by: S. Mihailescu, and, subsequently, by G.-F. Dinulescu, lawyers)

*Defendant:* Commission of the European Communities (represented by: K. Herrmann and M. Velardo, Agents)

### Re:

Annulment of the decision of the selection board for open competition EPSO/AD/44/06 CJ, made for the purpose of establishing a reserve list for the recruitment of Romanian-language lawyer-linguists, to award the applicant a mark of 18/40 in written test (b) and not to admit her to the oral test for that competition

**Operative part of the judgment**

*The Tribunal:*

1. *Dismisses the action;*

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

(1) OJ C 42, 24.2.2007, p. 48.

## Judgment of the Civil Service Tribunal (Second Chamber) of 4 September 2008 — Lafili v Commission

**(Case F-22/07)** (1)

***(Staff case — Officials — Entry into force of Regulation (EEC, Euratom) No 723/2004 — Articles 44 and 46 of the Staff Regulations — Article 7 of Annex XIII to the Staff Regulations — Promotion — Grading — Multiplication factor)***

(2008/C 313/100)

*Language of the case: French*

**Parties**

*Applicant:* Paul Lafili (Genk, Belgium) (represented by: G. Vandersanden and L. Levi, lawyers)

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

**Re:**

Annulment of the decision to place the applicant in Grade AD 13, step 5, contained in a memorandum from DG ADMIN of 11 May 2006 and in the pay slip of June 2006 and in subsequent pay slips, inasmuch as that the decision infringes, inter alia, Articles 44 and 46 of the Staff Regulations of Officials and Article 7 of Annex XIII to those regulations.

**Operative part of the judgment**

*The Tribunal:*

1. *Annuls the decision of the Head of Unit A 6 'Career structure, evaluation and promotion' in the 'Personnel and Administration' General-Directorate of the Commission of the European Communities of 11 May 2006;*

2. *Orders Mr Lafili to bear half his own costs;*

3. *Orders the Commission of the European Communities to bear its own costs and to pay half of Mr Lafili's costs.*

(1) OJ C 95, 28.4.2007, p. 59.

## Judgment of the Civil Service Tribunal (Third Chamber) of 8 October 2008 — Barbin v European Parliament

**(Case F-44/07)** (1)

***(Staff cases — Officials — Promotion — Procedure for the allocation of merit points in the European Parliament — Illegality of the instructions governing that procedure — Examination of comparative merits)***

(2008/C 313/101)

*Language of the case: French*

**Parties**

*Applicant:* Florence Barbin (Luxembourg, Luxembourg) (represented by: S. Orlandi, A. Coolen, J.-N. Louis and É. Marchal, lawyers)

*Defendant:* European Parliament (represented by: A. Lukošiūtė and R. Ignătescu, later by C. Burgos, A. Lukošiūtė and R. Ignătescu, agents)

**Re:**

First, annulment of the decision of 16 September 2006 to allocate one merit point to the applicant under the 2005 promotion procedure and, secondly, for a declaration that paragraph I.2(c) of the 'Implementing measures relating to the allocation of merit and promotion points' of the European Parliament of 10 May 2006 is illegal.

**Operative part of the judgment**

*The Tribunal:*

1. *dismisses the application;*

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

(1) OJ C 155 of 7.7.2007, p. 45.

## Judgment of the Civil Service Tribunal (Third Chamber) of 22 October 2008 — Tzirani v Commission

**(Case F-46/07)** ([1])

***(Staff cases — Officials — Recruitment — Appointment in grade — Promotion — Post of director — Rejection of candidature — Implementation of a judgment annulling an appointment decision — Admissibility)***

(2008/C 313/102)

*Language of the case: French*

### Parties

*Applicant:* Marie Tzirani (Brussels, Belgium) (represented by: É. Boigelot, lawyer)

*Defendant:* Commission of the European Communities (represented by: G. Berscheid and V. Joris, agents, assisted by B. Wägenbaur, lawyer)

### Re:

First, annulment of the decision adopted by the Commission of the European Communities on 30 August 2006 to appoint Mr D. J. to the post of Director of Directorate B 'Staff Regulations: Policy, Management and Advisory Services' of the Directorate-General (DG) 'Personnel and Administration' and consequently to reject the applicant's candidature for that post; and, secondly, an order that the Commission is to pay compensation for the material and non-material damage allegedly suffered.

