ISSN 1725-2423

Official Journal of the European Union

C 141

English edition

Volume 52

20 June 2009

Information and Notices

Notice No | Contents | Page

EN

Price:
EUR 18

(Continued overleaf)

Notice No | Contents (continued) | Page

EN

EN

(Continued overleaf)

EN

EN

(Continued overleaf)

EN

EN

(Continued overleaf)

EN

EN

(Continued overleaf)

EN

EN

(Continued overleaf)

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS AND BODIES

COURT OF JUSTICE

(2009/C 141/01)

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

OJ C 129, 6.6.2009

Past publications

OJ C 113, 16.5.2009

OJ C 102, 1.5.2009

OJ C 90, 18.4.2009

OJ C 82, 4.4.2009

OJ C 69, 21.3.2009

OJ C 55, 7.3.2009

These texts are available on:

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Second Chamber) of 23 April 2009 — Markku Sahlstedt, Juha Kankkunen, Mikko Tanner, Toini Tanner, Liisa Tanner, Eeva Jokinen, Aili Oksanen, Olli Tanner, Leena Tanner, Aila Puttonen, Risto Tanner, Tom Järvinen, Runo K. Kurko, Maa- ja metsätaloustuottajain Keskusliitto MTK ry, MTK:n säätiö v Commission of the European Communities, Republic of Finland, Kingdom of Spain

(Case C-362/06 P) ([1])

(Appeals — Conservation of natural habitats — List, adopted by a Commission decision, of sites of Community importance for the Boreal biogeographical region — Admissibility of an action for annulment brought by natural or legal persons against that decision)

(2009/C 141/02)

Language of the case: Finnish

Parties

Appellants: Markku Sahlstedt, Juha Kankkunen, Mikko Tanner, Toini Tanner, Liisa Tanner, Eeva Jokinen, Aili Oksanen, Olli Tanner, Leena Tanner, Aila Puttonen, Risto Tanner, Tom Järvinen, Runo K. Kurko, Maa- ja metsätaloustuottajain Keskusliitto MTK ry, MTK:n säätiö (represented by: K. Marttinen, asianajaja)

Other parties to the proceedings: Commission of the European Communities (represented by: M. Huttunen and M. van Beek, acting as Agents) Republic of Finland

Intervener in support of the Commission of the European Communities: Kingdom of Spain (represented by: F. Díez Moreno)

Re:

Appeal against the order of the Court of First Instance of the European Communities (First Chamber) of 22 June 2006 in Case T-150/05 *Sahlstedt and Others* v *Commission of the European Communities* dismissing as inadmissible an application for annulment of Commission Decision 2005/101/EC of 13 January 2005 adopting, pursuant to Council Directive 92/43/EEC, the list of sites of Community importance for the Boreal biogeographical region (OJ 2005 L 40, p. 1) — Concept of 'direct concern' within the meaning of Article 230 EC

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Mr Sahlstedt and Others to pay the costs;*

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

([1]) OJ C 261, 28.10.2006.

Judgment of the Court (First Chamber) of 2 April 2009 — France Télécom SA v Commission of the European Communities

(Case C-202/07 P) ([1])

(Appeals — Abuse of dominant position — Market for services in high-speed Internet access — Predatory pricing — Recoupment of losses — Right to align)

(2009/C 141/03)

Language of the case: French

Parties

Appellant: France Télécom SA (represented by: J. Philippe, H. Calvet, O.W. Brouwer, T. Janssens, lawyers)

Other party to the proceedings: Commission of the European Communities (represented by: E. Gippini Fournier, Agent)

Re:

Appeal against the judgment of the Court of First Instance (Fifth Chamber, Extended Composition) of 30 January 2007 in Case T-340/03 *France Télécom* v *Commission*, in which the Court dismissed France Télécom's appeal against the Commission Decision of 16 July 2003 relating to a proceeding under Article 82 EC (Case COMP/38.233 — Wanadoo Interactive) — Market for services in high-speed internet access (ADSL) — Abuse of a dominant position — Concept of predatory pricing, alignment of prices with those of competitors and recoupment of losses suffered

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders France Télécom SA to pay the costs.*

(1) OJ C 170, 21.7.2007.

Judgment of the Court (Third Chamber) of 2 April 2009 (Reference for a preliminary ruling from the Audiencia Provincial de Barcelona (Spain)) — Pedro IV Servicios SL v Total España SA

(Case C-260/07) (1)

(Competition — Agreements, decisions and concerted practices — Article 81 EC — Exclusive distribution agreement for motor-vehicle fuels and other fuels — Exemption — Regulation (EEC) No 1984/83 — Article 12(2) — Regulation (EC) No 2790/1999 — Articles 4(a) and 5(a) — Period of exclusivity — Retail price-fixing)

(2009/C 141/04)

Language of the case: Spanish

Referring court

Audiencia Provincial de Barcelona

Parties to the main proceedings

Applicant: Pedro IV Servicios SL

Defendant: Total España SA

Re:

Reference for a preliminary ruling — Audiencia Provincial de Barcelona — Interpretation of Article 81(1)(a) EC, of recital 8 in the preamble and of Articles 10 and 12(1)(c) and 12(2) of Commission Regulation (EEC) No 1984/83 of 22 June 1983 on the application of Article [81](3) of the Treaty to categories of exclusive purchasing agreements (OJ 1983 L 173, p. 5) and of Articles 4(a) and 5 of Commission Regulation (EC) No 2790/99 of 22 December 1999 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices (OJ 1999 L 336, p. 21) — Exclusive fuel distribution agreement between a supplier and the operator of a service-station — Whether the supplier must be the proprietor of the land and installations comprising the service-station or whether other legal titles which enable the supplier to lease the service-station to a reseller who is the proprietor of the land are sufficient — Restriction of the reseller's freedom to determine his selling price

Operative part of the judgment

1. *Article 12(2) of Commission Regulation (EEC) No 1984/83 of 22 June 1983 on the application of Article [81](3) of the Treaty to categories of exclusive purchasing agreements, as amended by Commission Regulation (EC) No 1582/97 of 30 July 1997, must be interpreted as meaning that, for the purposes of applying the exception which it laid down, that provision did not require the supplier to be the owner of the land on which he had built the service station which he let to the reseller.*

2. *Article 5(a) of Commission Regulation (EC) No 2790/1999 of 22 December 1999 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices must be interpreted as meaning that, for the purposes of applying the exception which it lays down, that provision requires that the supplier is the owner both of the service station which he lets to the reseller and of the land on which it is built, or, if he is not the owner, that he leases the land and service station from third parties not connected to the reseller.*

3. *Contractual clauses relating to the retail price, such as those at issue in the main proceedings, are eligible for the block exemptions under Regulation No 1984/83, as amended by Regulation No 1582/97, and Regulation No 2790/1999 where the supplier restricts himself to imposing a maximum sale price or to recommending a sale price and where, therefore, it is genuinely possible for the reseller to determine the retail price. On the other hand, such clauses are ineligible for those exemptions where they lead, directly or by indirect or concealed means, to the fixing of a retail price or the imposition of a minimum sale price by the supplier. It is for the national court to determine whether such obligations constrain the reseller, taking account of all of the contractual obligations in their economic and legal context, and of the conduct of the parties to the main proceedings.*

(1) OJ C 183, 04.08.2007.

Judgment of the Court (First Chamber) of 23 April 2009 (reference for a preliminary ruling from the Rechtbank van koophandel te Antwerpen (Belgium)) — VTB-VAB NV (C-261/07) and Galatea BVBA (C-299/07) v Total Belgium NV (C-261/07) and Sanoma Magazines Belgium NV (C-299/07)

(Case C-261/07 and C-299/07) (1)

(Directive 2005/29/EC — Unfair commercial practices — National legislation prohibiting combined offers to consumers)

(2009/C 141/05)

Language of the case: Dutch

Referring court

Rechtbank van koophandel te Antwerpen

Parties to the main proceedings

Applicants: VTB-VAB NV (C-261/07), Galatea BVBA (C-299/07)

Defendants: Total Belgium NV (C-261/07), Sanoma Magazines Belgium NV (C-299/07)

Re:

Reference for a preliminary ruling — Rechtbank van koophandel te Antwerpen — Interpretation of Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') (OJ 2005 L 147, p. 22) — National legislation prohibiting combined offers to consumers

Operative part of the judgment

Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') must be interpreted as precluding national legislation, such as that at issue in the disputes in the main proceedings, which, with certain exceptions, and without taking account of the specific circumstances, imposes a general prohibition of combined offers made by a vendor to a consumer.

([1]) OJ C 199, 25.8.2007.

Judgment of the Court (Second Chamber) of 23 April 2009 — Commission of the European Communities v Kingdom of Belgium

(Case C-287/07) ([1])

(Failure of a Member State to fulfil obligations — Public contracts — Directive 2004/17/EC — Procedures for the award of contracts in the water, energy, transport and postal services sectors — Incorrect or incomplete transposition — Failure to transpose within the prescribed period)

(2009/C 141/06)

Language of the case: French

Parties

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

Defendant: Kingdom of Belgium (represented by: D. Haven and J.-C. Halleux, Agents)

Re:

Failure of Member State to fulfil obligations — Failure to have taken, within the prescribed period, all the provisions necessary to comply with Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ 2004 L 134, p. 1).

Operative part of the judgment

The Court:

1. *Declares that,*

— *by failing to adopt the laws, regulations and administrative provisions necessary to transpose completely and correctly Article 1(2)(b), the second subparagraph of Article 1(2)(c), Article 1(2)(d) and the second subparagraph of Article 1(13), Article 14(4), Article 17(10)(a) and (c), Article 34(8), Article 36(2), Article 39(2), Article 45(1) and (3)(a) and (c), Article 48(1) to (4) and (6)(c), the second indent of Article 49(2), Article 49(3) to (5), the first subparagraph of Article 50(1) under (c), Article 52(1), the second subparagraph of Article 57(1) under (d) and (e) and the first sentence of Article 57(3), and Article 65(2) of Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors, and*

— *by failing to have adopted, within the prescribed period, the laws, regulations and administrative provisions necessary to comply with Article 9, Article 34(2), Article 52(3) and the second sentence of Article 57(3) of Directive 2004/17,*

the Kingdom of Belgium has failed to fulfil its obligations under that Directive;

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

([1]) OJ C 211, 08.09.2007.

Judgment of the Court (First Chamber) of 23 April 2009 — Commission of the European Communities v Kingdom of Belgium

(Case C-292/07) [1]

(Failure of a Member State to fulfil obligations — Public procurement — Directive 2004/18/EC — Procedures for the award of public works contracts, public supply contracts and public service contracts — Incorrect or incomplete transposition — Failure to transpose within the prescribed period)

(2009/C 141/07)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: B. Stromsky, D. Kukovec and M. Konstantinidis, acting as Agents)

Defendant: Kingdom of Belgium (represented by: D. Haven and J.-C. Halleux, acting as Agents)

Re:

Failure of a Member State to fulfil obligations — Failure to adopt, within the prescribed period, all the provisions necessary to comply with Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ 2004 L 134, p. 114)

Operative part of the judgment

The Court:

1. *Declares that by failing to adopt the laws, regulations and administrative provisions necessary to transpose or to transpose completely and/or correctly Article 1(2)(b) in conjunction with Annex I; the second sentence of Article 9(1); Article 9(8)(a)(i) and (iii); Article 23(2); Article 30(2) to (4); Article 31(1)(c); Article 38(1); point (d) of the first paragraph of Article 43; the second subparagraph of Article 44(2); Article 44(3) and (4); the first paragraph of Article 46; Article 48(2)(f); points (d) and (e) of the second subparagraph of Article 55(1); Article 55(3); the second and third subparagraphs of Article 67(2); the first paragraph of point (a) of Article 68; Article 72, and Article 74(1) of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, as amended by Commission Regulation (EC) No 2083/2005 of 19 December 2005, the Kingdom of Belgium has failed to fulfil its obligations under that directive;*

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

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

[1] OJ C 211, 08.09.2007.

Judgment of the Court (Second Chamber) of 23 April 2009 — Commission of the European Communities v Hellenic Republic

(Case C-331/07) [1]

(Failure of a Member State to fulfil obligations — Animal feed and food law — Regulation (EC) No 882/2004 — Shortage of staff assigned to the services responsible for veterinary controls)

(2009/C 141/08)

Language of the case: Greek

Parties

Applicant: Commission of the European Communities (represented by: H. Tserepa-Lacombe and F. Erlbacher, Agents)

Defendant: Hellenic Republic (represented by: S. Charitaki and I. Chalkias, Agents)

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 4(2) of Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules (OJ 2004 L 165, p. 1) — Shortage of staff assigned to the services responsible for veterinary controls

Operative part of the judgment

The Court:

1. *Declares that, by not having adopted all the measures necessary to remedy the shortage of staff assigned to the services responsible for veterinary controls in Greece, the Hellenic Republic has failure to fulfil its obligations under Article 4(2)(c) of Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules;*

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

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

[1] OJ C 247, 20.10.2007.

Judgment of the Court (Fourth Chamber) of 2 April 2009 (Reference for a preliminary ruling from the Tribunale amministrativo regionale del Lazio (Italy)) — A. Menarini Industrie Farmaceutiche Riunite Srl, Laborati Guidotti SpA, Istituto Lusofarmaco d'Italia SpA, Malesi Istituto Farmacobiologico SpA, Menarini International Operations Luxembourg SA (C-352/07) v Ministero della Salute, Agenzia Italiana del Farmaco (AIFA), third party: Sanofi Aventis SpA, Sanofi Aventis SpA (C-353/07) v Agenzia Italiana del Farmaco (AIFA), IFB Stroder Srl (C-354/07) v Agenzia Italiana del Farmaco (AIFA), Schering Plough SpA (C-355/07) v Agenzia Italiana del Farmaco (AIFA), third party: Baxter SpA, Bayer SpA (C-356/07) v Agenzia Italiana del Farmaco (AIFA), Ministero della Salute, Simesa SpA (C-365/07) v Ministero della Salute, Agenzia Italiana del Farmaco (AIFA), third party: Merck Sharp & Dohme (Italia) SpA, Abbott SpA (C-366/07) v Ministero della Salute, Agenzia Italiana del Farmaco (AIFA), Baxter SpA (C-367/07) v Agenzia Italiana del Farmaco (AIFA), third party: Merck Sharp & Dohme (Italia) SpA, and SALF SpA (C-400/07) v Agenzia Italiana del Farmaco (AIFA), Ministero della Salute

(Joined Cases C-352/07 to C-356/07, C-365/07 to C-367/07 and C-400/07) [1]

(Directive 89/105/EEC — Transparency of measures regulating the prices of medicinal products for human use — Article 4 — Price freeze — Price reduction)

(2009/C 141/09)

Language of the case: Italian

Referring court

Tribunale amministrativo regionale del Lazio

Parties to the main proceedings

Applicants: A. Menarini Industrie Farmaceutiche Riunite Srl, FIRMA Srl, Laboratori Guidotti SpA, Istituto Lusofarmaco d'Italia SpA, Malesi Istituto Farmacobiologico SpA, Menarini International Operations Luxembourg SA (C-352/07), Sanofi Aventis SpA (C-353/07), IFB Stroder Srl (C-354/07), Schering Plough SpA (C-355/07), Bayer Spa (C-356/07), Simesa SpA (C-365/07), Abbott SpA (C-366/07), Baxter SpA (C-367/07), SALF SpA (C-400/07)

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

Re:

Reference for a preliminary ruling — Tribunale amministrativo regionale del Lazio — Interpretation of Article 4(1) and (2) of Council Directive 89/105/EEC of 21 December 1988 relating to the transparency of measures regulating the pricing of medicinal products for human use and their inclusion in the scope of national health insurance systems (OJ 1989 L 40, p. 8) — Price freeze imposed on medicinal products — Procedures to follow in the case of a price reduction

Operative part of the judgment

1. *Article 4(1) of 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 is to be interpreted as meaning that, provided the requirements laid down by that provision are met, the competent authorities of a Member State may adopt general measures reducing the prices of all, or of certain categories of, medicinal products, even if the adoption of those measures is not preceded by a freeze on those prices.*

2. *Article 4(1) of Directive 89/105 is to be interpreted as meaning that, provided the requirements laid down by that provision are met, the adoption of measures reducing the prices of all, or of certain categories of, medicinal products is possible more than once a year and for several years.*

3. *Article 4(1) of Directive 89/105 is to be interpreted as meaning that it does not preclude measures controlling the prices of all, or of certain categories of, medicinal products from being adopted on the basis of predicted expenditure, provided that the requirements laid down by that provision are met and that the predictions are based on objective and verifiable data.*

4. *Article 4(1) of Directive 89/105 is to be interpreted as meaning that it is for the Member States to determine, in compliance with the objective of transparency pursued by that directive and the requirements laid down by that provision, the criteria on the basis of which the review of the macro-economic conditions referred to in that provision is to be conducted and that those criteria may consist in pharmaceutical expenditure alone, in health expenditure overall or even in other types of expenditure.*

5. *Article 4(2) of Directive 89/105 is to be interpreted as meaning:*

   — *that the Member States must, in all cases, provide for the possibility for an undertaking, which is concerned by a measure freezing or reducing the prices of all, or of certain categories of, medicinal products, of applying for a derogation from the price imposed pursuant to such measure;*

   — *that they are to ensure that a reasoned decision on any such application is adopted, and*

   — *that the genuine participation of the undertaking concerned consists, first, in the submission of an adequate statement of the particular reasons justifying its application for derogation and, second, in the provision of detailed additional information if the information supporting the application is inadequate.*

[1] OJ C 247, 20.10.2007.
OJ C 269, 10.11.2007.

Judgment of the Court (Second Chamber) of 23 April 2009 (reference for a preliminary ruling from the High Court of Justice (England & Wales), Queen's Bench Division (Administrative Court) — United Kingdom) — TNT Post UK Ltd, The Queen v The Commissioners for Her Majesty's Revenue and Customs

(Case C-357/07) [1]

(Sixth VAT Directive — Exemptions — Article 13A(1)(a) — Services supplied by the public postal services)

(2009/C 141/10)

Language of the case: English

Referring court

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

Parties to the main proceedings

Applicant: TNT Post UK Ltd, The Queen

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

Interested party: Royal Mail Group Ltd

Re:

Reference for a preliminary ruling — High Court of Justice (England & Wales), Queen's Bench Division (Administrative Court) — Interpretation of Article 13A(1)(a) of Directive 77/388/EEC: Sixth Council Directive of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) — Exemptions in favour of certain activities in the public interest — Services provided by public postal services — Meaning of 'public postal services' — Whether a commercial company providing postal services is included

Operative part of the judgment

1. *The concept of 'public postal services' in Article 13A(1)(a) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, must be interpreted to cover operators, whether they are public or private, who undertake to provide, in a Member State, all or part of the universal postal service, as defined in Article 3 of Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service, as amended by Directive 2002/39/EC of the European Parliament and of the Council of 10 June 2002.*

2. *The exemption provided for in Article 13A(1)(a) of Sixth Directive 77/388 applies to the supply by the public postal services acting as such — that is, in their capacity as an operator who undertakes to provide all or part of the universal postal service in a Member State — of services other than passenger transport and telecommunications services, and the supply of goods incidental thereto. It does not apply to supplies of services or of goods incidental thereto for which the terms have been individually negotiated.*

[1] OJ C 247, 20.10.2007.

Judgment of the Court (Sixth Chamber) of 2 April 2009 — Mebrom NV v Commission of the European Communities

(Case C-373/07 P) [1]

(Appeal — Protection of the ozone layer — Import of methyl bromide into the Union — Refusal to allocate import quotas for 2005 — Legitimate expectations — Legal certainty)

(2009/C 141/11)

Language of the case: English

Parties

Appellant: Mebrom NV (represented by: K. Van Maldegem and C. Mereu, avocats)

Other party to the proceedings: Commission of the European Communities (represented by: X. Lewis, acting as Agent)

Re:

Appeal brought against the judgment of the Second Chamber of the Court of First Instance of 22 May 2007 in Case T-216/05 *Mebrom* v *Commission* by which the Court dismissed as unfounded an action for annulment of Decision A(05)4338-D/6176 of the Commission of 11 April 2005 refusing to allocate to the appellant quotas for the import of methyl bromide into the European Union in accordance with Articles 6 and 7 of Regulation (EC) No 2037/2000 of the European Parliament and of the Council of 29 June 2000 on substances that deplete the ozone layer (OJ 2000 L 244, p. 1) — Incorrect application of Community law — Inadequate reasoning — Breach of Article 220 EC

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Mebrom NV to pay the costs.*

[1] OJ C 247, 20.10.2007.

Judgment of the Court (Third Chamber) of 23 April 2009 (references for a preliminary ruling from the Monomeles Protodikio Rethimnis — Greece) — K. Angelidaki, A. Aivali, A. Vavouraki, Kh. Kaparou, M. Lioni, E. Makrigiannaki, E. Nisanaki, Kh. Panagiotou, A. Pitsidianaki, M. Khalkiadaki, Kh. Khalkiadaki (C-378/07), Kharikleia Giannoudi (C-379/07), Georgios Karampousanos, Sophocles Mikhopoulos (C-380/07) v Nomarkhiaki Aftodiikisi Rethimnis, Dimos Geropotamou

(Joined Cases C-378/07 to C-380/07) [1]

(Directive 1999/70/EC — Clauses 5 and 8 of the framework agreement on fixed-term work — Fixed-term employment contracts in the public sector — First or single use of a contract — Successive contracts — Equivalent legal measure — Reduction in the general level of protection afforded to workers — Measures intended to prevent abuse — Penalties — Absolute prohibition on conversion of fixed-term employment contracts into contracts of indefinite duration in the public sector — Consequences of the incorrect transposition of a directive — Interpretation in conformity with Community law)

(2009/C 141/12)

Language of the case: Greek

Referring court

Monomeles Protodikio Rethimnis

Parties to the main proceedings

Applicants: K. Angelidaki, A. Aivali, A. Vavouraki, Kh. Kaparou, M. Lioni, E. Makrigiannaki, E. Nisanaki, Kh. Panagiotou, A. Pitsidianaki, M. Khalkiadaki, Kh. Khalkiadaki (C-378/07), Kharikleia Giannoudi (C-379/07), Georgios Karampousanos, Sophocles Mikhopoulos (C-380/07)

Defendants: Nomarkhiaki Aftodiikisi Rethimnis, Dimos Geropotamou

Re:

Reference for a preliminary ruling — Monomeles Protodikio Rethimnis — Interpretation of Clauses 5 and 8(1) and (3) of the annex to Council Directive 1999/70/EEC concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p. 43) — Prohibition on adopting national rules in the guise of transposition where an equivalent national measure, within the meaning of Clause 5(1) of the directive, already exists and the new rules lower the level of protection of workers under fixed-term employment contracts

Operative part of the judgment

1. *Clause 5(1) of the Framework Agreement on fixed-term work concluded on 18 March 1999, which is annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, must be interpreted as not precluding the adoption by a Member State of national legislation, such as Presidential Decree No 164/2004 laying down provisions concerning workers employed under fixed-term contracts in the public sector, which, for the purposes specifically of transposing Directive 1999/70 so as to implement the provisions of that directive in the public sector, provides for the implementation of the measures to prevent the misuse of successive fixed-term employment contracts or relationships which are listed in clause 5(1)(a) to (c) where — which it is for the national court to ascertain — an 'equivalent legal measure' within the meaning of that clause already exists under national law, such as Article 8(3) of Law No 2112/1920 on compulsory notice of termination of contracts of employment of employees in the private sector, provided, however, that that legislation (i) does not affect the effectiveness of the prevention of the misuse of fixed-term employment contracts or relationships resulting from that equivalent legal measure, and (ii) complies with Community law and, in particular, with clause 8(3) of the Framework Agreement.*

2. *Clause 5(1)(a) of the Framework Agreement on fixed-term work must be interpreted as precluding the application of national legislation, such as that at issue in the main proceedings, by the authorities of the Member State concerned in such a way that the renewal of successive fixed-term employment contracts in the public sector is deemed to be justified by 'objective reasons' within the meaning of that clause solely on the ground that those contracts are founded on legal provisions allowing them to be renewed in order to meet certain temporary needs when, in fact, those needs are fixed and permanent. By contrast, clause 5(1)(a) does not apply to the first or single use of a fixed-term employment contract or relationship.*

3. *Clause 8(3) of the Framework Agreement on fixed-term work must be interpreted as meaning that the 'reduction' with which that clause is concerned must be considered in relation to the general level of protection applicable in the Member State concerned both to workers who have entered into successive fixed-term employment contracts and to workers who have entered into a first or single fixed-term employment contract.*

4. *Clause 8(3) of the Framework Agreement on fixed-term work must be interpreted as not precluding national legislation, such as Presidential Decree No 164/2004, which, unlike an earlier rule of domestic law such as Article 8(3) of Law No 2112/1920, (i) no longer provides for fixed-term employment contracts to be recognised as contracts of indefinite duration where abuse arises from the use of such contracts in the public sector, or which makes such recognition subject to certain cumulative and restrictive conditions, and (ii) excludes from the benefit of the protection measures provided workers who have entered into a first or single fixed-term employment contract, where — which it is for the national court to ascertain — such amendments relate to a limited category of workers having entered into a fixed-term employment contract or are offset by the adoption of measures to prevent the misuse of fixed-term employment contracts within the meaning of clause 5(1) of the Framework Agreement.*

However, the implementation of the Framework Agreement by national legislation such as Presidential Decree No 164/2004 cannot have the effect of reducing the protection previously applicable, under the domestic legal order, to fixed-term workers to a level below that set by the minimum protective provisions laid down by the Framework Agreement. In particular, compliance with clause 5(1) of the Framework Agreement requires that such legislation should provide, in respect of the misuse of successive fixed-term employment contracts, effective and binding measures to prevent such misuse and penalties which are sufficiently effective and a sufficient deterrent to ensure that those preventive measures are fully effective. It is therefore for the referring court to establish that those conditions are fulfilled.