### Operative part of the judgment

*The Tribunal:*

1. *annuls the decision of the Commission of the European Communities rejecting the candidature of Mrs Tzirani for the post of Director of Directorate B 'Staff Regulations: Policy, Management and Advisory Services' of the Directorate-General (DG) 'Personnel and Administration';*

2. *annuls the decision of the Commission of the European Communities, dated 30 August 2006, appointing Mr D. J. to the post of Director of Directorate B 'Staff Regulations: Policy, Management and Advisory Services' of the Directorate-General (DG) 'Personnel and Administration';*

3. *orders the Commission of the European Communities to pay Mrs Tzirani EUR 10 000 damages;*

4. *for the rest, dismisses the action;*

5. *orders the Commission of the European Communities to bear their own costs and to pay Mrs Tzirani's costs.*

([1]) OJ C 170 of 21.7.2007, p. 42.

## Judgment of the Civil Service Tribunal (Second Chamber) of 11 September 2008 — Bui Van v Commission

**(Case F-51/07)** ([1])

***(Staff case — Officials — Recruitment — Classification in grade and step — Improper classification — Withdrawal of a measure vitiated by illegality — Legitimate expectations — Reasonable time-limit — Rights of the defence — Right to sound administration)***

(2008/C 313/103)

*Language of the case: French*

### Parties

*Applicant:* Philippe Bui Van (Hettange-Grande, France) (represented by: S. Rodrigues and R. Albelice, lawyers)

*Defendant:* Commission of the European Communities (represented by: J. Currall and G. Berscheid, Agents)

### Re:

First, annulment of the decision of the Director General of the Commission's Joint Research Centre of 4 October 2006 in so far as it reclassifies the applicant in Grade AST 3, whereas he was initially classified in Grade AST 4 and, secondly, an application for damages.

### Operative part of the judgment

*The Tribunal:*

1. *Orders the Commission of the European Communities to pay Mr Bui Van the sum of EUR 1 500 by way of damages;*

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

3. *Orders Mr Bui Van to pay two thirds of his costs;*

4. *Orders the Commission of the European Communities to pay its own costs and one third of the costs incurred by Mr Bui Van.*

([1]) OJ C 170, 21.7.2007, p. 43.

## Judgment of the Civil Service Tribunal (Third Chamber) of 8 October 2008 — Barbin v Parliament

**(Case F-81/07)** ([1])

***(Staff case — Officials — Promotion — 2006 promotion procedure — Consideration of comparative merits)***

(2008/C 313/104)

*Language of the case: French*

### Parties

*Applicant:* Florence Barbin (Luxembourg, Luxembourg) (represented by: S. Orlandi, A. Coolen, J.-N. Louis and É. Marchal, lawyers)

*Defendant:* European Parliament (represented by: A. Lukošiūtė and R. Ignătescu, Agents, and, subsequently, by C. Burgos, A. Lukošiūtė and R. Ignătescu, Agents)

### Re:

Annulment of the decision of the European Parliament not to promote the applicant to grade AD 12 pursuant to the 2006 promotion procedure.

### Operative part of the judgment

*The Tribunal:*

1. *Annuls the decision of the European Parliament of 20 November 2006 not to promote Ms Barbin pursuant to the 2006 promotion procedure;*

2. *Orders the European Parliament to pay the costs.*

([1]) OJ C 247, 20.10.2007, p. 43.

## Judgment of the Civil Service Tribunal (Second Chamber) of 4 September 2008 — Duta v Court of Justice

**(Case F-103/07)** ([1])

***(Staff case — Temporary staff — Recruitment — Legal secretary — Article 2(c) of the CEOS — Act adversely affecting an official — Relationship of trust)***

(2008/C 313/105)

*Language of the case: French*

### Parties

*Applicant:* Radu Duta (Luxembourg, Luxembourg) (represented by: F. Krieg, lawyer)

*Defendant:* Court of Justice of the European Communities (represented by: M. Schauss, Agent)

### Re:

Application for, first, annulment of the decision of 4 June 2007 of the committee of the Court of First Instance (CFI) authorised to rule on complaints, rejecting the applicant's candidature for a position as legal secretary in the chambers of a judge of the CFI and, secondly, an application for the symbolic sum of EUR one by way of damages for the harm suffered.

### Operative part of the judgment

*The Tribunal:*

1. *Dismisses the action as inadmissible;*

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

([1]) OJ C 315, 22.12.2007, p. 45, and OJ C 79, 29.3.2008, p. 39 (corrigendum).