5. *In circumstances such as those of the cases in the main proceedings, the Framework Agreement on fixed-term work must be interpreted as meaning that, where the domestic law of the Member State concerned includes, in the sector under consideration, other effective measures to prevent and, where relevant, punish the abuse of successive fixed-term employment contracts within the meaning of clause 5(1) of that agreement, it does not preclude the application of a rule of national law which prohibits absolutely, in the public sector only, the conversion into a contract of indefinite duration of a succession of fixed-term employment contracts which, having been intended to cover fixed and permanent needs of the employer, must be regarded as constituting an abuse. It is none the less for the referring court to determine to what extent the conditions for application and effective implementation of the relevant provisions of domestic law constitute a measure adequate for the prevention and, where relevant, the punishment of the misuse by the public authorities of successive fixed-term employment contracts or relationships.*

By contrast, since clause 5(1) of the Framework Agreement is not applicable to workers who have entered into a first or single fixed-term employment contract, that provision does not require the Member States to adopt penalties where such a contract does in fact cover fixed and permanent needs of the employer.

6. *It is for the national court to interpret the relevant provisions of national law, so far as possible, in conformity with clauses 5(1) and 8(3) of the Framework Agreement on fixed-term work, and also to determine, in that context, whether an 'equivalent legal measure' within the meaning of clause 5(1), such as that provided for in Article 8(3) of Law No 2112/1920, must be applied to the main proceedings in place of certain other provisions of domestic law.*

(1) OJ C 269, 10.11.2007.

Judgment of the Court (First Chamber) of 2 April 2009 (reference for a preliminary ruling from the Corte d'appello di Milano (Italy)) — Marco Gambazzi v DaimlerChrysler Canada Inc., CIBC Mellon Trust Company

(Case C-394/07) (1)

(Brussels Convention — Recognition and enforcement of judgments — Grounds for refusal — Infringement of public policy in the State in which enforcement is sought — Exclusion of the defendant from the proceedings before the court of the State of origin because of failure to comply with a court order)

(2009/C 141/13)

Language of the case: Italian

Referring court

Corte d'appello di Milano

Parties to the main proceedings

Applicant: Marco Gambazzi

Defendants: DaimlerChrysler Canada Inc., CIBC Mellon Trust Company

Re:

Reference for a preliminary ruling — Corte d'appello di Milano — Interpretation of Articles 26 and 27(1) of the Brussels Convention — Decision whose recognition is contrary to public policy in the State in which enforcement is sought — Decision preventing one of the parties from presenting a defence ('debarment') because of failure to comply with a court order

Operative part of the judgment

Article 27(1) of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by the Convention of 9 October 1978 on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, by the Convention of 25 October 1982 on the Accession of the Hellenic Republic, by the Convention of 26 May 1989 on the Accession of the Kingdom of Spain and the Portuguese Republic, and by the Convention of 29 November 1996 on the Accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden, is to be interpreted as follows:

the court of the State in which enforcement is sought may take into account, with regard to the public policy clause referred to in that article, the fact that the court of the State of origin ruled on the applicant's claims without hearing the defendant, who entered

appearance before it but who was excluded from the proceedings by order on the ground that he had not complied with the obligations imposed by an order made earlier in the same proceedings, if, following a comprehensive assessment of the proceedings and in the light of all the circumstances, it appears to it that that exclusion measure constituted a manifest and disproportionate infringement of the defendant's right to be heard.

(1) OJ C 283, 24.11.2007.

Judgment of the Court (Third Chamber) of 23 April 2009 — Commission of the European Communities v Hellenic Republic.

(Case C-406/07) (1)

(Failure of a Member State to fulfil its obligations — Freedom of establishment — Free movement of capital — Direct taxation — Taxation of dividends from shares in companies — Rate of taxation for partnerships)

(2009/C 141/14)

Language of the case: Greek

Parties

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

Defendant: Hellenic Republic (represented by: P. Mylonopoulos, M. Tassopoulou and I. Pouli, acting as Agents)

Re:

Failure of a State to fulfil obligations — Breach of Articles 43 EC and 56 EC — National rules providing for tax exemption for dividends distributed by national companies but not for dividends distributed by companies whose seat is in another Member State

Operative part

The Court:

1. *Declares that, by applying a tax regime for dividends from abroad that is less favourable than that applied to domestic dividends, the Hellenic Republic has failed to fulfil its obligations under Articles 43 EC and 56 EC and the corresponding articles of the Agreement on the European Economic Area of 2 May 1992, namely Articles 31 and 40 thereof;*

   Declares that, by maintaining in force the provisions of the Income Tax Code (Law 2238/1994, as amended by Law 3296/2004), by which foreign partnerships in Greece are taxed more heavily than domestic partnerships, the Hellenic Republic has failed to fulfil its obligations under Article 43 EC and Article 31 of the Agreement on the European Economic Area;

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

(1) OJ C 269, 10.11.2007.

Judgment of the Court (Second Chamber) of 2 April 2009 (reference for a preliminary ruling from the Tribunale ordinario di Nocera Inferiore (Italy)) — Lodato Gennaro & C. SpA v Istituto nazionale della previdenza sociale (INPS), SCCI

(Case C-415/07) (1)

(State aid for employment — Guidelines on aid to employment — Guidelines on national regional aid — Regulation (EC) No 2204/2002 — Notion of 'job creation' — Calculation of the increase in employment)

(2009/C 141/15)

Language of the case: Italian

Referring court

Tribunale ordinario di Nocera Inferiore

Parties to the main proceedings

Applicant: Lodato Gennaro & C. SpA

Defendants: Istituto nazionale della previdenza sociale (INPS), SCCI

Re:

Reference for a preliminary ruling — Tribunale ordinario di Nocera Inferiore — Interpretation of Commission Regulation (EC) No 2204/2002 of 12 December 2002 on the application of Articles 87 and 88 of the EC Treaty to State aid for employment (OJ 2002 L 337, p. 3) — Ascertaining compliance with the requirements for obtaining aid — Ascertaining whether there has been an increase in employment — Method of calculation

Operative part of the judgment

In order to determine whether there has been an increase in employment, the guidelines on aid to employment should be interpreted as meaning that the average number of annual working units for the year preceding recruitment should be compared with the average number of annual working units for the year following such recruitment.

(1) OJ C 283, 24.11.2007.

Judgment of the Court (Second Chamber) of 2 April 2009 (reference for a preliminary ruling from the Vestre Landsret — Denmark)) — Criminal proceedings against Frede Damgaard

(Case C-421/07) [1]

(Medicinal products for human use — Directive 2001/83/EC — Concept of 'advertising' — Dissemination of information about a medicinal product by a third party acting on his own initiative)

(2009/C 141/16)

Language of the case: Danish

Referring court

Vestre Landsret

Party in the main proceedings

Frede Damgaard

Re:

Reference for a preliminary ruling — Vestre Landsret — Interpretation of Art. 86 of Directive 2001/83/EC of the European Parliament and of the Council on the Community code relating to medicinal products for human use (OJ 2001 L 311, p. 67) — Concept of advertising — Dissemination of information about a medicinal product by a third party acting on his own initiative and completely independently of the seller and the manufacturer

Operative part of the judgment

The Court:

Article 86 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, as amended by Directive 2004/27/EC of the European Parliament and of the Council of 31 March 2004, is to be interpreted as meaning that dissemination by a third party of information about a medicinal product, including its therapeutic or prophylactic properties, may be regarded as advertising within the meaning of that article, even though the third party in question is acting on his own initiative and completely independently, de jure and de facto, of the manufacturer and the seller of such a medicinal product. It is for the national court to determine whether that dissemination constitutes a form of door-to-door information, canvassing activity or inducement designed to promote the prescription, supply, sale or consumption of medicinal products.

[1] OJ C 269, 10.11.2007.

Judgment of the Court (Third Chamber) of 23 April 2009 — AEPI Elliniki Etaireia pros Prostasian tis Pnevmatikis Idioktisias AE v Commission of the European Communities

(Case C-425/07 P) [1]

(Appeal — Competition — Commission rejecting a complaint — Serious impediments to the proper functioning of the common market — Lack of Community interest)

(2009/C 141/17)

Language of the case: Greek

Parties

Appellant: AEPI Elliniki Etaireia pros Prostasian tis Pnevmatikis Idioktisias AE (represented by: T. Asprogerakas Grivas, dikigoros)

Other party to the proceedings: Commission of the European Communities (represented by: F. Castillo de la Torre and T. Christoforou, acting as Agents)

Re:

Appeal against the judgment of the Court of First Instance (Fourth Chamber) of 12 July 2007 in Case T-229/05 *AEPI* v *Commission*, by which the Court dismissed as unfounded an action for the annulment of the Commission's decision of 18 April 2005 to reject the applicant's complaint concerning an alleged infringement of Articles 81 and/or 82 of the EC Treaty by the related-rights collective management bodies ERATO, APOLLON and GRAMMO which charged radio and television stations unreasonable amounts in respect of the related rights of singers, musicians and producers of music media

Operative part of the judgment

The Court:

1. *Dismisses the appeal.*

2. *Orders AEPI Elliniki Etaireia pros Prostasian tis Pnevmatikis Idioktisias AE to pay the costs*

[1] OJ C 269, 10.11.2007.

Judgment of the Court (First Chamber) of 2 April 2009 — Bouygues SA, Bouygues Télécom SA v Commission of the European Communities, French Republic, Orange France S.A., Société française du radiotéléphone — SFR

(Case C-431/07 P) [1]

(Appeals — State aid — Article 88(2) EC — Conditions for initiation of the formal investigation procedure — Serious difficulties — Criteria for establishing the existence of State aid — State resources — Principle of non-discrimination)

(2009/C 141/18)

Language of the case: French

Parties

Appellants: Bouygues SA, Bouygues Télécom SA (represented by: F. Sureau, D. Théophile, S. Perrotet, A. Bénabent, J. Vogel and L. Vogel, avocats,)

Other parties to the proceedings: Commission of the European Communities, (represented by: C. Giolito, Agent), French Republic (represented by: G. de Bergues, O. Christmann and A.L. Vendrolini, Agents), Orange France SA (represented by: S. Hautbourg, S. Quesson and L. Olza Moreno, avocats), Société française du radiotéléphone — SFR (represented by: A. Vincent, avocat and by C. Vajda QC)

Re:

Appeal against the judgment of the Court of First Instance (Fourth Chamber) of 4 July 2007 in Case T-475/04 *Bouygues and Bouygues Télécom* v *Commission* in which the Court of First Instance dismissed the applicants' action for annulment of the Commission Decision of 20 July 2004 (State Aid NN 42/2004 — France) concerning alteration of the fees payable by Orange and SFR for UMTS (Universal Mobile Telecommunication System) licences — State aid — Conditions for initiation of the formal investigation procedure under Article 88(2) EC — Criteria for State aid — Concepts of State resources, competitive advantage and non-discrimination.

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Bouygues SA and Bouygues Télécom SA to pay the costs;*

3. *Orders the French Republic to bear its own costs.*

[1] OJ C 269, 10.11.2007.

Judgment of the Court (Third Chamber) of 2 April 2009 (reference for a preliminary ruling from the Unabhängiger Finanzsenat, Außenstelle Graz (Austria)) — Veli Elshani v Hauptzollamt Linz

(Case C-459/07) [1]

(Community Customs Code — Article 202 and point (d) of the first paragraph of Article 233 — Incurrence of a customs debt — Unlawful introduction of goods — Seizure and confiscation — Extinction of the customs debt — Moment at which seizure must take place)

(2009/C 141/19)

Language of the case: German

Referring court

Unabhängiger Finanzsenat, Außenstelle Graz

Parties to the main proceedings

Applicant: Veli Elshani

Defendant: Hauptzollamt Linz

Re:

Reference for a preliminary ruling — Unabhängiger Finanzsenat, Außenstelle Graz — Interpretation of Article 202 and point (d) of the first paragraph of Article 233 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code — Extinction of the customs debt linked to the seizure of goods upon their unlawful introduction — Seizure of goods in the Member State of destination — Removal of the goods — Moment at which the debt is extinguished

Operative part of the judgment

1. *Article 202 and point (d) of the first paragraph of Article 233 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Regulation (EC) No 2700/2000 of the European Parliament and of the Council of 16 November 2000, must be interpreted as meaning that, in order to lead to the extinction of the customs debt, the seizure of goods unlawfully introduced into the customs territory of the Community must take place before those goods go beyond the first customs office situated inside that territory.*

2. *There is no need to reply to the second question.*

[1] OJ C 297, 8.12.2007.

Judgment of the Court (Third Chamber) of 23 April 2009 (Reference for a preliminary ruling from the Verwaltungsgerichtshof, Austria) — Sandra Puffer v Unabhängiger Finanzsenat, Außenstelle Linz

(Case C-460/07) [1]

(Sixth VAT Directive — Article 17(2) and (6) — Right to deduct input tax — Construction costs of a building allocated to a taxable person's business — Article 6(2) — Private use of part of the building — Financial advantage compared to non-taxable persons — Equal treatment — State aid under Article 87 EC — Exclusion from right to deduct)

(2009/C 141/20)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Applicant: Sandra Puffer

Defendant: Unabhängiger Finanzsenat, Außenstelle Linz

Re:

Reference for a preliminary ruling — Verwaltungsgerichtshof — Interpretation of Article 87 EC and of Article 17(6) 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) — Deduction of the input value added tax paid in respect of the construction of a building used principally for private residential purposes and, as to the remainder, intended to be rented out subject to tax — National legislation treating private use as an exempt transaction and, in the version applicable on the date of entry into force of the Sixth Directive, excluding the right to deduct input value added tax attributable to those parts of the building used for the taxable person's private purposes — Validity of Directive 77/388/EEC and, in particular, Article 17 thereof, in so far as it establishes a tax advantage upon the acquisition of a residential property for taxable persons who use their property, even minimally, for business purposes, compared to other taxable persons and nationals of other Member States.

Operative part of the judgment

1. *Article 17(2)(a) and Article 6(2)(a) 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 do not infringe the general principle of equal treatment under Community law by conferring on taxable persons, by means of a full and immediate right to deduct input value added tax on the construction of a mixed-use building and the subsequent staggered imposition of that tax on the private use of the building, a financial advantage compared to non-taxable persons and to taxable persons who use their property only as a private residence.*

2. *Article 87(1) EC must be interpreted as not precluding a national measure which transposes Article 17(2)(a) of Sixth Directive 77/388 and which provides that the right to deduct input value added tax payable is confined to taxable persons carrying out taxable transactions, to the exclusion of those carrying out only exempt transactions, in so far as that national measure may confer a financial advantage only on taxable persons carrying out taxable transactions.*

3. *Article 17(6) of Sixth Directive 77/388 must be interpreted as meaning that the derogation it contains does not apply to a provision of national law which amends legislation existing when that directive entered into force, which is based on an approach which differs from that of the previous legislation and which laid down new procedures. In that regard, it is irrelevant whether the national legislature amended the previous national legislation on the basis of a correct or incorrect interpretation of Community law. The question whether such an amendment of a provision of national law also affects, with regard to the applicability of the second subparagraph of Article 17(6) of the Sixth Directive, another provision of national law depends on whether those provisions of national law are interdependent or autonomous, which is a matter for the national court to determine.*

[1] OJ C 315, 22.12.2007.

Judgment of the Court (First Chamber) of 23 April 2009 (reference for a preliminary ruling from the Tribunale di Bergamo (Italy)) — Luigi Scarpelli v NEOS Banca SpA

(Case C-509/07) [1]

(Directive 87/102/EEC — Consumer protection — Consumer credit — Breach of contract of sale)

(2009/C 141/21)

Language of the case: Italian

Referring court

Tribunale di Bergamo

Parties to the main proceedings

Applicant: Luigi Scarpelli

Defendant: NEOS Banca SpA

Re:

Reference for a preliminary ruling — Tribunale di Bergamo — Interpretation of Article 11(2) of Council Directive 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit (OJ 1987 L 42, p. 48) — Consumer credit — Right of the consumer to pursue remedies against the grantor of credit for breach of the contract of sale relating to the goods financed by the credit

Operative part of the judgment

Article 11(2) of Council Directive 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit is to be interpreted as meaning that, in a situation such as that in the main proceedings, an agreement between a supplier and a grantor of credit whereunder credit is made available exclusively by that grantor of credit to customers of that supplier is not a necessary condition for the right of those customers to pursue remedies against the grantor of credit — where the supplier is in breach of contract — in order to obtain the termination of the credit agreement and the subsequent reimbursement of the sums already paid to the grantor of credit.

([1]) OJ C 37, 9.2.2008.

Judgment of the Court (Third Chamber) of 2 April 2009 (reference for a preliminary ruling from the Korkein hallinto-oikeus (Finland)) — proceedings brought by A

(Case C-523/07) ([1])

(Judicial cooperation in civil matters — Jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility — Regulation (EC) No 2201/2003 — Substantive scope — Definition of 'civil matters' — Decision relating to the taking into care and placement of children outside the family home — Child's habitual residence — Protective measures — Jurisdiction)

(2009/C 141/22)

Language of the case: Finnish

Referring court

Korkein hallinto-oikeus

Party to the main proceedings

Applicant: A

Re:

Reference for a preliminary ruling — Korkein hallinto-oikeus — Interpretation of Articles 1(2)(d), 8(1), 13(1) and 20(1) of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (OJ 2003 L 338, p. 1) — Enforcement of a single decision concerning the immediate taking into care of a child and placement outside the family home, adopted as a public-law decision in connection with child protection — Situation of a child with a permanent residence in one Member State but staying in another Member State with no fixed dwelling place

Operative part of the judgment

1. *Article 1(1) of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, must be interpreted as meaning that a decision ordering that a child be immediately taken into care and placed outside his original home is covered by the term 'civil matters', for the purposes of that provision, where that decision was adopted in the context of public law rules relating to child protection.*

2. *The concept of 'habitual residence' under Article 8(1) of Regulation No 2201/2003 must be interpreted as meaning that it corresponds to the place which reflects some degree of integration by the child in a social and family environment. To that end, in particular the duration, regularity, conditions and reasons for the stay on the territory of a Member State and the family's move to that State, the child's nationality, the place and conditions of attendance at school, linguistic knowledge and the family and social relationships of the child in that State must be taken into consideration. It is for the national court to establish the habitual residence of the child, taking account of all the circumstances specific to each individual case.*

3. *A protective measure, such as the taking into care of children, may be decided by a national court under Article 20 of Regulation No 2201/2003 if the following conditions are satisfied:*

   — *the measure must be urgent;*

   — *it must be taken in respect of persons in the Member State concerned, and*

   — *it must be provisional.*

   The taking of the measure and its binding nature are determined in accordance with national law. After the protective measure has been taken, the national court is not required to transfer the case to the court of another Member State having jurisdiction. However, in so far as the protection of the best interests of the child so requires, the national court which has taken provisional or protective measures must inform, directly or through the central authority designated under Article 53 of Regulation No 2201/2003, the court of another Member State having jurisdiction.

4. *Where the court of a Member State does not have jurisdiction at all, it must declare of its own motion that it has no jurisdiction, but is not required to transfer the case to another court. However, in so far as the protection of the best interests of the child so requires, the national court which has declared of its own motion that it has no jurisdiction must inform, directly or through the central authority designated under Article 53 of Regulation No 2201/2003, the court of another Member State having jurisdiction.*

([1]) OJ C 22, 26.01.2008.

Judgment of the Court (Fourth Chamber) of 23 April 2009 (reference for a preliminary ruling from the Oberster Gerichtshof — Austria) — Falco Privatstiftung, Thomas Rabitsch v Gisela Weller-Lindhorst

(Case C-533/07) ([1])

(Jurisdiction and the recognition and enforcement of judgments in civil and commercial matters — Regulation (EC) No 44/2001 — Special jurisdiction — Article 5(1)(a) and the second indent of Article 5(1)(b) — The concept of 'provision of services' — Contract assigning intellectual property rights)

(2009/C 141/23)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicants: Falco Privatstiftung, Thomas Rabitsch

Defendant: Gisela Weller-Lindhorst

Re:

Reference for a preliminary ruling — Oberster Gerichtshof — Interpretation of Article 5(1) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1) — Meaning of 'provision of services' and of the 'place in a Member State where the services should have been provided' — Jurisdiction over a case relating to the payment of royalties in respect of a licence to exploit a musical work

Operative part of the judgment

1. *The second indent of Article 5(1)(b) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and enforcement of judgments in civil and commercial matters, is to be interpreted to the effect that a contract under which the owner of an intellectual property right grants its contractual partner the right to use that right in return for remuneration is not a contract for the provision of services within the meaning of that provision.*

2. *In order to determine, under Article 5(1)(a) of Regulation No 44/2001, the court having jurisdiction over an application for remuneration owed pursuant to a contract under which the owner of an intellectual property right grants to its contractual partner the right to use that right, reference must continue to be made to the principles which result from the case-law of the Court of Justice on Article 5(1) of the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters, as amended by the Convention of 26 May 1989 on the Accession of the Kingdom of Spain and the Portuguese Republic.*

([1]) OJ C 37, 09.02.2008.