## Judgment of the Civil Service Tribunal (Second Chamber) of 11 September 2008 — Smadja v Commission

**(Case F-135/07)** ([1])

***(Staff case — Officials — Recruitment — Appointment — Classification by step — New appointment of the applicant to the same post after his first appointment was annulled by judgment of the Court of First Instance — Principle of proportionality — Principle of the protection of legitimate expectations — Duty to have regard to the welfare of officials)***

(2008/C 313/106)

*Language of the case: French*

### Parties

*Applicant:* Daniele Smadja (New Delhi, India) (represented by: É. Boigelot, lawyer)

*Defendant:* Commission of the European Communities (represented by: D. Martin and K. Herrmann, Agents)

### Re:

First, annulment of the Commission decision appointing the applicant, an official placed initially in Grade A*15, step 4, inasmuch as it places her in grade A*15, step 1 following her reappointment to the post of Director of Directorate B of RELEX after the annulment of her first appointment, and, second, a claim for non-material and material loss

**Operative part of the judgment**

*The Tribunal:*

1. *Annuls the decision of the Commission of the European Communities of 21 December 2006, placing Ms Smadja in grade A*15, step 1, with seniority in step as at 1 November 2005;*

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

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([1]) OJ C 37, 9.2.2008, p. 35.

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## Action brought on 13 October 2008 — Wenig v Commission

**(Case F-80/08)**

(2008/C 313/107)

*Language of the case: French*

**Parties**

*Applicant:* Fritz Harald Wenig (Woluwe Saint-Pierre, Belgium) (represented by: G.-A. Dal, D. Voillemot, D. Bosquet, lawyers)

*Defendant:* Commission of the European Communities

**Subject-matter and description of the proceedings**

Application for annulment of the Commission's decision to suspend the applicant and to order EUR 1 000 per month to be withheld from his remuneration.

**Form of order sought**

The applicant claims that the Tribunal should:

— Annul the Commission's decision of 18 September 2008 to suspend the applicant and to order EUR 1 000 per month to be withheld from his remuneration, pursuant to Articles 23 and 24 of Annex IX to the Staff Regulations of Officials of the European Communities;

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

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## Action brought on 13 October 2008 — Ketselidou v Commission

**(Case F-81/08)**

(2008/C 313/108)

*Language of the case: French*

**Parties**

*Applicant:* Zoe Ketselidou (Brussels, Belgium) (represented by: S. Pappas, lawyer)

*Defendant:* Commission of the European Communities

**Subject-matter and description of the proceedings**

Annulment of the decision rejecting the applicant's request for revision of the calculation of the pension annuities to be taken into account for the transfer of pension rights acquired in Greece to the Community scheme.

**Form of order sought**

— Annul the decision dated 10 January 2008 in which the Appointing Authority rejected the applicant's request for revision of the calculation of the pension annuities that she had acquired in the pension scheme of the institutions of the European Communities as a result of the transfer of pension rights by Greek social security institutions;

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

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## Action brought on 10 October 2008 — Gheysens v Council

**(Case F-83/08)**

(2008/C 313/109)

*Language of the case: French*

**Parties**

*Applicant:* Johan Gheysens (Mechelen, Belgium) (represented by: S. Orlandi, A. Coolen, J.-N. Louis and E. Marchal, lawyers)

*Defendant:* Council of the European Union

**Subject-matter and description of the proceedings**

Annulment of the decision of the Council fixing the conditions of the applicant's recruitment in so far as it limits the duration of the contract to two years and classifies him in function group III, grade 11, step 1 and a declaration that Article 88 of the Conditions of Employment of Other Servants is illegal in so far as it authorises successive contracts for a fixed period subject to an overall limit of three years.

**Form of order sought**

— Declare that Article 88 of the Conditions of Employment of Other Servants is illegal in so far as it authorises successive contracts for a fixed period subject to an overall limit of three years;

— Annul the decision of the Council fixing the conditions of the applicant's recruitment in so far as it limits the duration of his contract to two years and classifies him in function group III, grade 11, step 1;

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

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## Action brought on 15 October 2008 — Notarnicola v Court of Auditors

**(Case F-85/08)**

(2008/C 313/110)

*Language of the case: French*

**Parties**

*Applicant:* Pietro Notarnicola (Luxembourg, Luxembourg) (represented by: A. Gross, lawyer)

*Defendant:* Court of Auditors of the European Communities

**Subject-matter and description of the proceedings**

Annulment of the decision of the defendant informing the applicant of his dismissal and reinstatement of the applicant and, in the alternative, an order that the defendant pay a sum as compensation for the material and non-material loss suffered by the applicant.