Judgment of the Court (Third Chamber) of 23 April 2009 (Reference for a preliminary ruling from the Wojewódzki Sąd Administracyjny we Wrocławiu (Poland)) — Uwe Rüffler v Dyrektor Izby Skarbowej we Wrocławiu Ośrodek Zamiejscowy w Wałbrzychu

(Case C-544/07) ([1])

(Article 18 EC — Income tax legislation — Reduction of income tax by the amount of health insurance contributions paid in the Member State of taxation — Refusal of reduction by the amount of contributions paid in other Member States)

(2009/C 141/24)

Language of the case: Polish

Referring court

Wojewódzki Sąd Administracyjny we Wrocławiu

Parties to the main proceedings

Applicant: Uwe Rüffler

Defendant: Dyrektor Izby Skarbowej we Wrocławiu Ośrodek Zamiejscowy w Wałbrzychu

Re:

Reference for a preliminary ruling — Wojewódzi Sąd Administracyjny we Wrocławiu (Poland) — Interpretation of the first paragraph of Article 12 EC and of Article 39(1) and (2) EC — National legislation on income tax limiting the right to deduct health insurance contributions from that tax to contributions paid solely in the Member State concerned

Operative part of the judgment

Article 18(1) EC precludes legislation of a Member State which makes the granting of a right to a reduction of income tax by the amount of health insurance contributions paid conditional on payment of those contributions in that Member State on the basis of national law and results in the refusal to grant such a tax advantage where the contributions liable to be deducted from the amount of income tax due in that Member State have been paid under the compulsory health insurance scheme of another Member State.

([1]) OJ C 37, 9.2.2008.

Judgment of the Court (First Chamber) of 23 April 2009 (reference for a preliminary ruling from the Cour de cassation — France) — Copad SA v Christian Dior couture SA, Vincent Gladel, as liquidator of Société industrielle lingerie (SIL), Société industrielle lingerie (SIL)

(Case C-59/08) ([1])

(Directive 89/104/EEC — Trade-mark law — Exhaustion of the rights of the proprietor of the trade mark — Licence agreement — Sale of goods bearing the trade mark in disregard of a clause in the licence agreement — No consent of the proprietor of the mark — Sale to discount stores — Damage to the reputation of the trade mark)

(2009/C 141/25)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Applicant: Copad SA

Defendants: Christian Dior couture SA, Vincent Gladel, as liquidator of Société industrielle lingerie (SIL), Société industrielle lingerie (SIL)

Re:

Reference for a preliminary ruling — Cour de Cassation (France) — Interpretation of Articles 5, 7, and 8(2) of First Council Directive No 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989 L 40, p. 1) — Concept of the exhaustion of the rights of the trade mark proprietor — Sale, by the licensee, of goods bearing the trade mark in disregard of a provision of the licensing agreement prohibiting certain methods of marketing — Sale to wholesalers and discount stores — Damage to the trade mark's prestige — No consent by the trade mark proprietor

Operative part of the judgment

1. *Article 8(2) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks, as amended by the Agreement on the European Economic Area of 2 May 1992, is to be interpreted as meaning that the proprietor of a trade mark can invoke the rights conferred by that trade mark against a licensee who contravenes a provision in a licence agreement prohibiting, on grounds of the trade mark's prestige, sales to discount stores of goods such as the ones at issue in the main proceedings, provided it has been established that that contravention, by reason of the situation prevailing in the case in the main proceedings, damages the allure and prestigious image which bestows on those goods an aura of luxury.*

2. *Article 7(1) of Directive 89/104, as amended by the Agreement on the European Economic Area, is to be interpreted as meaning that a licensee who puts goods bearing a trade mark on the market in disregard of a provision in a licence agreement does so without the consent of the proprietor of the trade mark where it is established that the provision in question is included in those listed in Article 8(2) of that Directive.*

3. *Where a licensee puts luxury goods on the market in contravention of a provision in a licence agreement but must nevertheless be considered to have done so with the consent of the proprietor of the trade mark, the proprietor of the trade mark can rely on such a provision to oppose a resale of those goods on the basis of Article 7(2) of Directive 89/104, as amended by the Agreement on the European Economic Area, only if it can be established that, taking into account the particular circumstances of the case, such resale damages the reputation of the trade mark.*

([1]) OJ C 92, 12.04.2008.

Judgment of the Court (Fourth Chamber) of 23 April 2009 (reference for a preliminary ruling from the Nógrád Megyei Bíróság (Republic of Hungary)) — PARAT Automotive Cabrio Textiltetőket Gyártó Kft. v Adó- és Pénzügyi Ellenőrzési Hivatal Hatósági Főosztály Észak-magyarországi Kihelyezett Hatósági Osztály

(Case C-74/08) ([1])

(Sixth VAT Directive — Accession of a new Member State — Tax on subsidised purchase of goods — Right to deduct — Exclusions laid down by national legislation at the time the Sixth Directive came into force — Member States' option to retain exclusions))

(2009/C 141/26)

Language of the case: Hungarian

Referring court

Nógrád Megyei Bíróság

Parties to the main proceedings

Applicant: PARAT Automotive Cabrio Textiltetőket Gyártó Kft.

Defendant: Adó- és Pénzügyi Ellenőrzési Hivatal Hatósági Főosztály Észak-magyarországi Kihelyezett Hatósági Osztály

Re:

Reference for a preliminary ruling — Nógrád Megyei Bíróság — Interpretation of Article 17 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) — National legislation restricting the deductibility of the tax relating to the subsidised acquisition of equipment to the non-subsidised portion

Operative part of the judgment

1. *Article 17(2) and (6) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, must be interpreted to the effect that it precludes national legislation which in the case of acquisition of goods subsidised by public funds, allow the deduction of related VAT only up to the limit of the part of the costs of that acquisition that is not subsidised.*

2. *Article 17(2) of the Sixth Directive confers on taxable persons rights on which they may rely before a national court to contest national rules that are incompatible with that Article.*

([1]) OJ C 116, 9.5.2008.

Judgment of the Court (Fourth Chamber) of 2 April 2009 (reference for a preliminary ruling from the Thüringer Finanzgericht, Gotha (Germany)) — Glückauf Brauerei GmbH v Hauptzollamt Erfurt

(Case C-83/08) ([1])

(Harmonisation of the structures of excise duties — Directive 92/83/EEC — Article 4(2) — Small independent brewery which is legally and economically independent of any other brewery — Criteria of legal and economic independence — Possibility of being subject to indirect influence)

(2009/C 141/27)

Language of the case: German

Referring court

Thüringer Finanzgericht, Gotha

Parties to the main proceedings

Applicant: Glückauf Brauerei GmbH

Defendant: Hauptzollamt Erfurt

Re:

Reference for a preliminary ruling — Thüringer Finanzgericht, Gotha (Germany) — Interpretation of Article 4(2) of Council Directive 92/83/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on alcohol and alcoholic beverages (OJ 1992 L 316, p. 21) — Classification as 'independent small brewery' for the purposes of application of reduced rates of duty — Criterion of 'economic independence' — Brewery liable, because of shareholdings and the allocation of voting rights, to be indirectly influenced by two other breweries

Operative part of the judgment

Article 4(2) of Council Directive 92/83/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on alcohol and alcoholic beverages must be interpreted as meaning that a situation characterised by the existence of structural links in terms of shareholdings and voting rights, and which results in a situation in which one individual, performing his duties as manager of a number of the breweries concerned, is able, independently of his actual conduct, to exercise influence over the taking of business decisions by those breweries, prevents them from being considered economically independent of each other.

([1]) OJ C 128, 24.5.2008.

Judgment of the Court (Fifth Chamber) of 2 April 2009 (Reference for a preliminary ruling from the Bundesfinanzhof, Germany) — Hauptzollamt Bremen v J.E. Tyson Parketthandel GmbH hanse j.

(Case C-134/08) ([1])

(Regulation (EC) No 2193/2003 — Additional customs duties on imports of certain products originating in the United States of America — Temporal scope — Article 4(2) — Products exported after the entry into force of that regulation for which it can be demonstrated that they were already on their way to the Community when those duties were first applied — Whether subject to duty)

(2009/C 141/28)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Hauptzollamt Bremen

Defendant: J.E. Tyson Parketthandel GmbH hanse j.

Re:

Reference for a preliminary ruling — Bundesfinanzhof — Interpretation of Article 4(2) of Council Regulation (EC) No 2193/2003 of 8 December 2003 establishing additional customs duties on imports of certain products originating in the United States of America (OJ 2003 L 328, p. 3) — Application of additional customs duties to products exported from the United States of America to the Community after the entry into force of that regulation for which it can be demonstrated that they were already on their way to the Community, with no possibility of changing their destination, when those duties were first applied

Operative part of the judgment

Article 4(2) of Council Regulation (EC) No 2193/2003 of 8 December 2003 establishing additional customs duties on imports of certain products originating in the United States of America must be interpreted in a manner consistent with its wording, namely that products for which it can be demonstrated that they are already on their way to the European Community on the date of entry into force of that regulation, and whose destination cannot be changed, are not to be subject to the additional duty.

([1]) OJ C 171, 5.7.2008.

Judgment of the Court (Third Chamber) of 2 April 2009 (reference for a preliminary ruling from the Oberlandesgericht Karlsruhe — Germany) — Criminal proceedings against Rafet Kqiku

(Case C-139/08) ([1])

(Visas, asylum, immigration — Third-country national holding a Swiss residence permit — Entry of and stay in the territory of a Member State for purposes other than transit — Lack of a visa)

(2009/C 141/29)

Language of the case: Germany

Referring court

Oberlandesgericht Karlsruhe

Party/parties in the main proceedings

Rafet Kqiku

Re:

Reference for a preliminary ruling — Oberlandesgericht Karlsruhe (Germany) — Interpretation of Articles 1 and 2 of Decision No 896/2006/EC of the European Parliament and of the Council of 14 June 2006 establishing a simplified regime for the control of persons at the external borders based on the unilateral recognition by the Member States of certain residence permits issued by Switzerland and Liechtenstein for the purpose of transit through their territory (OJ 2006 L 167, p. 8) — Possibility for a national of the former State Union of Serbia and Montenegro residing in Switzerland and holding a Swiss type C permanent resident permit to enter the territory of the Federal Republic of Germany for purposes other than transit and to remain there for two days without a visa

Operative part of the judgment

The Court:

Decision No 896/2006/EC of the European Parliament and of the Council of 14 June 2006 establishing a simplified regime for the control of persons at the external borders based on the unilateral recognition by the Member States of certain residence permits issued by Switzerland and Liechtenstein for the purpose of transit through their territory must be interpreted as meaning that the residence permits listed in the annex to that decision, issued by the Swiss Confederation or the Principality of Liechtenstein to third-country nationals subject to a visa requirement, are considered to be equivalent to a transit visa only. As regards entering the territory of the Member States for the purpose of transit, the requirements laid down in Articles 1(1) and 2 of Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement are fulfilled if the person covered by that decision is in possession of a residence permit issued by the Swiss Confederation or the Principality of Liechtenstein which is listed in the annex to that decision.

([1]) OJ C 183, 19.07.2008.

Judgment of the Court (First Chamber) of 23 April 2009 (reference for a preliminary ruling from the Hof van Cassatie van België (Belgium)) — Draka NK Cables Ltd, AB Sandvik International, VO Sembodja BV, Parc Healthcare International Ltd v Omnipol Ltd

(Case C-167/08) ([1])

(Judicial cooperation in civil matters — Regulation (EC) No 44/2001 — Article 43(1) — Jurisdiction and enforcement of judgments — Notion of 'party'))

(2009/C 141/30)

Language of the case: Dutch

Referring court

Hof van Cassatie van België

Parties to the main proceedings

Applicants: Draka NK Cables Ltd, AB Sandvik International, VO Sembodja BV, Parc Healthcare International Ltd

Defendant: Omnipol Ltd

Re:

Reference for a preliminary ruling — Hof van Cassatie van België — Interpretation of Article 43(1) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ('Brussels I') (OJ 2001 L 12, p. 1) — Notion of 'party' — Action brought by a creditor in the name and for the account of his debtor — Decision relating to a request for a declaration of enforceability

Operative part of the judgment

Article 43(1) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that a creditor of a debtor cannot lodge an appeal against a decision on a request for a declaration of enforceability if he has not formally appeared as a party in the proceedings in which another creditor of that debtor applied for that declaration of enforceability.

([1]) OJ C 183, 19.7.2008.

Judgment of the Court (Eighth Chamber) of 23 April 2009 — Commission of the European Communities v Kingdom of Spain

(Case C-321/08) ([1])

(Failure of a Member State to fulfil obligations — Directive 2005/29/EC — Unfair business-to-consumer commercial practices in the internal market — Failure to transpose within the prescribed period)

(2009/C 141/31)

Language of the case: Spanish

Parties

Applicant: Commission of the European Communities (represented by: W. Wils and E. Adsera Ribera, acting as Agents)

Defendant: Kingdom of Spain (represented by: B. Plaza Cruz, acting as Agent)

Re:

Failure of a Member State to fulfil obligations — Failure to adopt, within the prescribed period, the provisions necessary to comply with Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') (OJ 2005 L 149, p. 22)

Operative part of the judgment

The Court:

1. *Declares that by failing to adopt, within the prescribed period, the laws, regulations and administrative provisions necessary to comply with Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive'), the Kingdom of Spain has failed to fulfil its obligations under that directive;*

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

([1]) OJ C 223, 30.08.2008.

Judgment of the Court (Seventh Chamber) of 2 April 2009 — Commission of the European Communities v Republic of Austria

(Case C-401/08) ([1])

(Failure of a Member State to fulfil obligations — Directive 96/82/EC — Major-accident hazards involving dangerous substances — Article 11(1)(c) — Drawing up of external emergency plans for the measures to be taken outside the establishment — Failure to transpose within the prescribed period)

(2009/C 141/32)

Language of the case: German

Parties

Applicant: Commission of the European Communities (represented by: B. Schima and A. Sipos, Agents)

Defendant: Republic of Austria (represented by: E. Reidl, Agent)

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 11(1)(c) of Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances, as amended by Directive 2003/105/EC (OJ 1997 L 10, p. 13) — Failure to draw up certain external emergency plans for the measures to be taken outside the establishments

Operative part of the judgment

The Court:

1. *Declares that, by failing to draw up an external emergency plan for all establishments subject to the provisions of Article 9 of Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazard sinvolving dangerous substances, as amended by Directive 2003/105/EC of the European Parliament and of the Council of 16 December 2003, the*

Republic of Austria has failed to fulfil its obligations under Article 11(1)(c) of that Directive;

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

(1) OJ C 327, 20.12.2008.

Judgment of the Court (Eighth Chamber) of 23 April 2009 — Commission of the European Communities v Hellenic Republic

(Case C-493/08) (1)

(Failure of a Member State to fulfil obligations — Directive 2005/56/EC — Cross-border mergers of limited liability companies — Failure to transpose within the prescribed period)

(2009/C 141/33)

Language of the case: Greek

Parties

Applicant: Commission of the European Communities (represented by: I. Dimitriou and P. Dejmek, acting as Agents)

Defendant: Hellenic Republic (represented by: N. Dafniou, acting as Agent)

Re:

Failure of a Member State to fulfil obligations — Failure to adopt, within the prescribed period, the measures necessary to comply with Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies (OJ 2005 L 310, p. 1)

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt, within the prescribed period, the laws, regulations and administrative provisions necessary to comply with Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies, the Hellenic Republic has failed to fulfil its obligations under the first paragraph of Article 19 of that directive;*

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

(1) OJ C 6, 10.01.2009.

Order of the Court (Second Chamber) of 24 March 2009 (reference for a preliminary ruling from the Rechtbank van koophandel Hasselt (Belgium)) — NV de Nationale Loterij v BVBA Customer Service Agency

(Case C-525/06) (1)

(Appeal against a judgment making a reference for a preliminary ruling — Appeal court giving judgment itself in the main proceedings — No need to reply)

(2009/C 141/34)

Language of the case: Dutch

Referring court

Rechtbank van koophandel Hasselt

Parties to the main proceedings

Applicant: NV de Nationale Loterij

Defendant: BVBA Customer Service Agency

Re:

Reference for a preliminary ruling — Rechtbank van koophandel te Hasselt — Interpretation of Article 49 EC — National lottery holding on the territory of a Member State a statutory monopoly seeking to limit addiction to gambling but advertising regularly in order to promote participation in the lottery — National legislation prohibiting the sale by other undertakings seeking to make a profit, without authorisation of the national lottery, of group participation forms

Operative part

There is no need to reply to the reference for a preliminary ruling in Case C-525/06.

(1) OJ C 42, 24.2.2007.

Order of the Court of 20 January 2009 — Mebrom NV v Commission of the European Communities

(Case C-374/07 P) (1)

(Appeal — Non-contractual liability of the Commission — Certain and actual loss — Distortion of the clear sense of the facts and the evidence — Burden of proof)

(2009/C 141/35)

Language of the case: English

Parties

Appellant: Mebrom NV (represented by: K. Van Maldegem and C. Mereu, avocats)

Other party to the proceedings: Commission of the European Communities (represented by: X. Lewis, Agent)

Re:

Appeal brought against the judgment of the Second Chamber of the Court of First Instance of 22 May 2007 in Case T-198/05 *Mebrom* v *Commission* by which the Court dismissed as unfounded an action for compensation for the damage allegedly suffered by the appellant following the Commission's failure to set up, for January and February 2005, a system allowing it to import methyl bromide into the European Union in accordance with Articles 6 and 7 of Regulation (EC) No 2037/2000 of the European Parliament and of the Council of 29 June 2000 on substances that deplete the ozone layer (OJ 2000 L 244, p. 1).

Operative part

Το Δικαστήριο διατάσσει:

1. *The appeal is dismissed.*

2. *Mebrom NV shall pay the costs.*

([1]) OJ C 247, 20.10.2007.

Order of the Court of 20 January 2009 — Jörn Sack v Commission of the European Communities

(Case C-38/08 P) ([1])

(Appeal — Civil service — Remuneration — Non-application of the increment provided for heads of unit to a legal adviser of grade A*14 — Principle of equal treatment)

(2009/C 141/36)

Language of the case: German

Parties

Appellant: Jörn Sack (represented by: D. Mahlo, Rechtsanwalt)

Other party to the proceedings: Commission of the European Communities (represented by: B. Wägenbaur and J. Currall, acting as Agent)

Re:

Appeal brought against the judgment of the Court of First Instance (Fifth Chamber) of 11 December 2007 in Case T-66/05 *Sack* v *Commission*, by which the Court of First Instance rejected the application for the annulment of the decisions relating to the setting of the applicant's monthly salary for the period from May 2004 to February 2005, application for that salary to be recalculated and application for the annulment of the decision expressly rejecting the applicant's complaint — Non-application of the increment provided for heads of unit to a legal adviser of grade A*14 in the Commission's legal service responsible for the coordination of a working group — Infringement of the principle of equal treatment.

Operative part

1. *The appeal is dismissed;*

2. *Mr Sack shall bear his own costs and pay the costs incurred by the Commission of the European Communities.*

([1]) OJ C 107, 26.4.2008.

Order of the Court (Eighth Chamber) of 5 March 2009 — K & L Ruppert Stiftung & Co. Handels-KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs), Natália Cristina Lopes de Almeida Cunha, Cláudia Couto Simões, Marly Lima Jatobá

(Case C-90/08 P) ([1])

(Appeal — Community trade mark — Application for registration of the Community figurative mark CORPO LIVRE — Opposition on the part of the proprietor of the earlier national and international word marks LIVRE — Proof of use of the earlier marks submitted out of time — Rejection of the opposition)

(2009/C 141/37)

Language of the case: German

Parties

Appellant: K & L Ruppert Stiftung & Co. Handels-KG (represented by: D. Spohn, Rechtsanwältin)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: G. Schneider, acting as Agent), Natália Cristina Lopes de Almeida Cunha, Cláudia Couto Simões, Marly Lima Jatobá

Re:

Appeal against the judgment of the Court of First Instance (Second Chamber) of 12 December 2007 in Case T-86/05 *K & L Ruppert Stiftung* v *OHIM — Lopes de Almeida Cunha, Couto Simões, Lima Jatobá* by which the Court dismissed an action for annulment brought by the proprietor of the national and international word marks 'LIVRE' for goods in Class 25 against the decision of the First Board of Appeal of OHIM of 7 December 2004 dismissing the appeal against the Opposition Division's decision rejecting the opposition brought by that proprietor against registration of the Community figurative mark 'CORPO LIVRE' in respect of goods in Classes 18 and 25 — Opposition proceedings — Rejection of the opposition on the basis that the proof of use of the earlier marks was submitted out of time

Operative part of the order

The Court:

1. *Dismisses the appeal;*

2. *Orders K & L Ruppert Stiftung & Co. Handels-KG to pay the costs.*

([1]) OJ C 142, 07.06.2008.

Appeal brought on 3 June 2008 by Mr Ammayappan Ayyanarsamy against the order of the Court of First Instance (Fifth Chamber) delivered on 1 April 2008 in Case T-412/07 Ammayappan Ayyanarsamy v Commission of the European Communities and the Federal Republic of Germany

(Case C-251/08 P)

(2009/C 141/38)

Language of the case: German

Parties

Appellant: Ammayappan Ayyanarsamy (represented by: H. Kotzur, Rechtsanwalt)

Other party to the proceedings: Commission of the European Communities, Federal Republic of Germany

By order of 17 March 2009 the Court (Eighth Chamber) dismissed the appeal and ordered Mr Ayyanarsamy to bear his own costs.

Appeal by VDH Projektentwicklung GmbH and Edeka Handelsgesellschaft Rhein-Ruhr mbH against the order of the Court of First Instance (Second Chamber) of 25 June 2008 in Case T-185/08 VDH Projektentwicklung GmbH and Edeka Handelsgesellschaft Rhein-Ruhr mbH v Commission of the European Communities, brought on 27 August 2008

(Case C-387/08 P)

(2009/C 141/39)

Language of the case: German

Parties

Appellants: VDH Projektentwicklung GmbH and Edeka Handelsgesellschaft Rhein-Ruhr mbH (represented by: C. Antweiler, Rechtsanwalt)

Other party to the proceedings: Commission of the European Communities

On 27 August 2008 VDH Projektentwicklung GmbH and Edeka Handelsgesellschaft Rhein-Ruhr mbH brought an appeal before the Court of Justice of the European Communities against the order of the Court of First Instance of the European Communities of 25 June 2008 in Case T-185/08 *VDH Projektentwicklung GmbH and Edeka Handelsgesellschaft Rhein-Ruhr mbH* v *Commission of the European Communities*. The appellants are represented by Dr Clemens Antweiler, Rechtsanwalt, Rotthege Wassermann & Partner, Postfach 20 06 69, DE-40103 Düsseldorf.

By order of 3 April 2009, the Court of Justice of the European Communities (Seventh Chamber) dismissed the appeal and decided that the appellants must bear their own costs.

Reference for a preliminary ruling from the Tribunal Superior de Justicia de Galicia (Spain) lodged on 19 March 2009 — Pedro Manuel Roca Álvarez v Sesa Start España ETT SA

(Case C-104/09)

(2009/C 141/40)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de Galicia

Parties to the main proceedings

Applicant: Pedro Manuel Roca Álvarez

Defendant: Sesa Start España ETT SA

Question referred

Does a national law (specifically, Article 37.4 of the Workers' Statute) which recognises only employed mothers, but not employed fathers, as holders of the right to paid leave in respect of the feeding of an unweaned child, — leave which consists of a half-hour reduction in the working day or an hour taken off from work that may be divided into two parts, which is voluntary, paid for by the employer and may be taken until the child is nine months old —, infringe the principle of equal treatment, which prohibits discrimination on grounds of sex, and is recognised in Article 13 of the Treaty, in Council Directive 76/207/EEC [1] of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, and in Directive 2002/73 [2] amending that Directive?