**Form of order sought**

— Annul the decision of 16 July 2008 and, accordingly, annul the decision of 5 March 2008 informing the applicant of his dismissal with effect from 15 April 2008;

— Reinstate the applicant as a member of the contractual staff pursuant to the contract of 23 August 2007, with retroactive payment of salary from 16 April 2008 until the date of judgment;

— In the alternative, order the defendant to pay the sum of EUR 60 500 for material loss and EUR 5 000 for the non-material loss suffered by the applicant.

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## Order of the Civil Service Tribunal of 4 September 2008 — Tsarnavas v Commission

**(Case F-44/08)** ([1])

(2008/C 313/111)

*Language of the case: French*

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

([1]) OJ C 158, 21.6.2008, p. 28.

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## Order of the Civil Service Tribunal of 24 October 2008 — Klug v EMEA

**(Case F-59/08)** ([1])

(2008/C 313/112)

*Language of the case: German*

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

([1]) OJ C 223, 30.8.2008, p. 62.

## CORRIGENDA

### Corrigendum to the Official Journal notice in Case T-283/08 P

*('Official Journal of the European Union C 272 of 25 October 2008, p. 28')*

(2008/C 313/113)

The correct text of the OJ notice in Case T-283/08 P *Longinidis* v *Cedefop* is as follows:

**'Appeal brought on 16 July 2008 by P. Longinidis against the judgment of the Civil Service Tribunal delivered on 24 April 2008 in Case F-74/06 Pavlos Longinidis v Cedefop**

**(Case T-283/08 P)**

(2008/C 272/54)

*Language of the case: Greek*

**Parties**

*Appellant:* Pavlos Longinidis (represented by P. Giatagantzidis and S. Stavropoulou, lawyers)

*Other party to the proceedings:* Cedefop

**Form of order sought by the appellant**

— set aside the judgment of the European Union Civil Service Tribunal of 24 April 2008 in Case F-74/06 *Pavlos Longinidis* v *Cedefop*;

— annul the decision of the Director of Cedefop of 30 November 2005 terminating the appellant's employment contract of indefinite duration of 4 March 2003, and any other related administrative act;

— annul the decision of the Director of Cedefop of 11 November 2005 amending the composition of the Appeals Committee of Cedefop, and any other related administrative act;

— annul the decision of the Appeals Committee of Cedefop of 24 May 2006 rejecting the appellant's complaint of 28 February 2006, and any other related administrative act;

— uphold the action brought by the appellant on 19 June 2006;

— order Cedefop to pay the costs of both the case at first instance and the appeal.

**Pleas in law and main arguments**

By his action, the appellant sought, inter alia, the annulment of the decision of the Director of Cedefop terminating his employment contract of indefinite duration. That action was dismissed by judgment of the Civil Service Tribunal of 24 April 2008.

The appellant submits that the judgment under appeal was delivered in breach of the rules that govern the bringing of evidence because it was based on matters that were not proved. More specifically, when examining the appellant's argument that the reasons for dismissal were communicated to him orally at the meeting on 23 November 2005, the Civil Service Tribunal erred in law because it altered the subject of the evidence.

In addition, the appellant contends that the reasoning set out in the judgment under appeal is not adequate. In particular, he asserts that the Civil Service Tribunal's reasoning was not adequate when it decided whether the appellant was appropriately and sufficiently informed by Cedefop as to the reasons for his dismissal and that the Tribunal did not specify all the facts which in its view led to his dismissal.

The appellant further contends that the Civil Service Tribunal misinterpreted and misapplied Community law as regards the following points: (i) in the light of the particular circumstances of the present case, compliance with the obligation to state reasons would have been ensured only by written notification of the reasons for his dismissal; (ii) his dismissal because of an isolated event constitutes a manifest error of assessment; and (iii) his rights of defence were infringed, given that he was heard after the decision to dismiss him had been taken, that no investigation or disciplinary proceedings were initiated in his regard and that crucial material on the file was not disclosed to him and his view was not sought on the accusations which arose against him.

Finally, the appellant submits that his complaint of 28 February 2006 challenging the decision to dismiss him was not heard by the Appeals Committee of Cedefop in an objective and impartial manner.'

**NOTE TO THE READER**

The institutions have decided no longer to quote in their texts the last amendment to cited acts.

Unless otherwise indicated, references to acts in the texts published here are to the version of those acts currently in force.