---

[1] OJ 1976 L 39, p. 40.
[2] OJ 2002 L 269, p. 15.

Appeal brought on 18 March 2009 by Commission of the European Communities against the judgment of the Court of First Instance (Third Chamber, Extended Composition) delivered on 18 December 2008 in Joined Cases T-211/04 and T-215/04: Government of Gibraltar and United Kingdom v Commission of the European Communities

(Case C-106/09 P)

(2009/C 141/41)

Language of the case: English

Parties

Appellant: Commission of the European Communities (represented by: R. Lyal, V. Di Bucci, N. Khan, Agents)

Other parties to the proceedings: Government of Gibraltar, United Kingdom of Great Britain and Northern Ireland, Kingdom of Spain

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the Court of First Instance (Third Chamber, Extended Composition) of 18 December 2008, notified to the Commission on 5 January 2009, in Joined Cases T-211/04 and T-215/04 Government of Gibraltar and United Kingdom v Commission;

— reject the applications for annulment lodged by the Government of Gibraltar and by the United Kingdom; and

— order the Governemnt of Gibraltar and the United Kingdom to pay the costs;

alternatively,

— refer the cases back to the Court of First Instance for reconsideration; and

— reserve the costs of the proceedings at first instance and on appeal.

Pleas in law and main arguments

The Commission maintains that the contested judgment should be set aside on the following grounds:

The Court of First Instance erred in assessing the relationship between Article 87(1) EC and the competence of the Member States in tax matters;

The Court of First Instance erred in interpreting and applying Article 87(1) EC by imposing an unjustified constraint on the assessment of suspected State aid measures;

The Court of First Instance erred in interpreting and applying Article 87(1) EC by imposing an unjustified constraint on the exercise of review powers in respect of the identification of a common or 'normal' tax system;

The Court of First Instance erred in interpreting and applying Article 87(1) EC by considering that the common or 'normal' tax system may result from the application of different techniques to different taxpayers;

The Court of First Instance erred in interpreting and applying Article 87(1) EC by considering that the Commission had failed to identify the common or 'normal' tax regime and to perform the required assessment to show the selective character of the measures at stake;

The Court of First Instance erred in interpreting and applying Article 87(1) EC by failing to examine the three elements of selectivity identified in the contested decision.

Appeal brought on 20 March 2009 by the Kingdom of Spain against the judgment delivered by the Court of First Instance (Third Chamber, extended composition) on 18 December 2008 in Joined Cases T-211/04 and T-215/04 Government of Gibraltar and United Kingdom of Great Britain and Northern Ireland v Commission of the European Communities

(Case C-107/09 P)

(2009/C 141/42)

Language of the case: English

Parties

Appellant: the Kingdom of Spain (represented by: N. Díaz Abad and J.M. Rodríguez Cárcamo, Agents)

Other parties to the proceedings: Government of Gibraltar, United Kingdom of Great Britain and Northern Ireland and Commission of the European Communities

Form of order sought

— set aside in full the judgment of the Court of First Instance under appeal and give a new judgment, declaring Commission Decision 2005/261/EC of 30 March 2004 on the aid scheme which the United Kingdom is planning to implement as regards the Government of Gibraltar Corporation Tax Reform [1] to be lawful;

— order the respondents to pay the costs.

Pleas in law and main arguments

1. Infringement of Article 299(4) EC, as it has been interpreted in the case-law of the Court of Justice. First, the judgment under appeal disregards the legal status of Gibraltar according to the case-law of the Court of Justice of the European Communities (judgments of 23 September 2003 and 12 September 2006), since it fails to state that Gibraltar was ceded by the King of Spain to the British Crown under the Treaty of Utrecht 1713 and since it makes a number of errors in describing the status of Gibraltar. Second, the judgment under appeal also infringes Article 299(4) EC in that it affords Gibraltar the possibility, in the field of taxation, to separate itself from the United Kingdom, which means that, in that field, the United Kingdom ceases to be responsible for the external relations of Gibraltar and that the latter is converted de facto into a new Member State for the purposes of taxation.

2. Infringement of Article 87(1) EC by interpreting it in a manner which precludes its application by the Community when tackling tax havens identified by the OECD. Gibraltar is considered a tax haven by the OECD. The judgment under appeal, in holding that no comparison can be made between business activity in Gibraltar and that in the United Kingdom, is in breach of the principles of

the OECD, according to which measures which may be general in Gibraltar may be harmful to OECD member countries, which include the United Kingdom. Article 87(1) EC must be interpreted in accordance with OECD principles, so that that comparison is not only possible but necessary.

3. Infringement of the ECB Guideline of 16 July 2004 when applying Article 87(1) EC. The European System of Central Banks regards Gibraltar, together with 37 other territories, as an offshore financial centre distinct from the United Kingdom with regard to balance of payments, international investment position and international reserves. The analysis in the judgment under appeal, which precludes a comparison between business activity in Gibraltar and the United Kingdom, is at odds with that definition, which does consider such a comparison to be possible, and entails a breach of a binding rule of Community law, namely the ECB Guideline of 16 July 2004, in the application of Article 87(1) EC.

4. Infringement of Article 87(1) EC by failing to observe the requirement that aid must be granted 'by a Member State or through State resources'. Given that Gibraltar is a territory which is not part of a Member State, pursuant to Article 299(4) EC, the finding in the judgment that the reference framework for the application of Article 87(1) EC corresponds exclusively to the geographical limits of the territory of Gibraltar is tantamount to treating Gibraltar as a Member State, since otherwise it would never be possible to fulfil the requirement that the aid be granted 'by a Member State or through State resources'.

5. Infringement of the principle of non-discrimination, by applying without good cause the rules in the *Azores* judgment (Case C-88/03) to a situation other than the one envisaged therein. There are two differences between the Azores case and the case considered in the judgment under appeal. First, the Azores is a territory of a Member State, which is not the case of Gibraltar, and, second, in the Azores case the Court of Justice examined a reduction of the corporate tax rate, whilst in the case of Gibraltar what is at issue is a new general corporate tax system.

6. Infringement of Article 87(1) EC, by holding that, from the point of view of regional selectivity, the conditions for State aid have not been satisfied. Specifically, the Kingdom of Spain argues that the judgment erred in law in finding that the three requirements of political autonomy, procedural autonomy and economic autonomy established by the *Azores* judgment were met.

7. Error in law by failing to assess and apply the fourth condition put forward by the Kingdom of Spain in the proceedings at first instance. Even if the three conditions of the *Azores* judgment were held to be satisfied, the Court of First Instance should have set a fourth harmonisation condition in relation to the domestic tax system of the Member State which introduced the measure.

8. Infringement of Article 87(1) EC by holding that, from the point of view of material selectivity, the conditions for State aid have not been satisfied. Even on the assumption that Gibraltar is an autonomous reference framework in which the conditions of the judgment in *Azores* are met, the judgment under appeal infringed Article 87(1) EC in its consideration of material selectivity, given that the Court of First Instance in its analysis did not take into account that the corporation tax reform which Gibraltar is seeking to implement creates a system in which, of the 29 000 companies in existence in Gibraltar, 28 798 undertakings may be subject to a zero rate of taxation. The measure particularly favours those companies and the judgment under appeal, in failing to recognise that, infringed Article 87(1) EC. Furthermore, contrary to what is maintained in the judgment, the Commission did indeed identify the common tax regime.

9. Failure to state reasons in the judgment with regard to the assessment of the 'fourth condition' put forward by the Kingdom of Spain.

10. Infringement of the fundamental right to have the proceedings disposed of within a reasonable period, since the proceedings before the Court of First Instance lasted virtually twice as long as a normal case without any justification being given for that, whilst that situation had a significant impact on the proceedings.

11. Infringement of Article 77(a) and (b) of the Rules of Procedure of the Court of First Instance in that the Court failed to stay the proceedings after hearing the parties.

([1]) OJ 2004 L 85, p. 1.

Reference for a preliminary ruling from the Baranya Megyei Bíróság (Hungary) lodged on 23 March 2009 — Ker-Optika Bt. v ÁNTSZ Dél-dunátúli Regionális Intézete

(Case C-108/09)

(2009/C 141/43)

Language of the case: Hungarian

Referring court

Baranya Megyei Bíróság

Parties to the main proceedings

Applicant: Ker-Optika Bt.

Defendant: ÁNTSZ Dél-dunátúli Regionális Intézete

Questions referred

1. Does the sale of contact lenses constitute medical advice requiring the physical examination of a patient and thus not fall with the scope of Directive 2000/31/EC [1] of the European Parliament and of the Council on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market?

2. If the sale of contact lenses does not constitute medical advice requiring the physical examination of a patient, must Article 30 EC be interpreted as precluding legislation of a Member State under which contact lenses may be sold only in specialist medical accessory shops?

3. Does the principle of the freedom of movement of goods laid down in Article 28 EC preclude the provision of Hungarian law which makes it possible to sell contact lenses solely in specialist medical accessory shops?

[1] 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 L 178, 17.7.2000, p. 1-16 (ES, DA, DE, EL, EN, FR, IT, NL, PT, FI, SV) Hungarian Special Edition, Chapter 13, Volume 25, p. 399-414.

Reference for a preliminary ruling from the Bundesarbeitsgerichts (Germany) lodged on 23 March 2009 — Deutsche Lufthansa AG v Gertraud Kumpan

(Case C-109/09)

(2009/C 141/44)

Language of the case: German

Referring court

Bundesarbeitsgericht

Parties to the main proceedings

Applicant: Deutsche Lufthansa AG

Defendant: Gertraud Kumpan

Questions referred

1. Are Article 1, Article 2(1) and Article 6(1) of Council Directive 2000/78/EC of 27 November 2000 [1] establishing a general framework for equal treatment in employment and occupation and/or the general principles of Community law to be interpreted as precluding a provision of national law, which entered into force on 1 January 2001, under which fixed term employment contracts may be agreed without further conditions with workers simply because the latter have reached the age of 58?

2. Is Clause 5(1) of the ETUC-UNICE-CEEP Framework Agreement, which was implemented by Council Directive 1999/70/EC of 28 June 1999, [2] to be interpreted to the effect that it precludes a provision of national law which, without further conditions, allows the conclusion over an indefinite period of an unlimited number of successive fixed term employment contracts without objective grounds, simply because the worker has reached the age of 58 by the time the fixed term employment relationship begins and there is no close objective connection with a previous employment relationship of indefinite duration with the same employer?

3. If Questions 1 and/or 2 are answered in the affirmative:

   Must the national courts disapply the provision of national law?

[1] OJ 2000 L 303, p. 16.
[2] OJ 1999 L 175, p. 43.

Reference for a preliminary ruling from the Okresní Soud v Cheb (Czech Republic) lodged on 23 March 2009 — Česká podnikatelská pojišťovna, a.s., Vienna Insurance Group v Michal Bílas

(Case C-111/09)

(2009/C 141/45)

Language of the case: Czech

Referring court

Okresní Soud v Cheb

Parties to the main proceedings

Applicants: Česká podnikatelská pojišťovna, a.s., Vienna Insurance Group

Defendant: Michal Bílas

Questions referred

1. Should Article 26 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [1] ('the Regulation') be interpreted as not authorising a court to review its international jurisdiction where the defendant partipates in the proceedings, even when the case is subject to the rules on compulsory jurisdiction under Section 3 of the Regulation and the application is brought contrary to those rules?

2. Can the defendant, by the fact that he partipates in the proceedings, establish the international jurisdiction of the Court within the meaning of Article 24 of the Regulation even where the proceedings are otherwise subject to the rules of compulsory jurisdiction in Section 3 of the Regulation and the application is brought contrary to those rules?

3. If the answer to question (2) is in the negative, may the fact that the defendant participates in the proceedings before a court which otherwise under the Regulation does not have jurisdiction in a case concerning insurance, be regarded as an agreement on jurisdiction within the meaning of Article 13(1) of the Regulation?

(1) OJ 2001 L 12, 16.1.2001, p. 1

Reference for a preliminary ruling from the Oberverwaltungsgericht für das Land Nordrhein-Westfalen (Germany) lodged on 27 March 2009 — Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen e.V. v Bezirksregierung Arnsberg

(Case C-115/09)

(2009/C 141/46)

Language of the case: German

Referring court

Oberverwaltungsgericht für das Land Nordrhein-Westfalen

Parties to the main proceedings

Applicant: Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen e.V.

Defendant: Bezirksregierung Arnsberg

Intervener: Trianel Kohlekraftwerk Lünen GmbH &Co. KG

Questions referred

1. Does Article 10a of Directive 85/337/EEC (1) as amended by Directive 2003/35/EC (2) require that non-governmental organisations seeking access to the courts of a Member State in which administrative procedural law requires an applicant to maintain the impairment of a right may maintain the impairment of all environmental provisions relevant to the approval of a project, that is, also such provisions which are intended to serve the interests of the general public alone and not, at least in addition, to protect the legal interests of individuals?

2. In the case that Question 1 is not answered unreservedly in the affirmative:

   Does Article 10a of Directive 85/337/EEC as amended by Directive 2003/35/EC require that non-governmental organisations seeking access to the courts of a Member State in which administrative procedural law requires an applicant to maintain the impairment of a right may maintain the impairment of such environmental provisions relevant to the approval of a project which derive directly from Community law or transpose Community environmental legislation into domestic law, that is, also such provisions which are intended to serve the interests of the general public alone and not, at least in addition, to protect the legal interests of individuals?

   (a) In the case that Question 2 is answered, in principle, in the affirmative:

   Must provisions of Community environmental legislation satisfy specific material requirements to be capable of forming the basis for a challenge?

   (b) In the case that Question 2(a) is answered in the affirmative:

   What are the material requirements (for example, direct effect, protective purpose or objective) concerned?

3. In the case that Question 1 or Question 2 is answered in the affirmative:

   Are non-governmental organisations entitled directly on the basis of the directive to such right of access to the courts which exceeds provision made under national law?

(1) Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ L 175, 5.7.1985 pp 40-48).

(2) Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC on the assessment of the effects of certain public and private projects on the environment — explanation of the Commission (OJ L156, 25.6.2003 pp 17-25).

Appeal brought on 31 March 2009 by Kronoply GmbH, formerly Kronoply GmbH & Co. KG, against the judgment delivered by the Court of First Instance (Fifth Chamber) on 14 January 2009 in Case T-162/06 Kronoply GmbH & Co. KG v Commission of the European Communities

(Case C-117/09 P)

(2009/C 141/47)

Language of the case: German

Parties

Appellant: Kronoply GmbH, formerly Kronoply GmbH & Co. KG (represented by: R. Nierer und L. Gordalla, Rechtsanwälte)

Other party to the proceedings: Commission of the European Communities

Form of order sought

1. Set aside the judgment of the Court of First Instance (Fifth Chamber) of 14 January 2009 in Case T-162/06;

2. annul the Commission's decision of 21 September 2005 on State aid No C 5/2004 (ex N 609/2003) by which the Commission declares the State aid which Germany is planning to implement for the appellant to be incompatible with the common market;

3. in the alternative to (2), refer the matter back to the Court of First Instance;

4. order the Commission to pay the costs of the proceedings at first instance and of the appeal, in particular the costs of the applicant/appellant.

Pleas in law and main arguments

This appeal relates to the judgment of the Court of First Instance dismissing the appellant's application for annulment of the Commission's decision of 21 September 2005 by which the State aid which Germany is planning to implement for Kronoply GmbH & Co. KG is declared to be incompatible with the common market. According to the judgment under appeal, the Commission was right to hold that the aid at issue did not require the beneficiary either to pay consideration or to contribute to an objective in the common interest; in consequence, it was operating aid intended to cover the running costs and could not be authorised. In the Court's view, the aid at issue was not necessary because it was intended solely for the construction of a production plant which had, however, already been the subject of an earlier notification, and because the investment project had already been completed by means of the aid authorised following that earlier notification long before the notification of the aid at issue.

The appeal is brought on the basis that the judgment under appeal is incompatible with Article 87(3)(a) and (c) EC, with the Guidelines on national regional aid issued pursuant thereto, and with the 1998 multisectoral framework on regional aid for large investment projects. Accordingly, the principles of the protection of legitimate expectations and equal treatment have also been infringed by the Court.

Article 87(3)(a) and (c) EC has been infringed in so far as the Court incorrectly interpreted and assessed the criterion of necessity and the incentive effect.

As far as the assessment of the necessity of the aid at issue is concerned, the Court unlawfully restricts the scope of application of Article 87(3) EC in so far as it errs in law in assuming that an aid recipient can notify aid in respect of an investment project only once, and that each further notification must relate to a new investment project. In addition, the Court focussed in its assessment of necessity on a point in time which was of no consequence at all as far as the appellant's decision to invest was concerned, and over which, moreover, the appellant could not have had any control. The relevant date, according to the Commission and the Court, was the date on which the aid at issue was notified to the Commission by the Member State. However, by its application to the national authorities for aid to be implemented, the appellant had already done everything that was required and in its power to establish necessity. The date on which the aid is notified to the Commission is outside the appellant's control. The stance taken by the Court and the Commission would — if taken to its logical conclusion — mean that the necessity of implementing aid would have to be disclaimed in respect of all investment projects if a decision by the Commission on the compatibility or incompatibility of the proposed aid with the common market were to be taken only after the completion or termination of the investment project.

Further, it should be noted that the appellant was not in a position directly to challenge the Commission's decision regarding the aid originally notified. Where the Commission declares aid to be compatible with the common market, but to an extent that does not correspond to the amount which the recipient requested from the national authorities, the recipient cannot successfully challenge the Commission's decision in his favour before the Court of First Instance. The period of time between the first decision of the Commission approving the original aid and the notification of the aid at issue is therefore attributable to the fact that the appellant availed itself of what it regarded as the legal remedies which it was entitled to use to challenge the Commission's letter refusing to amend its first authorisation decision. The fact that the Federal Republic of Germany consequently notified the aid at issue only after the investment project was completed is due solely to the fact that there was an intervening dispute about the categorisation of the letter from the Commission referred to above. The argument that the investment project had since been completed cannot, therefore, serve as a basis for the assessment of necessity.

As regards the criterion of incentive effect, the Court expressly left consideration of that issue open. Even if, contrary to the appellant's view, necessity and incentive effect are regarded as being two distinct requirements for the authorisation of aid, both have been met in this case.

The third subparagraph of point 4.2 of the Guidelines on national regional aid provides that the criterion of incentive effect is satisfied if the application for aid is submitted before work is started on the project. As stated above, it is only the application for aid that is submitted to the national authorities that can be relevant in that regard. The appellant submitted the application before work was started on the project and thus satisfied that criterion. The Court failed to take this into account, thereby infringing not only Article 87 EC but also the Guidelines for national regional aid.

The judgment under appeal also infringes the multisectoral framework on regional aid and the principle of equal treatment in so far as the Court endorsed the Commission's inconsistent application of the market assessment. During the notification procedure in respect of the original aid, the Commission had indicated that it would assess the 'state of competition' factor in respect of the relevant product market as being 0.75; however, only approximately three weeks later, it assessed the same relevant market differently in another decision and deemed a 'state of competition' factor under the multisectoral framework of 1.0 to be appropriate. Even though the Commission has a wide margin of discretion in its economic assessment of the facts, that margin is nevertheless curtailed by the fact that the markets for the same goods are the same, particularly where the markets for the same group of products are assessed within a period of three weeks.

Finally, the Court committed a further error of law by entirely disregarding the appellant's argument that it was obliged to complete the investment project within 36 months of submission of the application. If the appellant had failed to comply with that obligation, it would have lost all of the aid. The appellant cannot be criticised for having complied with that obligation. That is an infringement of Article 87 EC, as well as of the principle that the Commission must adhere to the rules on dealing with aid that the Commission itself has adopted and implemented.

Reference for a preliminary ruling from the Oberste Berufungs- und Disziplinarkommission (Austria) lodged on 1 April 2009 — Robert Koller v Rechtsanwaltsprüfungskommission beim Oberlandesgericht Graz

(Case C-118/09)

(2009/C 141/48)

Language of the case: German

Referring court

Oberste Berufungs- und Disziplinarkommission

Parties to the main proceedings

Applicant: Robert Koller

Defendant: Rechtsanwaltsprüfungskommission beim Oberlandesgericht Graz

Questions referred

1. Is Directive 89/48/EEC [1] applicable to the case of an Austrian national if he

   (a) successfully completed his diploma course in law in Austria and was awarded by decision the academic degree of 'Magister der Rechtswissenschaften',

   (b) after taking supplementary examinations at a Spanish university, which however involved less than three years of study, was then granted, by a certificate of recognition from the Ministry of Education and Science of the Kingdom of Spain, the entitlement to use the Spanish title 'Licenciado en Derecho', which is equivalent to the Austrian title, and

   (c) by registering with the Madrid Chamber of Lawyers gained the entitlement to use the professional title 'abogado' and actually pursued the profession of a lawyer in Spain for three weeks before making the application and for five months at the most before the first instance decision?

2. In the event that Question 1 is answered in the affirmative:

   Is it compatible with Directive 89/48/EEC to interpret Paragraph 24 of the Bundesgesetz über den freien Dienstleistungsverkehr und die Niederlassung von europäischen Rechtsanwälten in Österreich (Federal law on the free movement of services and the establishment of European lawyers in Austria, 'EuRAG') as meaning that obtaining an Austrian degree in law and attaining the entitlement to use the Spanish title 'Licenciado en Derecho' after taking supplementary examinations at a Spanish university over a period of less than three years of study is not sufficient for admission to the aptitude test in Austria under Paragraph 24(1) of the EuRAG without proof of the practice required under national law (Paragraph 2(2) of the Rechtsanwaltsordnung (Lawyers' Code, 'RAO'), even if the applicant has been admitted as an 'abogado' in Spain without a comparable requirement for practice and had pursued the profession there for three weeks before making the application and for five months at the most before the first instance decision?

[1] OJ 1989 L 19, p. 16

Reference for a preliminary ruling from the Conseil d'État (France) lodged on 1 April 2009 — Société fiduciaire nationale d'expertise comptable v Ministre du budget, des comptes publics et de la fonction publique

(Case C-119/09)

(2009/C 141/49)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicant: Société fiduciaire nationale d'expertise comptable

Defendant: Ministre du budget, des comptes publics et de la fonction publique

Question referred

Was Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market [1] intended to proscribe, in respect of the regulated professions falling within its scope, any general prohibition [on commercial communications], whatever the form of commercial practice concerned, or does it leave the Member States the option of maintaining general prohibitions in respect of certain commercial practices, such as canvassing?

[1] OJ L 376, p. 36.

Action brought on 1 April 2009 — Commission of the European Communities v Kingdom of Belgium

(Case C-120/09)

(2009/C 141/50)

Language of the case: French

Parties

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

Defendant: Kingdom of Belgium

Form of order sought

— Declare that, by failing to transpose into Walloon law Article 2(f), (j) and (k) of, and point 4C of Annex III to, Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste, [1] the Kingdom of Belgium has failed to fulfil its obligations under that directive;

— order the Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

The European Commission raises two grounds of complaint in support of its action.

First, it alleges that the defendant has not transposed into the law of the Walloon Region the concepts of 'underground storage', 'landfill gas' and 'eluate' provided for by the provisions of Article 2(f), (j) and (k) of Directive 1999/31/EC on the landfill of waste. The Commission draws attention to the importance of those concepts which, being key concepts for the application of the directive, are also referred to in other provisions adopted on the basis of and in application of that directive.

Secondly, the applicant complains that Walloon law does not include any provisions relating to the trigger levels from which it can be considered that the location of the landfill has a significant adverse effect on groundwater quality. Point 4C of Annex III to the directive, which provides for the drawing up of such provisions, is crucially important in order to ensure effective control of groundwater quality and, consequently, to guarantee the protection of the environment which constitutes the essential objective of the directive.

[1] OJ 1999 L 182, p. 1.

Action brought on 1 April 2009 — Commission of the European Communities v Italian Republic

(Case C-121/09)

(2009/C 141/51)

Language of the case: Italian

Parties

Applicant: Commission of the European Communities (represented by: W. Wils and C. Cattabriga, Agents)

Defendant: Italian Republic

Form of order sought

— a declaration that the Italian Republic has failed to fulfil its obligations under Article 7 of Directive 90/314/EEC; [1]

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

Pleas in law and main arguments

1. By fixing a period of three months from the foreseen date of the end of travel for the purpose of making an application for action by the Guarantee Fund for package travel consumers, the Italian Republic has failed to fulfil its obligations under Article 7 of Directive 90/314.

2. Article 7 of Directive 90/314 provides that the organiser and/or retailer party to the contract is to provide sufficient evidence of security for the refund of money paid over and for the repatriation of the consumer in the event of insolvency. According to the interpretation given in Community case-law, that provision imposes an obligation of result on the Member States, which entails affording the purchaser of package travel the right to effective protection against the risks of the organisers' insolvency and, in particular, the refunding of sums paid over and repatriation.

3. Next, Article 8 allows Member States to adopt more stringent provisions, but only if the latter offer greater consumer protection.

4. In the instant case, the object of the Italian legislation in question, according to information sent by the national authorities during the infringement procedure, is to ensure that the State budget has the opportunity of recovering sums paid to consumers and so of preserving the State's financial interests instead of ensuring greater protection for the purchasers of package travel.

5. Although the Commission understands that Italy has an interest in ensuring the proper balanced running of the Guarantee Fund, making it easier for the latter to bring an action for indemnity against the tour operator, it takes the view that such a measure, by imposing an absolute limit on the presentation of the application for action by the Fund, introduces a condition capable of depriving the consumer of the rights guaranteed by Directive 90/314.

6. It is true, as the Italian authorities maintain, that consumers may make their application for action by the Fund as soon as they are aware of circumstances that threaten to prevent the performance of the contract. However, in order to avail themselves of that opportunity they must be aware of those circumstances. Excluding those cases in which the travel organiser's insolvency is obvious, by reason of a declaration of insolvency, in most cases consumers do not know the exact financial situation of the operator. It is therefore reasonable that they should in the first place turn to the operator to obtain repayment of sums paid, sending it a letter, perhaps a reminder, and finally an order to pay. In that manner there is a risk that the period of three months fixed by Article 5 of Ministerial Decree No 349/1999 may already have long elapsed when the application is made for action by the Fund, with the result that consumers are deprived of the right to obtain the refund of the sums paid.

7. To remedy the infringement alleged in these proceedings, the Italian authorities declared, first, that they wished to extend from three to 12 months the period in which the application may be made and then that they intended to abolish it.

8. In addition, they published in the Official Gazette of the Italian Republic a communication informing potentially interested persons that, pending abolition of the period in question, for the purposes of ensuring consumer protection applications may be made to the Guarantee Fund at any time.

9. The Commission considers that such measures, while a laudable attempt to make good the consequences of the infringement complained of, do not do enough to eliminate the risk that purchasers of package travel may be deprived of their right to effective protection in the event of the organiser's insolvency.

10. For the purpose of fully ensuring legal certainty, so enabling individuals to know the full extent of their rights and to rely on them before the courts, the provisions of a directive must be given effect with unquestionable force, precision and clarity and not by means of mere administrative practices which, by their nature, are alterable at will by the national authorities.

11. The coexistence, in the Italian legal order, of a provision, never formally repealed, prescribing a period of three months beyond which the introduction of an application for the Fund to take action will not be valid, on the one hand, and an administrative communication inviting the public to take no notice of that time-limit, on the other, clearly creates a situation of uncertainty for purchasers of package travel.

([1]) Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours (OJ 1990 L 158, p. 59).

Reference for a preliminary ruling from the Simvoulio tis Epikratias (Greece) lodged on 2 April 2009 — Enosi Efopliston Aktoploias, ANEK, Minoikes Grammes, N.E. Lesvou and Blue Star Ferries v Ipourgos Emporikis Naftilias and Ipourgos Aigaiou

(Case C-122/09)

(2009/C 141/52)

Language of the case: Greek

Referring court

Simvoulio tis Epikratias

Parties to the main proceedings

Claimants: Enosi Efopliston Aktoploias, ANEK, Minoikes Grammes, N.E. Lesvou and Blue Star Ferries

Defendants: Ipourgos Emporikis Naftilias and Ipourgos Aigaiou

Questions referred

(a) In accordance with the second paragraph of Article 10 and the second paragraph of Article 249 of the Treaty establishing the European Community: (i) was the Greek legislature obliged, for the duration of the temporary exemption until 1 January 2004 from the implementation of Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage) (OJ 1992 L 364, p. 7) which was introduced by Article 6(3) of that regulation and relates to Greece, to refrain from adopting provisions liable seriously to compromise the full and effective application of the regulation in Greece from 1 January 2004 onwards; (ii) are individuals entitled to rely on that regulation to contest the validity of provisions adopted by the Greek legislature before 1 January 2004 in the event that those national provisions seriously compromise the full and effective application of the regulation in Greece from 1 January 2004?

(b) If the first question referred for a preliminary ruling is answered in the affirmative, is the full application from 1 January 2004 of Regulation No 3577/92 in Greece seriously compromised by reason of the adoption by the Greek legislature, before 1 January 2004, of provisions which are exhaustive and permanent in nature, do not lay down that they cease to have force from 1 January 2004 and are contrary to provisions of that regulation?

(c) If the answers to the first two questions referred for a preliminary ruling are in the affirmative, do Articles 1, 2, and 4 of Regulation (EEC) No 3577/92 permit the adoption of national rules under which shipowners may provide maritime cabotage services only on specific operational routes determined each year by a national authority competent for that purpose and after first obtaining an administrative licence granted under an authorisation scheme having the following characteristics: (i) it relates to all operational routes, without exception, which serve islands, and (ii) the competent national authorities may approve an application submitted for the grant of a licence to operate a service by unilaterally amending, in the exercise of their discretion and without prior definition by a rule of law of the criteria applied, the elements of the application which relate to the frequency and the period of interruption of the service and to the fare tariff?

(d) If the answers to the first two questions referred for a preliminary ruling are in the affirmative, is a restriction on the freedom to provide services that is impermissible for the purposes of Article 49 of the Treaty establishing the European Community introduced by national legislation which provides that a shipowner to whom the administration has granted a licence to operate a ship on a specified route (either after his application in that regard has been approved as it stands, or after it has been approved with amendments to certain of its elements, which he accepts) is in principle obliged to work the particular operational route continuously for the entire duration of the annual operational period, and that to secure compliance with this obligation imposed on him he must deposit, before the operational service commences, a letter of guarantee all or part of whose amount will be forfeited if the obligation in question is not complied with or not complied with precisely?

Action brought on 2 April 2009 — Commission of the European Communities v Republic of Cyprus

(Case C-125/09)

(2009/C 141/53)

Language of the case: Greek

Parties

Applicant: Commission of the European Communities (represented by: G. Zavvos and A. Nijenhuis)

Defendant: Republic of Cyprus

Form of order sought

— declare that, by not ensuring that rights of way on, over or under public property are granted in good time, without discrimination and transparently, the Republic of Cyprus has failed to fulfil its obligations under Article 11(1) of the Framework Directive (2002/21/EC) and Article 4(1) of the Authorisation Directive (2002/20/EC);

— order the Republic of Cyprus to pay the costs.

Pleas in law and main arguments

1. It is apparent from the information supplied to the Commission that the second mobile telephony provider has been unable to establish its network effectively in order to provide electronic communications services competitively vis-à-vis the established network operator, the Arkhi Tilepikinonion Kiprou (Cyprus Telecommunications Authority; 'ATHK'), because of time-consuming and uncoordinated procedures in Cyprus.

2. The Commission alleges that, as a result of the conduct of the competent Cypriot public authorities (municipalities and/or districts), the second mobile telephony provider does not have at the moment the construction authorisations which are required under national legislation and therefore its existing network, which is expected to correspond to the strict requirement regarding geographical coverage that is entered in its authorisation, could be regarded as operating in breach of Cypriot law.

3. The Commission considers that that situation gives rise to substantial disadvantages for the activities of the second mobile telephony network operator. Since it has not completed the development of its network, it can offer end users full geographical coverage only by means of the national roaming service available to it, at wholesale prices, from ATHK. This results in the second operator currently being dependent on ATHK's wholesale national roaming service for approximately 20 % of its total traffic. Thus, since the second operator's own network does not provide full geographical coverage, it is obliged to shoulder the real external cost of use of ATHK's wholesale national roaming service and is dependent on that service.

4. In the Commission's view, this significant delay regarding the grant, to the second mobile telephony provider, of rights of way on, over or under public property for the installation of masts and antennae constitutes an infringement of Article 11(1) of the Framework Directive, which provides that the competent authority must act on the basis of transparent and publicly available procedures, applied without discrimination and without delay.

5. The Republic of Cyprus states that the decree which was to be issued immediately after the vote on the draft law was expected also to cover other important points of the Code, such as the six-week rule and, generally, all the provisions of paragraph 4 of the Code. However, the abovementioned decree was *never* issued, with the result that the situation remains essentially unchanged. Consequently, the Commission considers that the Framework Directive and the Authorisation Directive are currently not implemented correctly in Cyprus so far as concerns the grant of town-planning and construction authorisations.

6. Therefore, Article 4(1) of the Authorisation Directive and Article 11(1) of the Framework Directive will not be fully implemented prior to formal implementation of the forthcoming measures implementing the Code since, in the absence of completion of the necessary procedure and issue of the decree, the new construction authorisation regime will not be capable of being brought into force.

Action brought on 3 April 2009 — Commission of the European Communities v Grand Duchy of Luxembourg

(Case C-126/09)

(2009/C 141/54)

Language of the case: French

Parties

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

Defendant: Grand Duchy of Luxembourg

Form of order sought

— Declare that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Directive 2003/59/EC of the European Parliament and of the Council of 15 July 2003 on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers, amending Council Regulation (EEC) No 3820/85 and Council Directive 91/439/EEC and repealing Council Directive 76/914/EEC [1] or, in any event, by failing to notify those provisions to the Commission, the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive;

— order the Grand Duchy of Luxembourg to pay the costs.

Pleas in law and main arguments

The period prescribed for transposition of Directive 2003/59/EC expired on 9 September 2006. At the time the present action was brought, the defendant had still not adopted all the measures necessary to transpose the directive or, in any event, had not notified those measures to the Commission.

(1) OJ 2003 L 226, p. 4.

Reference for a preliminary ruling from the Oberlandesgericht Nürnberg (Germany) lodged on 6 April 2009 — Coty Prestige Lancaster Group GmbH v Simex Trading AG

(Case C-127/09)

(2009/C 141/55)

Language of the case: German

Referring court

Oberlandesgericht Nürnberg

Parties to the main proceedings

Applicant: Coty Prestige Lancaster Group GmbH

Defendant: Simex Trading AG

Question referred

Are goods put on the market within the meaning of Article 13(1) of Regulation (EC) No 40/94 (1) and Article 7 of Directive 89/104/EEC (2) if 'perfume testers' are made available to contractually-bound intermediaries without transfer of ownership and with a prohibition on the sale thereof so that those intermediaries are able to allow potential customers to use the contents of the goods for test purposes, the goods bearing a notice stating that they may not be sold, the recall of the goods by the manufacturer/trade mark proprietor at any time remaining contractually possible and the packaging of the goods being significantly different from the goods usually put on the market by the manufacturer/trade mark proprietor in that it is plainer?

(1) Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark, OJ L 11, 14.1.1994, p. 1–36.

(2) First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks, OJ L 40, 11.2.1989, p. 1–7.

Reference for a preliminary ruling from the Arios Pagos (Greece) lodged on 10 April 2009 — Organismos Sillogikis Diakhirisis Dimiourgon Theatrikon kai Optikoakoustikon Ergon v Divani Acropolis Hotel and Tourism AE

(Case C-136/09)

(2009/C 141/56)

Language of the case: Greek

Referring court

Arios Pagos

Parties to the main proceedings

Applicant: Organismos Sillogikis Diakhirisis Dimiourgon Theatrikon kai Optikoakoustikon Ergon

Respondent: Divani Acropolis Hotel and Tourism AE

Question referred

Does the mere installation of television sets by a hotelier in hotel rooms and their connection to the central antenna installed in the hotel, without any other action, intermediation or intervention by the hotelier, constitute communication of the work to the public within the meaning of Article 3(1) of Directive 2001/29/EC, and, in particular, in accordance with the aforementioned judgment of the Court of Justice of 7 December 2006 in Case C-306/05 *Sociedad General de Autores y Editores de España (SGAE)* v *Rafael Hoteles SA*, does this involve the distribution of a signal, via television sets, to customers who stay in the hotel rooms, by means of the technical intervention of the hotelier?

Reference for a preliminary ruling from the Raad van State (Netherlands) lodged on 15 April 2009 — M.M. Josemans and the Burgemeester of Maastricht v Rechtbank Maastricht

(Case C-137/09)

(2009/C 141/57)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Applicants: 1. M.M. Josemans

2. Burgemeester of Maastricht

Questions referred

1. Does a regulation, such as that at issue in the main proceedings, concerning the access of non-residents to coffeeshops, fall wholly or partly within the scope of the EC Treaty, with particular reference to the free movement of goods and/or services, or of the prohibition of

discrimination laid down in Article 12 in conjunction with Article 18 of the EC Treaty?

2. In so far as the provisions of the EC Treaty concerning the free movement of goods and/or services are applicable, does a prohibition of the admission of non-residents to coffeeshops form a suitable and proportionate means of reducing drug tourism and the public nuisance which accompanies it?

3. Is the prohibition of discrimination against citizens on grounds of nationality, as laid down in Article 12 in conjunction with Article 18 of the EC Treaty, applicable to the rules on the access of non-residents to coffeeshops if and in so far as the provisions of the EC Treaty concerning the free movement of goods and services are not applicable?

4. If so, is the resulting indirect distinction between residents and non-residents justified, and is the prohibition of the admission of non-residents to coffeeshops a suitable and proportionate means of reducing drug tourism and the public nuisance which accompanies it?

Action brought on 16 April 2009 — Commission of the European Communities v Kingdom of Belgium

(Case C-139/09)

(2009/C 141/58)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: L. de Schietere de Lophem and A. Marghelis, acting as Agents)

Defendant: Kingdom of Belgium

Form of order sought

— Declare that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industries and amending Directive 2004/35/EC [1] or, in any event, by failing to notify those provisions to the Commission, the Kingdom of Belgium has failed to fulfil its obligations under that directive;

— order the Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

The period prescribed for transposition of Directive 2006/21/EC expired on 30 April 2008. At the time the present action was brought, the defendant had not yet adopted all the measures necessary to transpose the directive or, in any event, had not notified those measures to the Commission.

[1] OJ 2006 L 102, p. 15.

Action brought on 21 April 2009 — Commission of the European Communities v Grand Duchy of Luxembourg

(Case C-141/09)

(2009/C 141/59)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: P. Dejmek and J. Sénéchal, acting as Agents)

Defendant: Grand Duchy of Luxembourg

Form of order sought

— Declare that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies, [1] and in particular Articles 1 to 4, 5 to 8, 9(2), 13 and 16 thereof, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 19 of that directive;

— order the Grand Duchy of Luxembourg to pay the costs.

Pleas in law and main arguments

The period prescribed for transposition of Directive 2005/56/EC expired on 14 December 2007. At the time the present action was brought, the defendant had not yet adopted all the measures necessary to transpose the directive or, in any event, had not notified those measures to the Commission.

[1] OJ 2005 L 310, p. 1.

Action brought on 27 April 2009 — Commission of the European Communities v Grand Duchy of Luxembourg

(Case C-149/09)

(2009/C 141/60)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: P. Dejmek and J. Sénéchal, acting as Agents)

Defendant: Grand Duchy of Luxembourg

Form of order sought

— Declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2006/68/EC of the European Parliament and of the Council of 6 September 2006 amending Council Directive 77/91/EEC as regards the formation of public limited liability companies and the maintenance and alteration of

their capital [1], or, as the case may be, by failing to inform the Commission of those provisions, the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive;

— order the Grand Duchy of Luxembourg to pay the costs.

Pleas in law and main arguments

The period for the transposition of Directive 2006/68/EC expired on 15 April 2008. However, at the time the present action was brought, the defendant had not yet adopted all the measures necessary to transpose the directive or, as the case may be, had not informed the Commission thereof.

[1] OJ 2006 L 264, p. 32.

Order of the President of the Second Chamber of the Court of 12 March 2009 (reference for a preliminary ruling from the Rechtbank van koophandel Brussel (Belgium)) — Beecham Group plc, SmithKline Beecham plc, Glaxo Group Ltd, Stafford-Miller Ltd, GlaxoSmithKline Consumer Healthcare NV, GlaxoSmithKline Consumer Healthcare BV v Andacon NV

(Case C-132/07) [1]

(2009/C 141/61)

Language of the case: Dutch

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

[1] OJ C 117, 26.5.2007.

Order of the President of the Court of 13 January 2009 — Commission of the European Communities v Kingdom of Spain

(Case C-112/08) [1]

(2009/C 141/62)

Language of the case: Spanish

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

[1] OJ C 128, 24.5.2008.

Order of the President of the Court of 3 March 2009 (reference for a preliminary ruling from the Bundesgerichtshof (Germany)) — proceedings brought by Hermann Fischer, Rolf Schlatter, interested party: Regierungspräsidium Freiburg

(Case C-193/08) [1]

(2009/C 141/63)

Language of the case: German

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

[1] OJ C 183, 19.7.2008.

Order of the President of the Court of 12 March 2009 — Commission of the European Communities v Ireland

(Case C-234/08) [1]

(2009/C 141/64)

Language of the case: English

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

[1] OJ C 183, 19.7.2008.

Order of the President of the Seventh Chamber of the Court of 5 February 2009 — Commission of the European Communities v Republic of Malta

(Case C-269/08) [1]

(2009/C 141/65)

Language of the case: Maltese

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

[1] OJ C 197, 2.8.2008.

Order of the President of the Court of 17 December 2008 — Commission of the European Communities v Kingdom of the Netherlands

(Case C-283/08) [1]

(2009/C 141/66)

Language of the case: Dutch

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

[1] OJ C 223, 30.8.2008.

Order of the President of the Sixth Chamber of the Court of 5 March 2009 — Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland

(Case C-284/08) [1]

(2009/C 141/67)

Language of the case: English

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

[1] OJ C 223, 30.8.2008.

Order of the President of the Court of 2 March 2009 — Commission of the European Communities v Czech Republic

(Case C-294/08) [1]

(2009/C 141/68)

Language of the case: Czech

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

[1] OJ C 247, 27.9.2008.

Order of the President of the Court of 20 March 2009 — Commission of the European Communities v Federal Republic of Germany

(Case C-326/08) [1]

(2009/C 141/69)

Language of the case: German

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

[1] OJ C 223, 30.8.2008.

Order of the President of the Court of 20 February 2009 — Commission of the European Communities v Federal Republic of Germany

(Case C-369/08) [1]

(2009/C 141/70)

Language of the case: German

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

[1] OJ C 285, 8.11.2008.

Order of the President of the Court of 10 March 2009 — Commission of the European Communities v Kingdom of Spain

(Case C-463/08) [1]

(2009/C 141/71)

Language of the case: Spanish

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

[1] OJ C 327, 20.10.2008.

Order of the President of the Court of 24 March 2009 (reference for a preliminary ruling from the Tribunal de première instance de Namur (Belgium)) — Atenor Group SA v Belgian State

(Case C-514/08) [1]

(2009/C 141/72)

Language of the case: French

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

[1] OJ C 32, 7.2.2009.

Order of the President of the Court of 24 March 2009 (reference for a preliminary ruling from the Cour d'appel de Liège (Belgium)) — Real Madrid Football Club, Zinedine Zidane, David Beckham, Raul Gonzalez Blanco, Ronaldo Luiz Nazario de Lima, Luis Filipe Madeira Caeiro, Futebol Club Do Porto S.A.D., Victor Baia, Ricardo Costa, Diego Ribas da Cunha, P.S.V. N.V., Imari BV, Juventus Football Club SPA v Sporting Exchange Ltd, William Hill Credit Limited, Victor Chandler (International) Ltd, BWIN International Ltd (Betandwin), Ladbrokes Betting and Gaming Ltd, Ladbroke Belgium S.A., Internet Opportunity Entertainment Ltd, Global Entertainment Ltd

(Case C-584/08) [1]

(2009/C 141/73)

Language of the case: French

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

[1] OJ C 55, 7.3.2009.

COURT OF FIRST INSTANCE

Judgment of the Court of First Instance of 30 April 2009 — Itochu v Commission

(Case T-12/03) [1]

(Competition — Agreements, decisions and concerted practices — Market for video games consoles and games cartridges compatible with Nintendo games consoles — Decision finding an infringement of Article 81 EC — Limitation of parallel exports — Attributability of the infringement — Fines — Differential treatment — Deterrent effect — Duration of the infringement — Attenuating circumstances — Cooperation during the administrative procedure)

(2009/C 141/74)

Language of the case: English

Parties

Applicant: Itochu Corp. (Tokyo, Japan) (represented by: Y. Shibasaki G. van Gerven, T. Franchoo, lawyers)

Defendant: Commission of the European Communities (represented initially by P. Hellström and O. Beynet, and subsequently by F. Castillo de la Torre and O. Beynet, Agents)

Re:

Application for the annulment of Articles 1, 3 and 5 of Commission Decision 2003/675/EC of 30 October 2002 relating to a proceeding pursuant to Article 81 [EC] and Article 53 of the EEA Agreement (COMP/35.587 PO Video Games, COMP/35.706 PO Nintendo Distribution and COMP/36.321 Omega — Nintendo) (OJ 2003 L 255, p. 33), in so far as they relate to the applicant, or, in the alternative, reduction of the amount of the fine imposed on it.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Itochu Corp. to pay the costs.*

[1] OJ C 55, 8.3.2003.

Judgment of the Court of First Instance of 30 April 2009 — Nintendo and Nintendo of Europe v Commission

(Case T-13/03) [1]

(Competition — Agreements, decisions and concerted practices — Market for Nintendo video games consoles and games cartridges — Decision finding an infringement of Article 81 EC — Limitation of parallel exports — Fines — Deterrent effect — Duration of the infringement — Aggravating circumstances — Role of leader or instigator — Attenuating circumstances — Cooperation during the administrative procedure)

(2009/C 141/75)

Language of the case: English

Parties

Applicants: Nintendo Co., Ltd (Kyoto, Japan) and Nintendo of Europe GmbH (Grossostheim, Germany) (represented by: I. Forrester QC, J. Pheasant, M. Powell, C. Kennedy-Loest, Solicitors and J. Killick, Barrister)

Defendant: Commission of the European Communities (represented initially by O. Beynet and A. Whelan, and subsequently by X. Lewis and O. Beynet, Agents)

Re:

Application for cancellation or reduction of the amount of the fine imposed on the applicants by Article 3, first indent, of Commission Decision 2003/675/EC of 30 October 2002 relating to a proceeding pursuant to Article 81 [EC] and Article 53 of the EEA Agreement (COMP/35.587 PO Video Games, COMP/35.706 PO Nintendo Distribution and COMP/36.321 Omega — Nintendo) (OJ 2003 L 255, p. 33).

Operative part of the judgment

The Court:

1. *Sets the amount of the fine imposed on Nintendo Co., Ltd and Nintendo of Europe GmbH at EUR 119,2425 million;*

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

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

[1] OJ C 70, 22.3.2003.

Judgment of the Court of First Instance of 30 April 2009 — CD-Contact Data v Commission

(Case T-18/03) ([1])

(Competition — Agreements, decisions and concerted practices — Market for Nintendo video games consoles and games cartridges — Decision finding an infringement of Article 81 EC — Limitation of parallel exports — Proof of the existence of an agreement to limit parallel trade — Fines — Differential treatment — Attenuating circumstances)

(2009/C 141/76)

Language of the case: English

Parties

Applicant: CD-Contact Data GmbH (Burglengenfeld, Germany) (represented by: J. de Pree and R. Wesseling, lawyers)

Defendant: Commission of the European Communities (represented by: P. Oliver, X. Lewis and O. Beynet, Agents)

Re:

APPLICATION for the annulment of Commission Decision 2003/675/EC of 30 October 2002 relating to a proceeding pursuant to Article 81 [EC] and Article 53 of the EEA Agreement (COMP/35.587 PO Video Games, COMP/35.706 PO Nintendo Distribution and COMP/36.321 Omega — Nintendo) (OJ 2003 L 255, p. 33).

Operative part of the judgment

The Court:

1. *Sets the amount of the fine imposed on CD-Contact Data GmbH at EUR 500 000;*

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

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

([1]) OJ C 70, 22.3.2003.

Judgment of the Court of First Instance of 30 April 2009 — Spain v Commission

(Case T-281/06) ([1])

(EAGGF — Guarantee Section — Expenditure excluded from Community financing — Compensatory aid for banana producers — Irregularities in quality controls — Type of financial correction applied — Proportionality)

(2009/C 141/77)

Language of the case: Spanish

Parties

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

Defendant: Commission of the European Communities (represented by: F. Jimeno Fernández, Agent)

Re:

Partial annulment of Commission Decision 2006/554/EC of 27 July 2006 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ 2006 L 218, p. 12) in so far as it provides for a financial correction applicable to expenses declared by the Kingdom of Spain pursuant to compensatory aid for banana producers for the financial years 2002 and 2003.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

([1]) OJ C 294, 2.12.2006.

Judgment of the Court of First Instance of 29 April 2009 — BORCO-Marken-Import Matthiesen v OHIM (α)

(Case T-23/07) ([1])

(Community trade mark — Application for the Community figurative mark α — Absolute ground for refusal — Distinctive character — Article 7(1)(b) of Regulation (EC) No 40/94)

(2009/C 141/78)

Language of the case: German

Parties

Applicant: BORCO-Marken-Import Matthiesen GmbH & Co. KG (Hamburg, Germany) (represented by: M. Wolter, lawyer)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 30 November 2006 (Case R 808/2006-4), concerning the registration as a Community trade mark of the figurative sign α

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 30 November 2006 (Case R 808/2006-4);*

2. *Declares that there is no need to adjudicate on the second head of claim of BORCO-Marken-Import Matthiesen GmbH & Co. KG;*

3. *Orders OHIM to pay the costs.*

(1) OJ C 69, 24.3.2007.

Judgment of the Court of First Instance of 29 April 2009 — Bodegas Montebello v OHIM — Montebello (MONTEBELLO RHUM AGRICOLE)

(Case T-430/07) (1)

(Community trade mark — Opposition proceedings — Application for the figurative Community trade mark MONTEBELLO RHUM AGRICOLE — Earlier national word mark MONTEBELLO — Relative ground for refusal — No likelihood of confusion — Absence of similarity between the goods — Article 8(1)(b) of Regulation (EC) No 40/94)

(2009/C 141/79)

Language of the case: Spanish

Parties

Applicant: Bodegas Montebello, SA (Montilla, Spain) (represented by: T. Andrade Boué, I. Lehmann Novo and A. Hernández Lehmann, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: P. López Fernández de Corres and J. Crespo Carrillo, acting as Agents)

Other party to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance: Montebello SARL (Petit-Bourg, France) (represented by: G.-G. Lamoureux, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 7 September 2007 (Case R 223/2007-2), relating to opposition proceedings between Bodegas Montebello, SA and Montebello SARL

Operative part of the judgment

The Court:

1. *dismisses the action;*

2. *orders Bodegas Montebello, SA to pay the costs.*

(1) OJ C 22, 26.1.2008.

Judgment of the Court of First Instance of 5 May 2009 — Rotter v OHIM (Shape of an arrangement of sausages)

(Case T-449/07) (1)

(Community trade mark — Application for a three-dimensional Community trade mark — Shape of an arrangement of sausages — Absolute ground for refusal — Lack of distinctive character — Article 7(1)(b) of Regulation (EC) No 40/94)

(2009/C 141/80)

Language of the case: German

Parties

Applicant: Thomas Rotter (Munich, Germany) (represented by: M. Müller, lawyer)

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 Fourth Board of Appeal of OHIM of 27 September 2007 (Case R 1415/2006-4) relating to the registration of a three-dimensional sign representing an arrangement of sausages as a Community trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Mr Thomas Rotter to pay the costs.*

(1) OJ C 37, 9.2.2008.

Judgment of the Court of First Instance of 24 April 2009 — Sanchez Ferriz and Others v Commission

(Case T-492/07 P) (1)

(Appeal — Staff Cases — Officials — Promotion — 2005 promotion year — Non-inclusion on the list of promoted officials — Multiplication rates for guidance purposes — Articles 6 and 10 of Annex XIII to the Staff Regulations — Legal interest in raising a plea)

(2009/C 141/81)

Language of the case: French

Parties

Appellants: Carlos Sanchez Ferriz (Brussels, Belgium) and the nine other officials of the Commission of the European Communities whose names appear in the annex to the judgment (represented by: F. Frabetti, lawyer)

Other party to the proceedings: Commission of the European Communities (represented by: C. Berardis-Kayser and G. Berscheid, Agents)

Re:

Appeal brought against the order of the European Union Civil Service Tribunal (Second Chamber) of 17 October 2007 in Case F-115/06 *Sanchez Ferriz and Others* v *Commission*, not yet published in the ECR, seeking annulment of that order.

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Mr Carlos Sanchez Ferriz and the nine other Commission officials whose names appear in the annex to bear their own costs and to pay those incurred by the Commission in the present proceedings.*

([1]) OJ C 64, 8.3.2008.

Judgment of the Court of First Instance of 6 May 2009 — M v EMEA

(Case T-12/08) ([1])

(Appeal — Staff case — Temporary staff — Invalidity — Application for reconsideration of the decision rejecting a first request that the Invalidity Committee be convened — Action for annulment — Non-actionable measure — Confirmatory act — New and substantial facts — Admissibility — Non-contractual liability — Non-material harm)

(2009/C 141/82)

Language of the case: French

Parties

Appellant: M (London, United Kingdom) (represented by: S. Orlandi, A. Coolen, J.-N. Louis and E. Marchal, lawyers)

Other party to the proceedings: European Medicines Agency (EMEA) (represented by: V. Salvatore and N. Rampal Olmedo, Agents)

Re:

Appeal brought against the order of the Civil Service Tribunal of the European Union (First Chamber) in Case F-23/07 *M* v *EMEA* [2007] ECR-SC I-A-0000 and II-0000 seeking that that order be set aside.

Operative part of the judgment

The Court:

1. *Sets aside the order of the Civil Service Tribunal of the European Union (First Chamber) of 19 October 2007 in Case F-23/07 M v EMEA [2007] ECR I-A-0000 and II-0000;*

2. *Annuls the decision of the European Medicines Agency (EMEA) of 25 October 2006, in so far as it rejected M's request of 8 August 2006 for his case to be referred to the Invalidity Committee;*

3. *Orders EMEA to pay the appellant compensation of EUR 3 000;*

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

5. *Orders EMEA to pay the costs of the procedure before the Civil Service Tribunal and those of this case.*

([1]) OJ C 64, 8.3.2008.

Judgment of the Court of First Instance of 29 April 2009 — Enercon v OHIM (E-Ship)

(Case T-81/08) ([1])

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

(2009/C 141/83)

Language of the case: German

Parties

Applicant: Enercon GmbH (Aurich, Germany) (represented by: R. Böhm and V. Henke, lawyers)

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

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 4 December 2007 (Case R 319/2007-1), relating to an application for registration of the sign E-ship as a Community trade mark

Operative part of the judgment

The Court:

1. *dismisses the action;*

2. *orders Enercon GmbH to pay the costs.*

([1]) OJ C 107, 26.4.2008.

Judgment of the Court of First Instance of 5 May 2009 — ars Parfum Creation & Consulting v OHIM (Shape of a spray bottle)

(Case T-104/08) [1]

(Community trade mark — Application for a three-dimensional Community trade mark — Shape of a spray bottle — Relative ground for refusal — Lack of distinctive character — Obligation to state reasons — Articles 7(1)(b), 73 and 74(1) of Regulation (EC) No 40/94)

(2009/C 141/84)

Language of the case: German

Parties

Applicant: ars Parfum Creation & Consulting GmbH (Cologne, Germany) (represented by: A. Späth and G. Hasselblatt, lawyers)

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

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 8 November 2007 (Case R 1656/2006-1), relating to the registration as a Community trade mark of a three-dimensional sign consisting of the shape of a spray bottle

Operative part of the judgment

The Court:

1. *dismisses the action;*

2. *orders ars Parfum Creation & Consulting GmbH to pay the costs.*

[1] OJ C 107, 26.4.2008.

Order of the Court of First Instance of 27 March 2009 — Alves dos Santos v Commission

(Case T-184/08) [1]

(European Social Fund — Training programmes — Reduction in the financial assistance initially granted — Application — Formal requirements — Manifest inadmissibility)

(2009/C 141/85)

Language of the case: Portuguese

Parties

Applicant: Rui Manuel Alves dos Santos (Alvaiázere, Portugal) (represented by: A. Marques Fernandes, lawyer)

Defendant: Commission of the European Communities (represented by: P. Guerra e Andrade and B. Kotschy, acting as Agents)

Re:

Application for annulment of the Commission's decision of 4 March 2004, notified to Rui Manuel Alves dos Santos on 3 March 2008, reducing the amount of financial assistance granted by the European Social Fund (ESF) in respect of a vocational training programme submitted by the Portuguese authorities in file No 89 0488 P1

Operative part of the order

1. *Dismisses the action;*

2. *Orders Rui Manuel Alves dos Santos to pay the costs.*

[1] OJ C 209, 15.8.2008.

Order of the Court of First Instance of 22 April 2009 — Bundesverband Deutscher Milchviehhalter and Others v Council

(Case T-217/08) [1]

(Action for annulment — Regulation (EC) No 248/2008 — Milk quota scheme — Increase in national milk quotas — Applicants not individually concerned — Inadmissible)

(2009/C 141/86)

Language of the case: German

Parties

Applicants: Bundesverband Deutscher Milchviehhalter eV (Bonn, Germany); Romuald Schaber (Petersthal, Germany); Stefan Mann (Eberdorfergrund, Germany); and Walter Peters (Körchow, Germany) (represented by: W. Renner and O. Schniewind, lawyers)

Defendant: Council of the European Union (represented by: M. Moore and Z. Kupčová, acting as Agents)

Intervener in support of the applicants: Commission of the European Communities (represented by: H. Tserepa-Lacombe and M. Vollkommer, acting as Agents)

Re:

Application for annulment of Council Regulation (EC) No 248/2008 of 17 March 2008 amending Regulation (EC) No 1234/2007 as regards the national quotas for milk (OJ 2008 L 76, p. 6).

Operative part of the order

1. *The action is dismissed.*

2. *The Bundesverband Deutscher Milchviehhalter eV, Romuald Schaber, Stefan Mann and Walter Peters are ordered to bear their own costs and to pay those incurred by the Council.*

3. *The Commission is ordered to bear its own costs.*

[1] OJ C 209 of 15.8.2008.

Order of the Court of First Instance of 1 April 2009 — Perry v Commission

(Case T-280/08) [1]

(Action for damages — Limitation period — Admissibility)

(2009/C 141/87)

Language of the case: French

Parties

Applicant: Claude Perry (Paris, France) (represented by: J. Culioli, lawyer)

Defendant: Commission of the European Communities (represented by: J.-P. Keppenne and P. van Nuffel, Agents)

Re:

Application for damages seeking compensation for the damage allegedly suffered by the applicant as a result of allegations of misuse of Community subsidies in the performance of certain contracts concluded by the Commission with the applicant's companies.

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *Mr Claude Perry is ordered to pay the costs.*

[1] OJ C 260, 11.10.2008.

Order of the Court of First Instance of 31 March 2009 — Spain v Commission

(Case T-359/08) [1]

(Action for annulment — Withdrawal of the contested measure — No need to give a decision)

(2009/C 141/88)

Language of the case: Spanish

Parties

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

Defendant: Commission of the European Communities (represented by: A. Steiblyté and S. Pardo Quintillán, Agents)

Re:

Annulment of Commission Decision C(2008) 3243 of 25 June 2008 reducing the financial assistance granted from the Cohesion Fund for the group of projects No 2001.ES.16.C.P.E.045 (Waste Management in Galicia — 2001 (Group II)) by Decision C(2001) 4193 of 20 December 2001

Operative part of the order

1. *There is no need to give a decision in the present action.*

2. *The Commission shall bear its own costs and pay those incurred by the Kingdom of Spain.*

[1] OJ C 272, 25.10.2008.

Order of the Court of First Instance of 31 March 2009 — Spain v Commission

(Case T-360/08) [1]

(Action for annulment — Withdrawal of the contested measure — No need to give a decision)

(2009/C 141/89)

Language of the case: Spanish

Parties

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

Defendant: Commission of the European Communities (represented by: A. Steiblyté and S. Pardo Quintillián, Agents)

Re:

Annulment of Commission Decision C(2008) 3247 of 25 June 2008, reducing the financial assistance granted from the Cohesion Fund for project group No. 2001.ES.16.C.P.E.036 ('Cleaning of the Hydrographic Basic of North-Galicia-2001') by Decision C(2001) 4084 of 20 December 2001.

Operative part of the order

1. *There is no need to give a decision in the present action.*

2. *The Commission shall bear its own costs and pay those incurred by the Kingdom of Spain.*

[1] OJ C 272, 25.10.2008.

Order of the Court of First Instance of 2 April 2009 — Cachuera v OHIM — Gelkaps (Ayanda)

(Case T-43/09) [1]

(Application initiating proceedings — Formal requirements — Inadmissibility)

(2009/C 141/90)

Language of the case: Spanish

Parties

Applicant: La Cachuera, SA (Misiones, Argentina) (represented by: E. Armijo Chávarri, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Gelkaps GmbH (Pritzwalk, Germany)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 19 November 2008 (Case RE 87/2008-2), relating to opposition proceedings between La Cachuera, SA and Gelkaps GmbH

Operative part of the order

The Court:

1. *Dismisses the action.*

2. *Orders La Cachuera, SA to bear its own costs.*

([1]) OJ C 69, 21.3.2009.

Order of the President of the Court of First Instance of 24 April 2009 — Nycomed Danmark v EMEA

(Case T-52/09 R)

(Application for interim measures — Marketing authorisation for a medicinal product — Ultrasound echocardiographic imaging agent for diagnostic purposes (perflubutane) — Refusal by the EMEA to grant a waiver from the obligation to submit a paediatric investigation plan — Application for suspension of operation of a measure and interim measures — No urgency)

(2009/C 141/91)

Language of the case: English

Parties

Applicant: Nycomed Danmark ApS (Roskilde, Denmark) (represented by: C. Schoonderbeek and H. Speyart van Woerden, lawyers)

Defendant: European Medicines Agency (EMEA) (represented by: V. Salvatore and N. Rampal Olmedo, Agents)

Re:

APPLICATION, first, for suspension of the operation of the EMEA's decision of 28 November 2008 rejecting the application for a product-specific waiver concerning perflubutane and, secondly, for the grant of interim measures.

Operative part of the order

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

2. *Costs are reserved.*

Order of the President of the Court of First Instance of 3 April 2009 — UCAPT v Commission

(Case T-96/09 R)

(Interim measures — Application for suspension of operation of a measure — Failure to comply with the formal requirements — Inadmissible)

(2009/C 141/92)

Language of the case: French

Parties

Applicant: Union des Coopératives agricoles des producteurs de tabac de France (UCAPT) (Paris, France) (represented by: B. Peignot and D. Garreau, lawyers)

Defendant: Commission of the European Communities (represented by: M. Moore and P. Mahnič Bruni, acting as Agents)

Re:

Application for suspension of operation of Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003 (OJ 2009 L 30, p. 16).

Operative part of the order

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

2. *Costs are reserved.*

Action brought on 24 march 2009 — Viasat Broadcasting UK v Commission

(Case T-114/09)

(2009/C 141/93)

Language of the case: English

Parties

Applicant: Viasat Broadcasting UK Ltd (London, United Kingdom) (represented by: S. Kalsmose-Hjelmborg and M. Honoré, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— annul the decision of the European Commission of 4 August 2008 in Case N 287/2008; and

— order the Commission to pay the costs.

Pleas in law and main arguments

By this application, the applicant seeks the annulment of the Commission's decision of 4 august 2008 in Case N 287/2008 [1] by which the Commission approved, on the basis of Article 87 (3) (c) EC rescue aid granted by the Danish State to TV 2 Danmark A/S ('TV 2').

The applicant submits that the aid does not comply with Article 87(3) (c) since it infringes the principle of proportionality enshrined in that provision according to which such aid must not 'adversely affect trading conditions to an extent contrary to the common interest'. In particular, the applicant claims first that the Commission erred in law when it held that TV 2 constituted a 'firm in difficulty' within the meaning of the Community guidelines on state aid for rescuing and restructuring firms in difficulty [2]. Secondly, the applicant contends that the Commission erred in law when holding that the rescue aid was limited to what was necessary to keep TV 2 business and that aid was maintained at a level which would not allow TV 2 to invest in new activities or to behave aggressively in commercial markets. Thirdly, the applicant claims that the Commission erred in law when it failed to take into account the State aid received by TV 2 in the past.

[1] A summary of the contested decision was published in the *Official Journal of the European Union* (OJ 2009 C 9, p. 2) and a non-confidential version of the decision was made available on http://ec.europa.eu/community_law/state_aids/

[2] Community guidelines on state aid for rescuing and restructuring firms in difficulty (OJ 2004 C 244, p. 2)

Action brought on 20 March 2009 — La Sonrisa de Carmen and Bloom Clothes v OHIM — Heldmann (BLOOMCLOTHES)

(Case T-118/09)

(2009/C 141/94)

Language in which the application was lodged: Spanish

Parties

Applicants: La Sonrisa de Carmen SL (Vigo, Spain), Bloom Clothes SL (Madrid, Spain) (represented by: S. Mígel Pereira, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Harald Heldmann (Hamburg, Germany)

Form of order sought

— Annul the decision of the Board of Appeal of 8 January 2009 in Case R 695/2008-2 and order the registration of the mixed mark BLOOMCLOTHES as a Community trade mark in classes 25 and 35.

Pleas in law and main arguments

Applicant for a Community trade mark: La Sonrisa de Carmen SL

Community trade mark concerned: Mixed mark consisting of the term 'BLOOMCLOTHES' with the figurative element of a toadstool (Application No 5 077 128) for goods and services in classes 18, 25 and 35.

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

Mark or sign cited in opposition: Word mark 'BLOOM' (German trade mark No 30 439 990) for goods in class 25.

Decision of the Opposition Division: Partial rejection of the opposition.

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

Pleas in law: Infringement of Article 8(1)(b) of Regulation No 40/94 on the Community trade mark (OJ 1994 L 11, p. 1), as replaced by Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1).

Action brought on 23 March 2009 — Zhejiang Xinshiji Foods et Hubei Xinshiji Foods v Council

(Case T-122/09)

(2009/C 141/95)

Language of the case: English

Parties

Applicants: Zhejiang Xinshiji Foods Co. Ltd, Hubei Xinshiji Foods Co. Ltd (represented by: F. Carlin, Barrister, A. MacGregor, Solicitor, N. Niejahr and Q. Azau, lawyers)

Defendant: Council of the European Union

Form of order sought

— annul the Regulation to the extent that it imposes anti-dumping duties on products produced and exported by the applicants;

— order the Council of the European Union to pay its own costs and the applicants' costs in connection with these proceedings.

Pleas in law and main arguments

By means of their application, the applicants seek the annulment, pursuant to Article 230 EC, of Council Regulation (EC) No 1355/2008 of 18 December 2008 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain prepared or preserved citrus fruits (namely mandarins, etc.) originating in the People's Republic of China [1] ('the Definitive Regulation'), insofar as it concerns the applicants.

The applicants submit that the Definitive Regulation should be annulled insofar as it concerns them because it violates the applicants' rights of defence, the duty to state reasons and breaches the principle of sound administration.

The applicants claim that their rights of defence were violated,

(i) because of the failure to provide timely disclosure of essential facts, as required by Article 20(4) of Council Regulation (EC) 384/96 [2], as well as the failure to provide adequate explanations as to inconsistencies in the Community industry's sales volumes, with the effect that the applicants could not effectively make their views known or defend their interest in a meaningful way.

(ii) in the context of the determination of injury where the Commission failed:

(a) to answer the applicants' questions surrounding data inconsistencies in the Community industry's sales volumes in time for the applicants' to make known their views before the Council adopted the Definitive Regulation;

(b) to provide the applicants with the requested explanations in relation to the refusal to take due account of the impact of the prices of raw materials;

(c) to explain how the Commission had calculated the 2 % uplift for import costs and importer's margin, and

(iii) by a manifest error of assessment in failing to take into account significant inconsistencies in relation to the Community industry's sales data in determining injury.

The applicants submit that the Definitive Regulation also violates Article 253 EC by failing to state the reasons on which it was based regarding an essential element of fact, namely the 2 % uplift for import costs and importer's margin, which is relevant to the findings made in the Definitive Regulation that led to the imposition of the definitive anti-dumping duties applicable to the applicants.

Finally, the applicants contend that, in view of the representations made by the applicants throughout the procedure, pointing to the various failures of the Commission to properly explain the factual basis on which the Commission was proposing to adopt definitive anti-dumping measures and to properly safeguard the applicants' rights of defence, the Council breached the principle of sound administration when adopting the Definitive Regulation as proposed by the Commission.

[1] OJ 2008 L 350, p. 35

[2] Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (OJ 1996 L 56, p. 1)

Action brought on 28 March 2009 — Ryanair v Commission

(Case T-123/09)

(2009/C 141/96)

Language of the case: English

Parties

Applicant: Ryanair Ltd (Dublin, Ireland) (represented by: E. Vahida and I-G. Metaxas-Maragkidis, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— To declare in accordance with Articles 230 and 231 EC that part of the European Commission's decision of 12 November 2008 in State aid case C26/2008 (Loan of EUR 300 million to Alitalia S.p.A.) is void insofar as it does not order the recovery of the aid from the successors of Alitalia and grants Italy additional time to implement its decision;

— to declare in accordance with Articles 230 and 231 EC that the entire decision of 12 November 2008 in State aid case N510/2008 (Sale of assets of Alitalia S.p.A.) is void;

— to order the Commission to bear its own costs and to pay those incurred by the applicant; and

— to take such further action as the Court may deem appropriate.

Pleas in law and main arguments

The applicant contests the legality of two Commission decisions of 12 November 2008 in State aid Cases C 26/2008 (ex NN 31/08) on the loan of EUR 300 million granted to Alitalia notified under document number C(2008) 6743 [1] and N510/2008 No C(2008) 6745 final regarding the procedure for the sale of the assets of Alitalia insofar as it found that the said procedure did not give rise to the grant of a State aid, provided that the Italian authorities complied with certain commitments.

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

In respect to the first contested decision, the applicant submits that it is partially void because it does not order recovery from Alitalia's successors and it grants Italy additional time to recover the loan.

In respect to the second contested decision, the applicant claims that by not initiating a formal investigation procedure despite the existence of serious difficulties the Commission issued an incomplete and insufficient decision and violated the applicant's procedural rights available under Article 88(2) EC. In addition, the applicant contends that the Commission lacked competence for the adoption of a conditional decision of absence of aid after a simple preliminary examination. Moreover, the applicant submits that the Commission failed to examine all the relevant features of the measures and their context.

In particular, according to the applicant the Commission failed to review whether the Italian extraordinary administration procedure in itself gave rise to the grant of aid and whether the Italian government had manipulated legislation to favour Compagnia Aerea Italiana's plan.

Further, the applicant claims that the Commission committed a manifest error of assessment by disregarding the possible alternatives to the sale of Alitalia's assets, such as a judicial liquidation or a share deal. The applicant also submits that the Commission failed to apply the market economy investor principle to the sale of Alitalia's assets, in particular, by not assessing the effect on price of the express condition of continuity of service and the implied condition of Italian origin of the buyer of Alitalia's passenger transport business, by not finding that the procedure for the sale of Alitalia's assets was obviously inadequate, and by failing to assess the true price offered by CAI and to define criteria for the determination of the market price of Alitalia's assets.

In addition, the applicant claims that the Commission committed an error in the identification of the party who must reimburse the loan, which should be CAI given the continuity between Alitalia and Compagnia Aerea Italiana. The applicant submits finally, that the Commission breached the obligation to state reasons.

([1]) OJ 2009 L 52, p. 3

Action brought on 31 March 2009 — Meridiana and Eurofly v Commission

(Case T-128/09)

(2009/C 141/97)

Language of the case: English

Parties

Applicants: Meridiana SpA (Olbia, Italy) and Eurofly SpA (Milan, Italy) (represented by: N. Green, QC, K. Bacon, Barrister, C. Osti and A. Prastaro, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— annul Commission decision C(2008) 6745 final of 12 November 2008;

— order the Commission to pay the applicants' costs.

Pleas in law and main arguments

The applicants seek the annulment of Commission Decision C(2008) 6745 final of 12 November 2008 declaring that the procedure for selling off the assets of the Alitalia airline company, as notified by the Italian authorities, do not represent the granting of the State aid in favour of the purchaser (N 510/2008) ([1]). The applicants are the competitors on the air transport market and they lodged with the Commission the complaints regarding the measures notified by Italian authorities.

The applicants put forward following pleas in law in support of their claims.

First, they claim that the contested decision is vitiated by errors of law, manifest errors of facts and deficiencies of reasoning as the Commission concluded that the assets of Alitalia would be sold at market prices. In particular, the applicants submit that the features of the procedure set out by the Commission do not demonstrate the existence of an independent expert valuation of Alitalia's assets prior to the negotiations for the sale of those assets. In the applicants' opinion, the Commission also erred in law by failing to attach sufficient weight to the absence of an open and transparent procedure for the sale of Alitalia's assets.

Second, the applicants contend that the Commission's conclusion staying that the arrangements of the transfer of the assets were not designed with the purpose of avoiding the obligation to repay State aid is based on errors in law, manifest errors of fact and deficiencies of reasoning.

Third, the applicants submit that the Commission erred in law and breached its duty to state reasons by failing to consider whether the 2008 legislation introduced in Italy regarding the special insolvency procedure in itself constituted State aid to Alitalia and to the purchaser, as submitted in the applicants' complaint as, in their opinion, it was aimed to enable the transfer of Alitalia's assets.

Fourth, in the applicants' view, the Commission erred in law and breached its duty of reasoning by failing to consider whether a number of elements of the applicants' complaint demonstrated the existence of State aid, namely the separation of Alitalia's assets in circumstances where a normal private investor would not have done so, the breach of the principle of non-discrimination, the inclusion of the assets of another company in the sale and the acquisition of another company by the purchaser of the Alitalia's assets.

Finally, the applicants claim that the Commission erred in law by failing to initiate the formal investigation procedure under Article 88(2) EC and instead deciding the case following a preliminary investigation.

([1]) OJ 2009 C 46, p. 6

Action brought on 2 April 2009 — Bongrain v OHIM — Apetito (APETITO)

(Case T-129/09)

(2009/C 141/98)

Language in which the application was lodged: English

Parties

Applicants: Bongrain SA (Viroflay, France) (represented by: C. Hertz-Eichenrode, lawyer)

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

Other party to the proceedings before the Board of Appeal: Apetito AG (Rheine, Germany)

Form of order sought

— Set aside the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 2 February 2009 in case R 720/2008-4; 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 'APETITO', for goods in class 29 — application No 3 470 598

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 of the word mark 'apetito' for goods in classes 5, 11, 21 29, 30, 37, 39, 41 and 42

Decision of the Opposition Division: Upheld the opposition

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation 40/94 [1] (which became Article 8(1)(b) of Council Regulation 207/2009) as the Board of Appeal erred in its finding that there is similarity of goods and hence likelihood of confusion between the trade marks concerned.

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

Action brought on 27 March 2009 — I Marchi Italiani and B Antonio Basile 1952 v OHIM — Osra (B Antonio Basile 1952)

(Case T-133/09)

(2009/C 141/99)

Language in which the application was lodged: Italian

Parties

Applicants: I Marchi Italiani (Naples, Italy) and B Antonio Basile 1952 (Giugliano, Italy) (represented by: G. Militerni, 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: Osra SA (Rovereta, Italy)

Form of order sought

— Annul the decision of the Second Board of Appeal dated 09.01.2009, notified to the applicants in the present case on 30.01.2009 in proceedings R 502/2008, between I Marchi Italiani Srl and Osra S.A., which upheld the decision of the Cancellation Division, which allowed the application for revocation and declaration of invalidity of the mark 'B Antonio Basile 1952', following the action brought by Osra S.A.;

— Declare the registration of the mark 'B Antonio Basile 1952' to be valid and effective as from the date of filing of the application and/or registration of that mark;

— Order OHIM 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: Figurative mark containing the wording 'B Antonio Basile 1952' (Community trade mark No 5 274 121 (divisional registration resulting from the division of registration No 1 462 555 following partial assignment of same), for goods in Classes 14, 18 and 25.

Proprietor of the Community trade mark: the applicants.

Applicant for the declaration of invalidity: Osra S.A.

Trade mark right of applicant for the declaration: Figurative mark 'BASILE' (Italian registration No 738 901 and international registration No R 413 396 B) for goods in Class 25.

Decision of the Cancellation Division: Allowed the application for annulment and declared the Community trade mark in its entirety to be invalid.

Decision of the Board of Appeal: Dismissed the appeal.

Pleas in law: Incorrect application of Article 52(1)(a) and Article 53(2) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark [1] and lack of likelihood of confusion.

[1] OJ 1994 L 11, p. 1.

Action brought on 30 March 2009 — B Antonio Basile 1952 and I Marchi Italiani v OHIM

(Case T-134/09)

(2009/C 141/100)

Language in which the application was lodged: Italian

Parties

Applicants: B Antonio Basile 1952 (Giugliano, Italy) and I Marchi Italiani (Naples, Italy) (represented by: G. Militerni, 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: Osra SA (Rovereta, Italy)

Form of order sought

— Annul the decision of the Second Board of Appeal dated 09.01.2009, notified to the applicants in the present case on 30.01.2009 in proceedings R 1436/2007-2, between Antonio Basile, operating as a sole proprietorship 'B Antonio Basile 1952' and Osra S.A., which upheld the decision of the Cancellation Division, which allowed the application for revocation and declaration of invalidity of the mark 'B Antonio Basile 1952', following the action brought by Osra S.A.;

— Declare the registration of the mark 'B Antonio Basile 1952' to be valid and effective as from the date of filing of the application and/or registration of that mark;

— Order OHIM 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: Figurative mark containing the wording 'B Antonio Basile 1952' (Community trade mark application No 1 462 555), for goods in Classes 14, 18 and 25

Proprietor of the Community trade mark: The applicants.

Applicant for the declaration of invalidity: Osra S.A.

Trade mark right of applicant for the declaration: Word mark 'BASILE' (Italian registration No 287 030 and international registration No R 413 396 B) for goods in Class 25.

Decision of the Cancellation Division: Declared the trade mark in question to be partially invalid in relation to goods in Class 25.

Decision of the Board of Appeal: Dismissed the appeal.

Pleas in law: The grounds put forward in the present action are the same as those in Case T-133/09.

Action brought on 7 April 2009 — Nexans France and Nexans v Commission

(Case T-135/09)

(2009/C 141/101)

Language of the case: English

Parties

Applicants: Nexans France SAS and Nexans SA (Paris, France) (represented by: M. Powell, Solicitor and J.-P. Tran Thiet, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— annul the Commission's decision of 9 January 2009 — Case COMP/39610 — Surge;

— declare unlawful the Commission's decision to remove four DVD-ROMs and a copy of the whole hard drive of the laptop of an employee of Nexans France, for review at its premises in Brussels at a later date;

— annul the Commission's decision to interview a Nexans France employee on 30 January 2009;

— order the Commission to return to Nexans France any documents or evidence which it might have obtained pursuant to the annulled decisions, including without limitation: (a) documents outside the proper product scope of the dawn raid; (b) documents relating to electrical cable projects located outside the European Economic Area; (c) documents seized improperly from the hard drive and DVD-ROMs; and (d) statements created during or based on interviews of the Nexans France employee;

— order the Commission to refrain from using, for the purposes of proceedings in respect of an infringement of the Community competition rules, any documents or evidence which it might have obtained pursuant to the annulled decisions;

— order the Commission to refrain from transmitting such documents or evidence (or derivatives or information based thereon) to competition authorities in other jurisdictions;

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

— take such other or further steps as justice may require.

Pleas in law and main arguments

In the present case, the applicants seek the annulment of Commission decision C(2009) 92/1 of 9 January 2009 ordering Nexans SA and all companies directly or indirectly controlled by it, including Nexans France SAS to submit to an inspection in accordance with Article 20, paragraph 4 of Council Regulation 1/2003 ([1]) (Case COMP/39610-Surge) as well as the way in which it was executed.

In support of its claims, the applicants argue that the contested decision is in breach of the applicants' fundamental rights, including the rights of defence, the right to a fair legal process, the privilege against self-incrimination and the presumption of innocence and right to privacy. Furthermore, they submit that in the execution of the contested decision the Commission went beyond the scope of the investigation.

(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, p. 1

Action brought on 7 April 2009 — Commission v Galor

(Case T-136/09)

(2009/C 141/102)

Language of the case: English

Parties

Applicant: Commission of the European Communities (represented by: A.-M. Rouchaud-Joët, F. Mirza, agents, assisted by B. Katan and M. van der Woude, lawyers)

Defendant: Benjamin Galor (Jupiter, United States of America)

Form of order sought

— order Galor to pay the Community EUR 205 611, to be increased by the statutory interest pursuant to Article 6 119 DCC as of 1 March 2003 up to the date the Community will have received full payment;

— order Galor to pay the Community the statutory interest pursuant to Article 6.119 DCC on EUR 9 231,25 as of 2 September 2003 (or, alternatively, as of 10 March 2007) up to the date the Community will have received full payment;

— order Galor to pay the costs of the current proceedings, provisionally estimated at EUR 17 900, to be increased by the statutory interest pursuant to Article 6.119 DCC as of the date of judgment up to the date the Community will have received full payment.

Pleas in law and main arguments

On 23 December 1997 the European Community, represented by the Commission, entered into a contract IN/004/97 with Prof. Benjamin Galor and three companies for the implementation of the project 'Self-Upgrading of Old-Design Gas Turbines in Land & Marine Industries by Energy-Saving Clean Jet-Engine Technologies' under the Community activities in the field of non-nuclear energy (1). Pursuant to the contract provision, the Commission made an advance payment of its contribution for the project to the contractors. The payment was received by the leader of the project, Prof. Benjamin Galor.

For reasons related to the difficulties for the contractors to find an associated contractor for the project and because no progress had been made in the implementation of the project, the Commission decided to terminate the contract. In its letter to the contractors, the Commission specified that the Community contribution could only be paid (or kept by the contractors) as far as it was related to the project and justified through the final technical and financial report.

The final report submitted by the contractors was not approved by the Commission and the Commission started the procedure for recovering the advance payment.

In its application, the Commission submits that the defendant did not reimburse the amount received, but instead demanded that the Commission pays him a foreseen contribution under the contract minus the advance payment. Furthermore, the defendant started legal proceedings before the Dutch courts to recover this amount. The jurisdiction of the Dutch courts was disputed by the Commission on the basis of the jurisdiction clause in the contract designating the Court of First Instance to decide on any disputes between the contracting parties.

In its application, the Commission seeks the recovery of the advance paid. The Commission claims that it was entitled to terminate the contract in application of the contract's provisions as the defendant acted in breach of his contractual obligations because, inter alia: there was an important delay in commencement of the project and the project showed no progress, the defendant was not able to engage technical means required for the research that the funding had been provided for and the technical and financial reports did not meet the contractual requirements.

Therefore, the Commission contends that it is entitled to demand reimbursement of the advance payment.

(1) Council Decision 94/806/EC of 23 November 1994 adopting a specific programme for research and technological development, including demonstration, in the field of non-nuclear energy (1994 to 1998) OJ 1994 L 334, p. 87

Action brought on 8 April 2009 — France v Commission

(Case T-139/09)

(2009/C 141/103)

Language of the case: French

Parties

Applicant: French Republic (represented by: E. Belliard, G. de Bergues and A.-L. During, Agents)

Defendant: Commission of the European Communities

Form of order sought

— Annul Commission Decision C(2009) 2003 final of 28 January 2009 on the contingency plans in the fruit and vegetable sector implemented by France, in so far as it refers to the part of the measures taken under the contingency plans which was financed by sectoral contributions;

— In the alternative, were the Court to find that application for partial annulment inadmissible, annul Decision C(2009) 2003 final in its entirety;

— Order the Commission to pay the costs.

Pleas in law and main arguments

The applicant seeks annulment in part of Commission Decision C(2009) 203 final ([1]) of 28 January 2009, by which the Commission declared incompatible with the common market State aids granted by the French Republic to producers of fruit and vegetables under the 'contingency plans' aimed at facilitating the marketing of agricultural products harvested in France.

The applicant seeks annulment of the contested decision, to the extent that the Commission found that the measures taken in favour of the producers of fruit and vegetables constituted State aid, whereas those measures were in part financed by voluntary contributions from the producers which do not, according to the applicant, amount to State resources or resources attributable to the State.

In support of its action, the applicant relies on two pleas based on:

— breach of the obligation to state reasons, to the extent that the Commission did not justify the extension of the finding of State aid to measures financed by voluntary contributions from the producers in the sector concerned;

— an error of law, since the Commission regarded as State aid measures financed by private resources paid voluntarily and without State intervention. Those measures cannot be regarded as advantages granted through State resources.

([1]) That is the number stated in the contested decision, whereas the applicant consistently refers to the number C(2009) 2003 final.

Action brought on 7 April 2009 — Prysmian, Prysmian Cavi and Sistemi Energia v Commission

(Case T-140/09)

(2009/C 141/104)

Language of the case: Italian

Parties

Applicants: Prysmian (Milan, Italy), Prysmian Cavi and Sistemi Energia (Milan, Italy) (represented by: A. Pappalardo, lawyer, F. Russo, lawyer, M.L. Stasi, lawyer, C. Tesauro, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— Annul the Decision of 9 January 2009 by which the Commission ordered the inspection (Case COMP/39610 — Surge);

— Declare the Commission's decision to extract a copy of the entire contents of the hard disks of some of the directors of Prysmian and to analyse the content thereof in its own offices in Brussels to be unlawful and contrary to Article 20(2) of Regulation No 1/2003;

— In the alternative, declare the conduct of the inspectors to be abusive in that, in interpreting incorrectly the powers of inspection conferred on them by the Decision, they acquired copies of the entire content of hard disks in order to inspect the content thereof in the Commission's offices in Brussels;

— Order the Commission to return to Prysmian all documents obtained unlawfully in the inspections at its Milan head office or extracts from the hard disks analysed in its own offices in Brussels;

— Order the Commission to refrain from using in any manner the documents unlawfully obtained and, in particular, from using them in proceedings initiated for investigating alleged anti-competitive conduct in the electrical cable sector contrary to Article 81 EC;

— Order the Commission to pay the costs.

Pleas in law and main arguments

The present action has been brought in relation to the Commission Decision of 9 January 2009 concerning the investigation into possible anti-competitive conduct in the electrical cable sector contrary to Article 81 EC, by which the applicants were ordered to submit to an inspection pursuant to Article 20(4) of 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. ([1])

It is stated in that regard that, during the implementation phase of the abovementioned decision, the representatives of the applicants were informed that the defendant had decided to produce forensic images of the hard disks of some computers, in order to continue the investigation in the Commission's offices in Brussels.

The applicants put forward the following in support of its action:

— Regulation No 1/2003 provides expressly that the powers of inspection are to be exercised at the premises of the undertaking, providing for the possibility that those premises may be sealed should the inspection extend over a number of days, and no legislative provision authorises the Commission to make copies of entire hard disks, transport them outside the premises of the undertaking and analyse those documents in its own offices;

— The defendant unduly prolonged the duration of the inspection by roughly one month, placing the applicants in a situation of uncertainty as to the actual scope of the investigation;

— The Commission also prevented them, for some weeks, from making a fully-informed assessment as to whether it might avail itself of the Leniency Notice;

— The defendant's conduct complained of constitutes a clear infringement of the limits the Community legislature placed on its powers of inspection, such as to significantly jeopardise the possibility for the undertakings subject to the inspections to prepare their defence.

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

Action brought on 6 April 2009 — Bredenkamp and Others v Commission

(Case T-145/09)

(2009/C 141/105)

Language of the case: English

Parties

Applicants: John Arnold Bredenkamp, Alpha International (PTV) Ltd (Camberley, United Kingdom), Breco (Asia Pacific) Ltd. (Douglas, Isle of Man, United Kingdom), Breco (Eastern Europe) Ltd. (Douglas, Isle of Man, United Kingdom), Breco (South Africa) Ltd. (Douglas, Isle of Man, United Kingdom), Breco (UK) Ltd. (Ascot, United Kingdom), Breco Group, Breco International (St. Helier, Jersey, United Kingdom), Breco Nominees Ltd. (Ascot, United Kingdom), Breco Services Ltd. (Ascot, United Kingdom), Corybantes Ltd. (Ascot, United Kingdom), Echo Delta Holdings (Reading, United Kingdom), Masters International Ltd. (Ascot, United Kingdom), Piedmont (UK) Ltd. (Ascot, United Kingdom), Raceview Enterprises (Private) Limited, Scottlee Holdings (PTV) Ltd., Scottlee Resorts Ltd., Timpani Exports Ltd. (Douglas, Isle of Man, United Kingdom), Tremalt Ltd. (represented by: D. Vaughan, QC, P. Moser, Barrister and R. Khan, Solicitor)

Defendant: Commission of the European Communities

Form of order sought

— annulment of Commission Regulation (EC) No 77/2009 of 26 January 2009 amending Council Regulation (EC) No 314/2004 concerning certain restrictive measures in respect of Zimbabwe, insofar as it concerns the applicants and each of them;

— further or alternatively, annulment of Commission Regulation (EC) No 77/2009 insofar as it concerns the first applicant and any entity in Annex III said to be "owned" by the first applicant by deletion of entry of the first applicant and all the entries of those entities from Annex III;

— consequently, a declaration that the Commission's said decision of 26 January 2009 is inapplicable in respect of the applicants;

— order that the Commission pay the applicants' costs.

Pleas in law and main arguments

In the present case the applicants seek the partial annulment of Commission Regulation No 77/2009 of 26 January 2009 amending Council Regulation (EC) No 314/2004 concerning certain restrictive measures in respect of Zimbabwe [1] insofar as the applicants are included on the list of natural and legal persons, entities and bodies whose funds and economic resources are frozen in accordance with this provision.

The applicants put forward five pleas in law in support of their claims.

First, the applicants submit that the contested regulation is devoid of any legal basis.

Second, they argue that the Commission failed to provide compelling reasons for funds freeze against the applicants, in violation of its obligation as resulting from the established case law.

Third, the applicants claim that the contested regulation violates their right of defence, both the right to be heard and to effective judicial protection as, in the applicants' opinion, it was adopted without any guarantee being given as to the communication of any inculpatory evidence against them or as to them being heard in relation to such evidence, nor as to their own, exculpatory evidence.

Fourth, the applicants contend that the contested regulation was adopted in breach of Protocol 1 Article 1 ECHR and violates their fundamental rights to property.

Fifth, they state that the contested regulation is based on a manifest error of facts insofar as it affects them. They further argue that the Commission failed to establish the alleged reasons to prove that freezing of the applicants' funds is legally justified, in the light of relevant legislation and to provide precise information and serious and credible evidence as basis to its decision thus failing to meet the requisite burden of proof.

---

[1] OJ 2009 L 23, p. 5

Action brought on 9 April 2009 — Parker ITR and Parker-Hannifin v Commission

(Case T-146/09)

(2009/C 141/106)

Language of the case: English

Parties

Applicants: Parker ITR Srl (Veniano, Italy) and Parker-Hannifin Corp. (Mayfield Heights, Unites States) (represented by: B. Amory, F. Marchini Càmia and F. Amato, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— annul the Decision insofar as it holds Parker ITR liable from 1 April 1986 until 9 June 2006, and Parker Hannifin liable from 31 January 2002 until 9 June 2006;

— substantially reduce the fine imposed on the applicants;

— order the Commission to pay its own costs and those of the applicants.

Pleas in law and main arguments

The applicants seek the annulment of Commission Decision C(2009) 428 Final of 28 January 2009 relating to a proceeding under Article 81 EC and Article 53 EEA in Case COMP/39406 — Marine Hoses insofar as it holds them liable for participation in a single and continuous infringement in the marine hose sector in the EEA, which consisted of allocating tenders, fixing prices, fixing quotas, fixing sales conditions, geographic market sharing, and the exchange of sensitive information on prices, sales volumes and procurement tenders. Furthermore, they seek the reduction of the fine imposed on the applicants.

The applicants put forward nine pleas in law in support of its claims.

Under the first three pleas which concern issues of attribution of liability, the applicants submit as follows:

First, they claim that, in holding Parker OTR liable for the infringement committed before 1 January 2002 by legal entities which still exist, carry out economic activities, and belong to a different undertaking, the contested decision infringed the principle of personal liability, misused its powers in order to circumvent the rules on prescription, infringed the principle of non-discrimination and failed to state reasons.

Second, the applicants argue that the contested decision infringed the principle of personal responsibility in holding them liable for the illegal conduct of Parker ITR's employee given that: (i) the employee engaged in the cartel activities for his own personal benefit; (ii) towards achieving his illegal gains the employee operated Parker ITR's Oil & Gas Business Unit independently of the applicants; (iii) Parker ITR suffered damage as a result of the employee's illegal conduct.

Third, they submit that the contested decision erred in holding Parker Hannifin liable for the period between 31 January 2002 and 9 June 2006, because any presumption of Parker Hannifin's decisive influence over the marine oil and gas hose activities of its wholly owned subsidiary Parker ITR has been amply rebutted by the Applicants and non of the arguments or documents cited in the decision undermines such rebuttal or constitutes evidence of Parker Hannifin's decisive influence over Parker ITR during such period.

Under the remaining six pleas, which concern the amount of the fine, the applicants submit as follows:

Fourth, they contend that the contested decision manifestly erred in defining the infringement from 1 April 1986 to 13 May 1997 and the infringement from 11 June 1999 to 2 May 2007 as either a single and continuous infringement or as a repeated infringement, within the meaning of Article 25, paragraph 2, second sentence, of Regulation 1/2003 [1]. Consequently, in the applicants' view, the Commission's power to impose a fine for the infringement from 1 April 1986 to 13 May 1997 is time barred.

Fifth, the applicants claim that the decision erred in considering Parker ITR as a leader of the cartel from 11 June 1999 to 30 September 2001.

Sixth, they submit that the contested decision violated the principle of personal responsibility and failed to state reasons with regard to the increase of the fine imposed on Parker Hannifin for Parker ITR's alleged role of leader.

Seventh, the applicants argue that the decision infringed the principle of legitimate expectation by taking into account for the purposes of calculating the 'aggregate sales within the EEA', within the meaning of paragraph 18 of the Commission Guidelines on Fines [2], the sales of goods invoiced to companies located in the EEA, but not delivered within the EEA.

Eighth, they claim that in relaying on Parker Hannifin's consolidated turnover for the purposes of calculating the 10 % ceiling for the portion of the fine for which Parker ITR was held solely liable, the contested decision misinterpreted Article 23 of Regulation 1/2003, infringed the principle of personal responsibility and failed to state reasons.

Ninth, they submit that the decision violated the principle of legitimate expectation and the duty to state reasons in refusing to apply to the applicants a reduction of the fine for cooperation.

---

[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

[2] Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003, OJ 2006 C 210, p. 2

Action brought on 9 April 2009 — Trelleborg v Commission

(Case T-148/09)

(2009/C 141/107)

Language of the case: English

Parties

Applicant: Trelleborg AB (Trelleborg, Sweden) (represented by: J. Joshua, Barrister and E. Aliende Rodríguez, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— annul in part Article 1 of the contested decision insofar as it relates to the applicant and in any event at least insofar as it finds the commission of any infringement by the applicant prior to 21 June 1999;

— reduce the fine imposed on the applicant in Article 2 so as to correct the manifest errors in the decision;

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

Pleas in law and main arguments

The applicant seeks the annulment of Commission Decision C(2009) 428 Final of 28 January 2009 relating to a proceeding under Article 81 EC and Article 53 EEA in Case COMP/39406 — Marine Hoses insofar as it holds it liable for participation in a single and continuous infringement in the marine hose sector in the EEA, which consisted of allocating tenders, fixing prices, fixing quotas, fixing sales conditions, geographic market sharing, and the exchange of sensitive information on prices, sales volumes and procurement tenders. Furthermore, it seeks the reduction of the fine imposed on the applicants.

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

First, it submits that the Commission's power to impose fines for any period before 21 June 1999 is time barred under Article 25(1) of Regulation 1/2003 as the applicant argues that the Commission made manifest error in fact and law in finding that the applicant had committed a single and continuous infringement.

Second, it claims that the Commission has no legitimate interest in making a declaratory finding of infringement for the first period which had come to an end in May 1997.

Action brought on 10 April 2009 — Dover v Parliament

(Case T-149/09)

(2009/C 141/108)

Language of the case: English

Parties

Applicant: Densmore Ronald Dover (Borehamwood, United Kingdom) (represented by: D. Vaughan, QC Barrister, M. Lester, Barrister and M. French, Solicitor)

Defendant: European Parliament

Form of order sought

— annulment of contested decision;

— measures of organisation pursuant to Article 64 of the Rules of Procedure of the Court of First Instance, as specified in the application;

— order that the Parliament pays the applicant's costs on this action.

Pleas in law and main arguments

By means of the present application the applicant seeks the annulment of Parliament Decision D(2009) 4639 of 29 January 2009 concerning the recovery of the parliamentary assistance allowance.

In support of his application, the applicant puts forward five pleas in law.

First, he claims that the Parliament has misinterpreted and misapplied Article 14 of the Rules governing the payment of expenses and allowances to members of the European Parliament (PEAM Rules), inter alia by seeking to impose, with retrospective effect, onerous requirements on the applicant which were never requirements on MEPs at the relevant time and by failing to identify precisely which item of expenditure is considered to have been paid unduly.

Second, he submits that the Parliament has relied on an alleged 'conflict of interest' with violation of the principle of legal certainty as it acted incompatibly with past custom and practice, inconsistently with its published rules, and without setting out clear and transparent standards. The applicant claims that the Parliament decision lacks any legal or factual basis.

Third, the applicant argues that the Parliament has not complied with the fundamental procedural requirements of Article 27 of the PEAM Rules inter alia regarding the prior consultation of the quaestors, justifying the 'exceptional case' circumstances, hearing the applicant before a decision had been taken as well as the requirement of a decision that should be taken by the Bureau.

Fourth, he contends that the defendant has sought to reclaim VAT from the applicant without having legal basis for doing so.

Finally, the applicant claims that the Parliament has referred the applicant's case to OLAF prematurely, in breach of the applicant's right of defence and without legal basis or justification.

Action brought on 10 April 2009 — Ningbo Yonghong Fasteners v Conseil

(Case T-150/09)

(2009/C 141/109)

Language of the case: English

Parties

Applicant: Ningbo Yonghong Fasteners Co. Ltd (represented by: F. Graafsma and J. Cornelis, lawyers)

Defendant: Council of the European Union

Form of order sought

— annulment of Council Regulation (EC) No 91/2009 imposing a definitive anti-dumping duty on imports of certain iron or steel fasteners originating in the People's Republic of China; and

— order the Council to pay the applicant's costs.

Pleas in law and main arguments

The applicant requests the annulment of Council Regulation (EC) No 91/2009, of 26 January 2009, imposing a definitive anti-dumping duty on imports of certain iron or steel fasteners

originating in the People's Republic of China [1] on the basis of an alleged infringement of Articles 2(7) (b) and (c) of Regulation (EC) No 384/96 [2] and on the basis of a manifest error of assessment of the facts in rejecting applicant's Market Economy Treatment ("MET") claim.

The applicant claims first, that the Commission failed to take a decision on MET within the statutory deadline pursuant to Article 2(7) (c) second paragraph of Regulation (EC) No 384/96. It is submitted that by making a MET decision after if had received all the information requested in the anti-dumping questionnaire, the Commission violated its obligation provided in the aforementioned provision intended to ensure that the question as to whether a producer meets the MET criteria is not decided on the basis of its effect on the calculation of the dumping margin.

Second, the applicant submits that the Council committed a manifest error of assessment in concluding that the applicant's cost of the major input, steel wire rod, did not substantially reflect market values pursuant to Article 2(7)(c) of Regulation (EC) No 384/96. It is submitted that this manifest error of assessment is attributable to the Commission and the Council's breach of their obligations of due diligence and proper administration by not carefully and impartially examining all of the relevant evidence before them.

Finally, the applicant contends that the Council's interpretation of Article 2 (7) (b) and (c) of Regulation (EC) No 384/96 constitutes an impermissible interpretation and thus an infringement of the said provision. The applicant, moreover, claims that the Council's interpretation of Article 2 (7) (b) (c) not only disregards the fact that the MET assessment needs to be carried out at the company-specific level, but the Council's interpretation also imposes an unreasonable burden of proof. In addition, the Council's interpretation, according to the applicant, renders the possibility to adjust costs of production that are distorted by a particular market situation pursuant to Article 2 (5) of Regulation (EC) No 384/96 redundant and as such conflicts with the obligation to interpret a provision of Community law in accordance with its context and its aim.

[1] OJ 2009, L 29, p. 1

[2] Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (OJ 1996, L 56, p. 1)

Action brought on 8 April 2009 — ISDIN v OHIM — Pfizer (ISDIN)

(Case T-153/09)

(2009/C 141/110)

Language in which the application was lodged: English

Parties

Applicant: ISDIN, SA (Barcelona, Spain) (represented by: M. Esteve Sanz, lawyer)

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

Other party to the proceedings before the Board of Appeal: Pfizer Ltd (Sandwich, United Kingdom)

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 22 January 2009 in case R 390/2008-1;

— Alternatively, annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 22 January 2009 in case R 390/2008-1, insofar as it invalidates the registered Community trade mark subject of the application for a declaration of invalidity for certain goods in class 5; and

— Order the defendant and, as the case may be, the other party to the proceedings before the Board of Appeal, to pay the costs of the proceedings, including those incurred before the Board of Appeal.

Pleas in law and main arguments

Registered Community trade mark subject of the application for a declaration of invalidity: The word mark "ISDIN" for goods in classes 3 and 5

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: Declared the Community trade mark concerned partially invalid

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 73 of Council Regulation 40/94 [1] (which became Article 75 of Council Regulation 207/2009) and of Rule 50(2)(h) of Commission Regulation No 2868/95 [2] as the Board of Appeal failed to comply with the duty to state reasons on the risk of confusion between the trade marks concerned; Infringement of Article 51(1)(a) (which became Article 52(1)(a) of Council Regulation 207/2009), in relation with Article 8(1)(b) (which became Article 8(1)(b) of Council Regulation 207/2009) and Article 74 of Council Regulation 40/94 (which became Article 76 of Council Regulation 207/2009) insofar as the Board of Appeal refused to take into account the limitation made by the applicant in its statement of grounds, and thus considered in a general way that the goods in conflict were identical; Alternatively, infringement of Article 51(1)(a), in relation with Article 8(1)(b) of Council Regulation 40/94, insofar as the contested decision refers to certain goods in class 5; Infringement of Article 51(1)(a), in relation with Article 8(1)(b) of Council Regulation 40/94, insofar as the Board of Appeal upheld the validity of the decision of the Cancellation Division for all products initially covered by the contested trade mark.

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

[2] Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark (OJ 1995 L 303, p. 1).

Action brought on 10 April 2009 — MRI v Commission

(Case T-154/09)

(2009/C 141/111)

Language of the case: Italian

Parties

Applicant: Manuli Rubber Industries SpA (MRI) (Milan, Italy) (represented by: L. Radicati di Brozolo, lawyer, M. Pappalardo, lawyer, and E. Marasà, lawyer)

Defendant: Commission of the European Communities

Form of order sought

The applicant claims that the Court of First Instance should:

— annul Article 1 of the Decision in so far as it states that the applicant participated in a single and continuous infringement in the marine hose sector from 1 April 1986 until 1 August 1992 and from 3 September 1996 until 2 May 2007, in particular during the period from 3 September 1996 to 9 May 2000;

— annul Article 2 of the Decision in so far as a fine in the amount of EUR 4 900 000 is imposed on the applicant as a result of the errors set out in the present application;

— reject any objection or defence put forward to the contrary;

or, in the lesser alternative:

— reduce, in accordance with Article 229 EC, the fine of EUR 4 900 000 to be imposed on the applicant under Article 2 of the Decision;

and, in any event:

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

Pleas in law and main arguments

The Decision contested in the present case ('the contested decision') is the same as that contested in Case T-146/09 *Parker ITR and Parker Hannifin* v *Commission*.

In support of its claims, the applicant submits first that the contested decision is vitiated as regards the categorisation of the infringement imputed to the applicant as participation in a single and continuous cartel agreement from 1986 to 2007, and in particular as regards the imputation of the infringement during the period from 1996 to 2000, and the inclusion of the period from September 1996 to May 1997 in the period in respect of which the penalty was imposed.

It is submitted in that regard that an infringement cannot be either continuous or repeated when the individual infringement episodes are interspersed, as in the present case, with intervals of considerable length and, above all, with positive events which are incompatible with a desire to continue or to repeat the infringement, such as the applicant's public and explicit breaking-off of relations with the cartel, which even the Commission acknowledged.

The applicant also submits that the amount of the fine was improperly determined, particularly as regards the duration, the gravity of the infringement and the reduction due for participation in the leniency programme.

Appeal brought on 20 April 2009 by Luigi Marcuccio against the order of the Civil Service Tribunal of 18 February 2009 in Case F-42/08, Marcuccio v Commission

(Case T-157/09 P)

(2009/C 141/112)

Language of the case: Italian

Parties

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

Other party to the proceedings: Commission of the European Communities

Form of order sought by the appellant

The appellant claims that the Court of First Instance should:

— set aside in its entirety, without any exception whatsoever, the order of the Civil Service Tribunal (First Chamber) of 18 February 2009 in Case F-42/08 *Marcuccio* v *Commission*;

— declare that the action brought before the Civil Service Tribunal in respect of which the order under appeal was made was perfectly admissible, and:

  — grant in their entirety, without any exception whatsoever, the forms of order sought by the appellant before the Civil Service Tribunal which, for all legal intents and purposes, are to be deemed to be reproduced in the present application;

  — order the Commission to repay the appellant all costs, fees and other expenses incurred by the latter in connection with the proceedings before the Civil Service Tribunal, together with the costs incurred by the appellant in the present appeal proceedings;

  or, in the lesser alternative:

  — refer the case back to the Civil Service Tribunal for a decision on the merits, to be taken by that Tribunal sitting in a different formation.

Pleas in law and main arguments

The present appeal has been brought against the order of the Civil Service Tribunal of 18 February 2009 dismissing as manifestly inadmissible the action brought by the appellant for compensation for the damage which he purportedly suffered as a result of the fact that the Commission sent a note intended for him to a fax number which was not at his disposal.

In support of his claims, the appellant alleges a total failure to state reasons in relation to the following:

— the inadmissibility of the action for compensation for damage;

— the inadmissibility of the forms of order seeking, inter alia, confirmation by the Civil Service Tribunal that the event which had given rise to the damage was unlawful;

— the date on which the defence was lodged: on this point, it is also alleged that the Civil Service Tribunal committed a procedural error by failing to comply with the obligation to discount the content of the defence where that document is submitted out of time, such that the interests of the applicant would be seriously compromised.

The appellant also alleges breach of the rules governing the right to a fair hearing; infringement of Article 6 of the European Convention on Human Rights; and infringement of Article 47 of the Charter of Fundamental Rights of the European Union.

Action brought on 16 April 2009 — Martinet v Commission

(Case T-163/09)

(2009/C 141/113)

Language of the case: French

Parties

Applicant: Yvon Martinet (Paris, France) (represented by: J.-L. Fourgoux, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— Annul the decision rejecting Mr Martinet's candidature for the post of alternate member of the Board of Appeal of the European Chemicals Agency;

— Order the European Commission, Enterprise and Industry Directorate-General, Pre-selection Committee for the Board of Appeal of the European Chemicals Agency, to carry out a genuine and in-depth examination of the file containing Mr Martinet's application, as reparation in kind for the damage suffered as a result of the loss of an opportunity;

— In any case, order the European Commission, Enterprise and Industry Directorate-General, Pre-selection Committee for the Board of Appeal of the European Chemicals Agency, to pay all the costs.

Pleas in law and main arguments

The applicant seeks annulment of the Commission decision rejecting his candidature for the post of alternate member of the Board of Appeal of the European Chemicals Agency (ECHA) on the ground that his candidature had not been considered, since it had not been received by the section responsible for the selection process, as a result of being sent to the Vice-President of the Commission, Mr G. Verheugen, at an address different from the exact address stated in the call for expression of interest, published in the *Official Journal of the European Union* (OJ 2008 C 41A, p. 8).

In support of its action, the applicant, with regard to the application for annulment, claims that:

— the contested decision does not satisfy the obligation to state reasons which constitutes an essential formality which must be complied with;

— the contested decision is based on a substantive factual inaccuracy, the candidature having been sent to the address stated in the call for candidatures;

— the principles of sound administration and of equal opportunities for candidates were infringed, because the applicant's candidature was not examined.

Appeal brought on 27 April 2009 by Luigi Marcuccio against the order of the Civil Service Tribunal of 18 February 2009 in Case F-70/07, Marcuccio v Commission

(Case T-166/09 P)

(2009/C 141/114)

Language of the case: Italian

Parties

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

Other party to the proceedings: Commission of the European Communities

Form of order sought by the appellant

The appellant claims that the Court of First Instance should:

— set aside in its entirety, without any exception whatsoever, the order of the Civil Service Tribunal (First Chamber) of 18 February 2009 in Case F-70/07;

— declare that the action brought before the Civil Service Tribunal in respect of which the order under appeal was made was perfectly admissible in its entirety, without any exception whatsoever;

— in so far as may be necessary, declare that the Civil Service Tribunal erred in law by categorising certain forms of order sought in the application as an application for payment of the costs (see paragraph 16 of the order under appeal);

— in so far as may be necessary, declare that the Civil Service Tribunal had jurisdiction, as a court of first instance, to rule on every aspect, without exception, of the forms of order sought by the appellant in the proceedings in Case F-70/07;

and

— uphold, in their entirety, without any exception whatsoever, the forms of order sought, which, for all legal intents and purposes, are to be deemed to be reproduced in the present application;

— order the Commission to reimburse the appellant all costs, fees and other expenses incurred by the latter in connection with the proceedings before the Civil Service Tribunal, together with the costs incurred by the appellant in the present appeal proceedings;

or, in the lesser alternative:

— refer the case back to the Civil Service Tribunal for a decision on the merits, to be taken by that Tribunal sitting in a different formation.

Pleas in law and main arguments

In support of his claims, the appellant alleges:

— unlawfulness of the part reference to the Court of First Instance of the case under appeal, inter alia through the misinterpretation and misapplication of Article 90 of the Regulations and Rules applicable to officials and other servants of the European Communities ('the Staff Regulations'), and total failure to state reasons;

— breach, misinterpretation and misapplication of the principle of the court with jurisdiction under the law and of Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter');

— unlawfulness of the dismissal, on grounds of inadmissibility, of the forms of order other than those in respect of which the Civil Service Tribunal declared that it lacked jurisdiction to make a ruling, inter alia through the misinterpretation and misinterpretation of Article 90 of the Staff Regulations and of the concept of claims for compensation which are ancillary to an action for the annulment of a decision by a Community institution, and total failure to state reasons and distortion of the evidence;

— procedural errors capable of seriously compromising the interests of the appellant, through failure to comply with the obligation to discount the content of the document referred to in paragraph 11 of the order under appeal in so far as that document had been submitted out of time, and through the request that the parties produce extraordinary documents and the subsequent inclusion of those documents in the case-file for the proceedings at first instance, in that this was capable of seriously compromising the interests of the appellant;

— breach of the rules governing due process; infringement of Article 6 of the European Convention on Human Rights, and Article 47 of the Charter.

Action brought on 28 April 2009 — Vidieffe Srl v OHIM

(Case T-169/09)

(2009/C 141/115)

Language in which the application was lodged: Italian

Parties

Applicant(s): Vidieffe Srl (Bologna, Italy) (represented by: M. Lamandini, avvocato, D. De Pasquale, avvocato, and M. Pappalardo, avvocato)

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

Other party to the proceedings before the Board of Appeal of OHIM: Perry Ellis International Group Holdings Ltd

Form of order sought

— Annul, for breach of Article 8(1)(b) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1) (replaced by Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark, OJ 2009 L 78, p. 1) and/or misuse of powers, the decision of 12 February 2009 of the first Board of Appeal of OHIM insofar as it upholds the appeal in part and annuls the part of the decision of the Opposition Division of OHIM which rejects the opposition in relation to 'leather and imitations of leather, and goods made of these materials and not included in other classes; trunks and travelling bags; umbrellas, parasols and walking sticks' in Class 18 and all goods in Class 25; as a result, uphold in full the decision of the Opposition Division of OHIM (proceedings No B 909 350 of 22 February 2008).

— Order OHIM to take the necessary measures to comply with the decision of the Court of First Instance.

— Order OHIM and Perry Ellis to bear all the costs of the proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: Vidieffe Srl

Community trade mark concerned: word mark 'GOTHA' (application for registration No 3 665 957), for goods in Classes 18 and 25.

Proprietor of the mark or sign cited in the opposition proceedings: Perry Ellis International Group Holdings Ltd.

Mark or sign cited in opposition: figurative Community trade mark 'gotcha' (No 2 896 199) for goods in Classes 3, 18 and 25.

Decision of the Opposition Division: rejection of the opposition in its entirety.

Decision of the Board of Appeal: appeal partially upheld.

Pleas in law: breach of Article 8(1)(b) of Regulation No 40/94 (replaced by Regulation No 207/2009) and misuse of powers in finding that there is a likelihood of confusing signs which are not likely to be confused.

EN

2009 SUBSCRIPTION PRICES (excluding VAT, including normal transport charges)

EU Official Journal, L + C series, paper edition only	22 official EU languages	EUR 1 000 per year (*)
EU Official Journal, L + C series, paper edition only	22 official EU languages	EUR 100 per month (*)
EU Official Journal, L + C series, paper + annual CD-ROM	22 official EU languages	EUR 1 200 per year
EU Official Journal, L series, paper edition only	22 official EU languages	EUR 700 per year
EU Official Journal, L series, paper edition only	22 official EU languages	EUR 70 per month
EU Official Journal, C series, paper edition only	22 official EU languages	EUR 400 per year
EU Official Journal, C series, paper edition only	22 official EU languages	EUR 40 per month
EU Official Journal, L + C series, monthly CD-ROM (cumulative)	22 official EU languages	EUR 500 per year
Supplement to the Official Journal (S series), tendering procedures for public contracts, CD-ROM, two editions per week	multilingual: 23 official EU languages	EUR 360 per year (= EUR 30 per month)
EU Official Journal, C series — recruitment competitions	Language(s) according to competition(s)	EUR 50 per year

(*) Sold in single issues: up to 32 pages: EUR 6
from 33 to 64 pages: EUR 12
over 64 pages: Priced individually.

Subscriptions to the *Official Journal of the European Union*, which is published in the official languages of the European Union, are available for 22 language versions. The Official Journal comprises two series, L (Legislation) and C (Information and Notices).

A separate subscription must be taken out for each language version.

In accordance with Council Regulation (EC) No 920/2005, published in Official Journal L 156 of 18 June 2005, the institutions of the European Union are temporarily not bound by the obligation to draft all acts in Irish and publish them in that language. Irish editions of the Official Journal are therefore sold separately.

Subscriptions to the Supplement to the Official Journal (S Series — tendering procedures for public contracts) cover all 23 official language versions on a single multilingual CD-ROM.

On request, subscribers to the *Official Journal of the European Union* can receive the various Annexes to the Official Journal. Subscribers are informed of the publication of Annexes by notices inserted in the *Official Journal of the European Union*.

Sales and subscriptions

Priced publications issued by the Publications Office are available from our commercial distributors. The list of commercial distributors is available at:

http://publications.europa.eu/others/agents/index_en.htm

EUR-Lex (http://eur-lex.europa.eu) offers direct access to European Union legislation free of charge. The *Official Journal of the European Union* can be consulted on this website, as can the Treaties, legislation, case-law and preparatory acts.

For further information on the European Union, see: http://europa.eu

Publications Office
Publications.europa.eu

OFFICE FOR OFFICIAL PUBLICATIONS OF THE EUROPEAN COMMUNITIES
L-2985 LUXEMBOURG

EN